



**Experiential Systems**

PO Box 188  
 Lansing, IL, 60438  
 (877) 206-8967 www.experientialsystems.com

**CONTRACT**

Sales Order Number : 4271887000041091011  
 Quote/Cost Valid Till Jan 7, 2023

<p><b>BILL TO:</b>                  Wheaton Park District  <b>102 W. Wesley</b>                  Wheaton, IL,                  USA</p>	<p><b>SHIP TO:</b>                  Wheaton Park District  <b>102 W. Wesley</b>                  Wheaton, IL                  USA</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------

S.No.	Product Details	Quantity	List Price	Total
1.	<b>Challenge Course Inspection CCI</b>  To be Completed by March 2023	1	\$ 1,255.00	\$ 1,255.00
2.	<b>Pole Inspection - Subgrade</b>	1	\$ 600.00	\$ 600.00
3.	<b>Staff Training - Course Operations</b>  Day Rate for 1 ESI Trainer and up to 10 participants  Desired early April, 4, 2023	1	\$ 1,255.00	\$ 1,255.00
4.	<b>Training Manuals</b>  ESI Manual and Test. The number of manuals distributed during the training will be in the final invoice. Estimated less than ten.	10	\$ 20.00	\$ 200.00
5.	<b>Travel Expense</b>  Estimated Expense - Actual expenses plus 5% admin fee will be reflected in final invoice. Travel time, meals, miles, tolls.	1	\$ 367.00	\$ 367.00
			Sub Total	<b>\$ 3,677.00</b>
			Tax	\$ 0.00
			Adjustment	\$ 0.00
			<b>Grand Total</b>	<b>\$ 3,677.00</b>

**Please note that unless otherwise covered within the scope of this agreement, the services listed do not constitute an annual inspection or an operational review, and this will not accredit, endorse, or otherwise certify your course or your operations. Industry standards require an annual inspection of your course and operational reviews every five years at minimum. These services are available for additional fees if desired.**

**CLIENT RESPONSIBILITIES**

In order for Experiential Systems to provide the best services possible, Client will need to provide the following items to Experiential Systems at least three (3) weeks prior to the service date(s); please note that some documentation may have a greater lead time.

**Client must provide:**

- A designated onsite contact, available by phone during the performance of services and for questions and/or to communicate needs, or in case of emergency
- Access to all inspection and maintenance records, manuals and equipment logs, required for the purpose of the project.
- Access to all courses, components, and equipment – including any specialized site-specific equipment required to access or maneuver on the course(s); please note that all course components must be able to be accessed in a way that allows ESI employee(s) to adhere to work safety standards.
- Security of job site during services

**EXPERIENTIAL SYSTEMS RESPONSIBILITIES**

Experiential Systems will provide:

- Supervision by a Qualified Professional
- All materials, labor, equipment and tooling required for scope of work unless otherwise agreed upon.
- Removal from the challenge course of any components identified in the scope; disposal or storage of components at the client’s discretion.
- Full written documentation within 30 days of completion of services.

**The Parties affirm and agree that Experiential Systems is not an operator and shall not be an operator of Client’s business, facilities, and services, has no direct supervision over Clients operations and has no financial stake or ownership in Clients organization.**

**\*INSTALLATION PROPOSALS:** The Client will take direct and ultimate responsibility for obtaining government permits/approvals, verification of property lines, securing proper land use classification and dealing with environmental and/or cultural Issues. Prior to providing services the client must ensure all the preceding approvals and permits are obtained and confirmed for the site. Please note that Experiential Systems will make themselves available if required to attend any meetings for an additional fee at the rate of \$160.00 per hour (includes travel time) plus all relevant travel expenses.

Client agrees that additional charges will be incurred if hard rock or significantly difficult digging is encountered. This cost may include fees associated with suspension of project and demobilization of site for a limited time; administrative fees to identify and contract a qualified subcontractor; the subcontractor's fees; and fees and expenses associated with supervision of subcontractor.

Client agrees that additional charges will be incurred as a result of any significant disruption of work created by conditions outside the capacity of Experiential Systems to influence. Examples of such significant disruption include any disruption of 1 hours or more directly caused by the client or any other contractor or entity outside of Experiential Systems that prevents required or scheduled work from occurring as planned; inclement weather including any disruption of 1 hour or more that prevents safe working conditions or scheduled activities; etc. Additional labor fees will be billed at \$140.00 per hour per affected employee plus any related expenses such as additional fees for rental equipment or required travel expenses.

Client is responsible for all site preparations not otherwise included in contract including but not limited to: Tree removal; grass cutting; leveling of land; etc. The Client is further responsible for all area improvements upon completion of installation not specifically listed within the agreement including but not limited to: landscaping, removal of ruts caused by machinery or vehicles, final grading to level site, installation of mulch or other fall attenuation, installation of any fencing or access prevention systems, etc.

**\*\* STAFF TRAINING PROPOSALS** Training and demonstrated competencies on completion of training and/or certification or skill review do not assure an acceptable performance by the trainees, on behalf of your clients or otherwise. Experiential Systems makes no assurances or representations regarding the quality of the future performance of the trainees or any other aspect of your operation, and is not responsible for any injury or loss suffered by any client of your program or member of your staff or others.

This training will be provided for a maximum of 10 attendees per Experiential Systems trainer. Additional trainees may participate at the discretion and approval of Experiential Systems for an additional fee of \$160.00 per additional attendee, and client will be billed accordingly. In no case will Experiential Systems allow more trainees into a training session than can be accommodated by our staff on the installed structure/systems. There will be no refunds or adjustments to this contract for trainee's who do not appear for the training session.

All Trainees In the training session must be at least 18 years of age. It is further expected that all trainees are in reasonable health, able to sustain periods of rigorous physical exertion. Limitations due to physical health or physical abilities will seriously impact the acquisition of and demonstration of skills taught during the training, and may render an attendee unsuitable as a facilitator/guide of the installed structures/systems. It is Experiential Systems policy to allow a trainee in any program the right to withdrawal from any activity. It should be clear to the trainee that such withdrawal may affect the ultimate evaluation of that persons qualifications to serve as a facilitator/guide on your installed structures/systems.

**\*\*\* INSPECTION SERVICES:** The scope of the inspection is a limited visual inspection of the challenge course structures, systems and components. The inspection will be performed in accordance with ACCT Standards and practices for challenge course inspections unless otherwise listed within the scope of the contract. The scope of the inspection is limited to the items listed within the inspection report as seen and evaluated on the date(s) of the inspection. The inspection and the provided report are but a snapshot of the course as it was seen during a specific moment in time, and it is beyond the scope of an inspection or the associated report to attest to any future usability or condition of a course, system or component that may be subject to environmental damage, normal wear and tear, abnormal or unauthorized use, or intentional or accidental modification by others. The inspector is a challenge course generalist and is not acting as an licensed engineer or expert in any other specific craft or trade. If the inspector recommends that the Client consult with specialized experts, the Client must do so at the Clients expense (ex. arborist, engineer, etc.).

#### **NOT INCLUDED IN THE SCOPE OF INSPECTION SERVICES**

Any area which is not exposed to view, is concealed, or is inaccessible because of soil, walls, fixed of immovable barriers, or any other activity, system or component that is not included in the inspection report. The inspection does not include any destructive testing or dismantling of components or systems. Client agrees to assume all risks for any and all conditions which are concealed from view at the time of the inspection. The inspection is not a challenge course warranty, guarantee, or insurance policy. Some specific items not included in the scope of this inspection include, but are not limited to: soil or geological inspection; arboricultural inspection; building code or zoning ordinance violations; engineering analysis of any system; efficiency of any installed components or systems; or mold, fungi, pests, termites, or other wood destroying organisms.

## **Additional Terms and Conditions**

### **1. Cost**

The total price above is \$ 3,677.00. In the event that it is identified that the scope of services or cost for delivery of the scope of services necessitates a change, Client will be notified and presented with a change order. Any change order must be approved in writing by client before any work proceeds.

### **2. Compensation and Term of Work**

Wheaton Park District hereby retains Experiential Systems and Experiential Systems agrees to provide services for Client as specified above. **All service dates are contingent on the receipt of a signed contract and a mobilization deposit of 50% of the total cost of the contracted services \$ 3,677.00.** Experiential Systems schedules on a first come, first served basis, and receipt of deposit is required prior to securing dates of service and/or preparation

### **3. Change Orders and Payment Terms**

An additional contract or change order will be required if major modifications, repairs, or additional inspections or work outside of the scope of services described herein are deemed necessary and approved by both parties. All variations in the scope of services described herein will be scheduled and executed only after such a contract or change order that specifies any and all changes in cost or time for completion of project has been signed and agreed to by both parties.

Experiential Systems requires full payment of the remaining balance of the contract within 14 days of delivery of services. All balances that are unpaid beyond 15 days are subject to 2% interest compounded every 14 days past due.

If Experiential Systems brings a legal action to collect any sums due under this agreement, it shall be entitled to collect, in addition to all damages, its costs of collection, including ALL in-house AND third party costs, expenses, and fees (including, but not limited to, attorney's fees, paralegal fees) associated with the legal action.

If Experiential Systems is named in a lawsuit brought against the Client, the client agrees in advance that ESI can bill against this contract, and the Client shall be responsible for any and all fees including administrative fees and fees for services and activities such as document gathering and distribution, depositions and court appearances, including any and all travel for such appearances at a rate of \$300.00 per hour.

### **4. Document Requirements**

Client agrees to provide Experiential Systems with documents that Experiential Systems deems relevant in its sole discretion to the delivery of services. These documents may include but are not limited to: Certificates of Insurance, operations manuals, staff portfolios and/or other proof of experience and training, maintenance and inspection manuals, previous inspection reports, professional service reports such as arborist or geotechnical reports, plans and drawings, commissioning documents, and in-house inspection, maintenance, training, and operations records. Client acknowledges that any failure to produce documents in a timely manner will delay the ability of Experiential Systems to provide services. Moreover, Client acknowledges that Experiential Systems shall not be responsible for any delays or other resulting effects from Client's failure to provide any such documentation.

### **5. Warranties**

#### **5.1 Warranty**

Experiential Systems will warranty (i) workmanship of its own employees and contractors, and (ii) new materials constructed or installed by the Experiential Systems for **ONE YEAR** from the completion of construction/installation of elements.

#### **5.2 Disclaimer of Warranties**

This warranty does not extend to any workmanship or foreign materials not provided, constructed or installed under the direct supervision and approval of Experiential Systems. This warranty also does not cover recalls, defects, or changes in manufacturer's requirements for products that have been procured from another manufacturer and in turn installed or provided by Experiential Systems.

Experiential Systems is not responsible for property damage, personal injury or death caused by weather, vandalism, normal wear use and/or extraordinary use. Experiential Systems is not responsible for damages, personal injury or death caused by modifications to structures by anyone other than authorized personnel of Experiential Systems. Experiential Systems is not responsible for damages, personal injury or death caused by improper or unauthorized operation of installed materials, products, or elements by Client as well as its owner(s), staff, participants, guests, invitees, trespassers, and/or all others. Improper operations include such activities or variations to activities not expressly covered within the training provided by Experiential Systems or outlined within approved operations manuals or other written documentation provided by Experiential Systems.

There are no express or implied warranties of merchantability or fitness for a particular purpose, which extend beyond the description on the face hereof. Client has made its own investigations and inspection as to the merchantability of the products provided and its fitness for their particular purpose. No other warranties, expressed, or implied are intended.

### **6. Ownership and Responsibility**

It is the Client's responsibility to understand and adhere to all requirements and regulations set forth by any Authority Having Jurisdiction (AHJ) applicable to their site(s) and organization. This includes but is not limited to AHJ requirements related to insurance, work safety, and industry specific standards such as those produced by ASTM International and the Association for Challenge Course Technology (ACCT).

It is the Client's responsibility to retain at all times a designated Qualified Course Manager – who shall be charged with the responsibility to oversee operations for all elements, structures, and programs in accordance with the ANSI/ACCT 03-2019 Challenge Course and Canopy/Zip Line Tour Standard and the ACCT Qualified Challenge Course Professional (QCCP) Guidelines.

It is the Client's responsibility to notify Experiential Systems in writing within 36 hours of any incident or accident related to installations, products, or services provided by Experiential Systems, that result in any person (owner, staff, participant, guest, invitee, trespasser, or others) seeking medical care by any professional health care provider. It is the Client's responsibility to notify Experiential Systems in writing within 36 hours of the discovery of any critical maintenance items related to any structures or equipment installed, modified, or otherwise provided by Experiential Systems. Client agrees to provide any requested documentation related to incidents, accidents, and critical maintenance as described above to Experiential Systems and its agents in a timely manner.

**Should Client fail to provide timely written notice under the foregoing conditions and thereby preclude Experiential Systems from responding in a timely manner to any incident or potential hazard, Client assumes all responsibility for any claims that arise from that incident brought against Experiential Systems. Consequently, in such circumstances, Client shall indemnify and hold Experiential Systems harmless against any such claims.**

Client agrees that Experiential Systems is not a partner, operator, or co-owner of any of the Client's structure(s), property or company/organization(s). Experiential Systems has no financial interest in the Client's organization with the exception of those outlined above to provide services or products to the client. Client agrees that Experiential Systems has no responsibility for supervision of any program, structures, staff, or clients once Experiential Systems has released any installed structures to the client, provided approval of the structures for use, or has otherwise concluded delivery of the agreed upon services. The client agrees to hold Experiential Systems harmless and indemnify Experiential Systems for any action(s) or inaction(s) of owner, staff, participants, guests, invitees or trespassers that Experiential Systems was not in direct supervision of at the time of damage to property or injury to person(s).

### **7. Mutual Waiver of Consequential Damages**

Experiential Systems and the Client waive all claims against the other for all consequential and indirect damages of every kind arising out of or relating to the contract. This mutual waiver Includes:

- a. Damages incurred by the Client for rental expenses for loss of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- b. Damages incurred by the contractor for principle office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit other than anticipated profits arising directly from the work in this contract.

This mutual waiver is applicable, without limitation, to all consequential damages to either party (except where listed), damages related to termination of this agreement and liquidated damages.

### **8. Annual Third Party and Quarterly In-House Inspections**

Client agrees to have an annual inspection completed by Experiential Systems or another ACCT Accredited Vendor who is qualified and has been approved by Experiential Systems in writing to provide an inspection services on your installed structures/components to ensure that the structures, equipment, and related systems and practices are in compliance with current ACCT standards and Experiential Systems written policies and procedures. If required by the AHJ, Experiential Systems or the ACCT Accredited Vendor, Client shall also ensure that any additional inspection(s) to a specific standard, and/or by a qualified party are also performed within any required time frame.

Experiential Systems and industry standards also require a hands-on in-house quarterly inspection(s) to be performed and documented in writing by a Qualified Course Professional (QCP) employed by the Client.

Failure of Client to have an annual inspection, or to conduct and document quarterly in-house inspections as described above relieves Experiential Systems from any responsibility for claims or liabilities related to the installed structures/components.

### **9. Annual Training / Skills Verification**

Client agrees to have all staff complete an annual professional training or skills verification delivered by Experiential Systems or another ACCT Accredited Vendor who is qualified and has been approved by Experiential Systems in writing to provide training services to ensure that the staff, operational procedures, and related systems and practices are in compliance with current industry ACCT standards. Annual training for staff who have not received training from an Experiential Systems approved Qualified Course Professional Trainer/Tester at the site, or who have not received training otherwise approved in writing by Experiential Systems at the site, shall be completed in an approved manner prior those staff working on/at or otherwise performing work related to the structures, equipment, and their operation/use. All training provided to staff shall adhere to the ACCT standards and Experiential Systems written operational policies.

Failure of Client to have a documented annual training/skills verification that complies with ACCT standards and Experiential Systems written policies and procedures as described above relieves Experiential Systems from any responsibility for claims or liabilities related to the installed structures/components.

**As stated elsewhere, Experiential Systems expressly advises against and disclaims any responsibility arising from Client providing any in-house training. Client agrees to hold Experiential Systems harmless and indemnify it from any claims arising from conduct of Client personnel that have not been directly trained and/or certified by Experiential Systems.**

### **10. Property Improvements**

Experiential Systems will not be responsible for any improvements to the property upon completion of construction that are not outlined in the Scope of Services above. These improvements include but are not limited to repairing any damage to grass areas, trails, or roads caused by the use of heavy equipment; damage to or removal of trees, or shrubs that is required to gain access to an area; damage caused by existing ground conditions which may result in ruts or damage to ground when people, vehicles, or equipment travel across an area.

### **11. Insurance**

Client agrees to maintain General Liability insurance in the minimum coverage amounts of \$1MM per occurrence/\$2MM aggregate. Client's insurance shall include coverage for all operations of the course, ride and/or attraction(s), and this coverage shall be maintained without lapse during Client's ongoing business operations.

Experiential Systems agrees to maintain General Liability insurance in the minimum coverage amounts of \$1MM per occurrence/\$2MM aggregate. Experiential Systems insurance shall cover construction, installation, inspection, and training services, and this coverage shall be maintained without lapse during Experiential Systems ongoing business operations.

### **12. Release of Liability and Indemnification**

Client and their agents agree to hold Experiential Systems harmless and indemnify it for any and all current or future claims made against Experiential

Systems and/or client which arise from the use and/or misuse of the installed elements, structures or equipment by owner, staff, participants, guests, invitees, trespassers, and others, or any failure to adhere to requirements and responsibilities of ownership as outlined in this agreement.

Experiential Systems in turn agrees to hold harmless and indemnify the client for any claims of injuries, which arise from the gross negligence of Experiential Systems, its employees and/or its officers while engaging in the delivery of services to the client/ and or while on the client's property, and/or while in direct supervision of client's staff or guests.

At any time, upon written request from the other party, a party to this Agreement shall stipulate to any term of their relationship expressly stated herein. Moreover, should any claim be brought by a third-party against one or more of the parties to this Agreement, each party shall have the obligation, upon written request from the other party, to stipulate to any facts known to the party that may exculpate the other party from a lawsuit or liability.

**13. Dispute Resolution**

In the event of any dispute between the parties which arises under this Agreement, such dispute shall be settled by arbitration in accordance with the rules for commercial arbitration of the American Arbitration Association in effect at the time such arbitration is initiated. A list of arbitrators shall be presented to the Claimant and Respondent from which one will be chosen using the applicable rules. The hearing shall be conducted in Kalamazoo, MI unless both parties consent to a different location. The decision of the arbitrator shall be final and binding upon all parties.

The prevailing party in any action or proceeding arising out of this Agreement shall be awarded all of its legal fees (including, but not limited to, attorney's fees, paralegal fees, expert fees), costs, expenses, filing fees and related administrative costs incurred. The court or arbitration panel shall be so instructed to determine which party is the prevailing party, to grant recovery of the foregoing incurred by the prevailing party, and to order the non-prevailing party to pay forthwith the foregoing to the prevailing party. Administrative and other costs of enforcing an arbitration award, including the costs of subpoenas, depositions, transcripts and the like, witness fees, payment of reasonable attorney's fees, and similar costs related to collecting an arbitrator's award, will be added to, and become a part of, the amount due pursuant to this agreement.

Any questions involving contract interpretation shall use the laws of the State of Michigan. An arbitrator's decision may be entered in any jurisdiction in which the party has assets in order to collect any amounts due here-under.

**14. Force Majeure**

Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the affected party, including but not limited to fire, floods, hurricanes, tornadoes, viral outbreaks, embargoes, war, acts of war (whether war is declared or not), insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority; provided, however, that the party so affected shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either party shall provide the other party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure. The parties shall mutually seek a resolution of the delay or the failure to perform as noted above.

**15. Entirety Clause**


This document once signed by Experiential Systems and the Client constitutes a complete agreement between parties and may be amended in writing only. If a court deems a portion of this agreement invalid, the balance of the document will remain intact and unchanged. The Court may, if possible, reform any unenforceable portion of the Agreement to make it enforceable.

This agreement shall commence on the date that it is executed by all parties. Both Experiential Systems and the Client agree that this Agreement shall be governed by the laws of the State of Michigan.

Should any party breach this Agreement, the other party shall be entitled to recover its legal fees (including, but not limited to, attorney's fees, paralegal fees, expert fees), costs, expenses in enforcing any terms of this Agreement.

IN WITNESS WHEREOF, Client and Experiential Systems have duly executed this agreement as of the last date written below.

**By signing below, the parties executing this agreement attest that they are an Authorized Agent of their company or organization and may enter into contracts on behalf of their company or organization.**

FOR Experiential Systems, Inc.	FOR Wheaton Park District
<b>Signature:</b> 	<b>Signature:</b> <i>Michael J. Benard</i>
<b>Title:</b> President	<b>Title:</b>
<b>Date:</b> Nov 25, 2022 03:31 PM	<b>Date:</b>