



## INSPECTION AGREEMENT

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Dear Wheaton Park District,

Thank you for considering Experiential Systems to provide inspection services for your organization. Experiential Systems is an Accredited Professional Vendor Member (PVM) of the Association for Challenge Course Technology (ACCT). ESI is a proud and active member of the following associations: the Association for Challenge Course Technology (ACCT), the American Camp Association (ACA), the Climbing Wall Association (CWA), the American National Standards Institute (ANSI), the National Association of Amusement Ride Safety Officers (NAARSO), and the American Society for Testing and Materials International (ASTM).

Our team is comprised of established professionals with decades of experience in all aspects of this industry, including design, installation, inspection, training, and operations. We operate according to several recognized industry standards including, but not limited to, the Association for Challenge Course Technology ACCT/ANSI Standard, and ASTM International Standards. We not only adhere to these standards, but members of our team have been involved in their development since their inception and continue to serve as leadership within these organizations. We are committed to delivering the highest level of safety not only for our own operations, but to the international aerial adventure industry as a whole.

In this document you will find details regarding the proposed inspection services requested. These services will be completed at the following property

Lincoln Marsh  
1000 West Lincoln Ave.  
Wheaton, IL 60187

[mkelly@wheatonparks.com](mailto:mkelly@wheatonparks.com)  
630-871-2810

Experiential Systems is happy to assist you in meeting industry standards, and this extends beyond performing these inspection services. If you have questions about these services or others that we provide including: design, installation, staff training, maintenance & repairs, course management or equipment sales please don't hesitate to contact us with questions.

Best Regards,  
Your Experiential Systems Team  
(877-206-8967)

## OVERVIEW OF SCOPE OF SERVICES

The Course Inspection will be supervised by a Qualified Challenge Course Professional (QCCP) Inspector, and will be completed according to the ANSI/ACCT 03-2019 Challenge Course and Canopy/Zip Line Tour Standard (unless otherwise agreed upon in writing). **Please note that these services do not constitute an operational review of your organization, and thus, will not accredit, endorse, or otherwise certify your operations. The industry standard requires an operational review at minimum every five (5) years and annual staff training and annual course inspections by a qualified professional.** These services are available for additional fees if desired.

The following services and documents are included in the scope of this inspection agreement. This Agreement has been prepared for your specific consideration based upon previous correspondence and your direct request for such. However, it supersedes any prior correspondence, representations, and/or agreements. Please let us know if there are any questions or concerns before approving and signing this agreement.

## Inspection / Testing Services

SERVICE DESCRIPTION	ITEM COST
On Site Inspection of physical structures and operational equipment - one day	\$1,040.00
<b>SERVICE SUBTOTAL</b>	<b>\$1,040.00</b>

## Documentation to be Provided:

SERVICE DESCRIPTION	ITEM COST
Inspection Report - verbal prior to leaving property, final written within 20 days	\$0.00
<b>SERVICE SUBTOTAL</b>	<b>\$0.00</b>

## Travel Expenses:

SERVICE DESCRIPTION	ITEM COST
Flights/Mileage/Local Travel - <i>estimated*</i>	\$81.00
Lodging - <i>estimated*</i>	\$0.00
Meals - <i>estimated*</i>	\$30.00
<b>SERVICE SUBTOTAL</b>	<b>\$111.00</b>

**\* The above costs are estimates only - your final bill will be reflective of the actual expenses incurred plus a 5% administrative fee.**

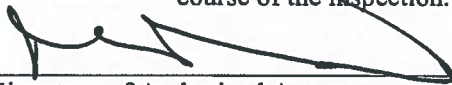

## Pre-authorized Repairs

Sometimes minor repairs are necessary in order to keep a challenge course in passing condition. If Client chooses, Experiential Systems can provide up to \$500.00 in repairs at the time of inspection without consultation, if simple repairs are necessary. *This agreement saves time and effort and could make the difference in an element being usable or not usable for your program between the time that an inspection is done and repairs can be accomplished. Opting out of this agreement would require a return trip to make which will require scheduling a return trip, which will carry additional travel expenses and is subject to our available staff and their schedule. This could mean your element/course may remain unusable in the interim, causing programming issues for your organization. Unfortunately, major repairs will not be able to be addressed during inspections typically due to lack of time and materials unless previously arranged and scheduled.*

**Common repairs:**

- Adding staples or steps to gain access to something that needs to be inspected.
- Loosening or replacing tight backup cables on courses in trees
- Replacing overgrown cables
- Retrofitting a backup system
- Replacing missing serving sleeves
- Replacing rusted belay cables, cable clamps or rapid links
- Adding missing cable clamps, or adjusting improperly installed clamps
- Tightening guy lines or tension cables
- Adjusting zip line tensions

We will provide a list of any materials and labor costs for these types of repairs. If repair(s) exceed the \$500.00 limit we will consult with your organization to obtain contract for the repair(s) needed. All billing for these maintenance tasks and goods will be upon completion of services, and will be added to the final balance due for this agreement.

<p><b>PLEASE CHECK ONE</b></p> <p><input checked="" type="checkbox"/> I authorize Experiential Systems to do up to \$500.00 in minor repairs during the course of the inspection.</p> <p><input type="checkbox"/> I DO NOT authorize Experiential Systems to do up to \$500.00 in minor repairs during the course of the inspection.</p>		
 Signature of Authorized Agent	 Printed Name	 Date

**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 scheduled Inspection date(s).

- Documented course history, including details and any plan sets of installation and major modifications, manuals, any related acceptance inspections and commissioning reports, and any other requested documentation, information, and reports related to project if not already on file with Experiential Systems.
- 2 years of previous annual inspection reports if not provided by Experiential Systems or currently on file with us.
- Current Certificate of Insurance, with Experiential Systems named as the Certificate Holder.
- Facility Maintenance or course set up required prior to the inspection or required for use during training.

**While onsite, client must provide:**

- A designated onsite contact, available by phone during the performance of the inspection for questions or to communicate needs, or in case of emergency
- Access to all inspection and maintenance records and equipment logs, plus other records/manuals required for the purpose of assessment for the installation.

- 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 the Inspector(s) to adhere to work safety standards/safe work at height practices.

## EXPERIENTIAL SYSTEMS RESPONSIBILITIES

Experiential Systems will provide:

- Supervision by an ACCT QCCP Inspector
- Additional QCCP Assistants as needed
- All tools and materials required for scope of work unless agreed upon otherwise and noted in the "Client Responsibilities" section
- OSHA compliant work at height Personal Protective Equipment for the inspector(s)
- Full written reports within no more than 20 days of completion of inspection, additional documents to be provided earlier as identified by project and client needs.

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.

## DEADLINE FOR RESPONSE & LEAD TIME

Experiential Systems requires that all requested documentation in order to complete the inspection and training for your facility be in our possession 30 days prior to the scheduled inspection date for review and distribution. Delays in providing required information will delay the service date of the project.

## TERMS OF SERVICE

### 1. Cost

The following is a breakdown of costs for the different components of this installation package. The total price below is all inclusive. 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.

Inspection & Testing Costs	\$1,040.00
Documentation Costs	\$0.00
Travel Expenses (* estimated)	\$111.00
<b>TOTAL</b>	<b>\$1,151.00</b>

### 2. Compensation and Term of Work

Client (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 (\$520.00 deposit). 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 of drawings, applying for permits or acquisition or preparation of any material(s).

### 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 15 days of delivery of services. All balances that are unpaid beyond 15 days are subject to 2% interest compounded every 15 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 24 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 24 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, 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 direct 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:

Wheaton Park District – 1/27/2020 Inspection Agreement

Experiential Systems, Inc. ♦ PO Box 188, Lansing, IL 60438 ♦ 877-206-8967 ♦ [www.experientialsystems.com](http://www.experientialsystems.com)

- 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 timeframe.

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 Challenge Course Professional (QCCP) 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 by Experiential.

**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. Images Photographs and Video**

Experiential Systems reserves the right to use any photograph/video taken at any event sponsored by Experiential Systems or hosted by Client where Experiential Systems was hired by the client and/or where the completed works or structures of Experiential Systems are featured and or where the employees or subcontractors of Experiential Systems are featured, without the expressed written permission of the Client or of those included within the image/photograph/video. This agreement includes use of photographs and images not expressly taken by Experiential Systems but made available by the client either directly to Experiential Systems, or by the posting or sharing of such images by the Client in a public manner such as on a web page or social media platform including but not limited to: Instagram, YouTube, Facebook, etc. Experiential Systems may use the photograph/video in manuals or other media material produced, used or contracted by Experiential Systems including but not limited to: brochures, invitations, books, newspapers, magazines, television, websites, etc.

To ensure the privacy of individuals and children, images will not be identified using names or personal identifying information without written approval from the photographed subject, parent or legal guardian.

**12. 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.

**13. 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.

#### **14. 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 hereunder.

#### **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.



## INSPECTION AGREEMENT

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

FOR CLIENT/Wheaton Park District

Signature of Authorized Agent

Keith Jacobs Owner

Printed Name and Title of Authorized Agent

1/28/2020

Date

Signature of Authorized Agent

Michael Benard-Executive Director

Printed Name and Title of Authorized Agent

Date

2/13/2020