

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into May 7, 2024, by and between the Wheaton Park District, 102 East Wesley Street, Wheaton, IL 60187, hereinafter referred to as the "Owner" and Wight & Company (Wight), 2500 North Frontage Road, Darien, IL 60561, hereinafter referred to as the "Consultant."

For and in consideration of the promises and mutual covenants set forth herein, the parties hereto agree as follows:

1. SCOPE OF WORK. The Consultant will provide professional engineering services for the proposed utilities at Danada South Park, all as more fully described in the Consultant's Proposal Dated March 5, 2024, (the "Work"). The Consultant's Proposal is incorporated into this Agreement as part of this Agreement provided, and attached at Exhibit A; however, that in the event of any conflict between this Agreement and the Consultant's Proposal, this Agreement shall control.

2. PAYMENT FOR PROFESSIONAL SERVICES RENDERED. Subject to the limitation set forth herein, Consultant shall be paid not more than fourteen thousand and five hundred dollars (\$14,500.00), which sum includes all fees of Consultant and its subcontractor(s)/subconsultant(s), costs and expenses to complete the Work. In addition to the professional services fees, reimbursable expenses shall be invoiced at direct costs and estimated at (\$500.00). No change in scope or cost of the Work will be effective unless a written change order is executed by Owner and Consultant. Within 30 days of submitting its final report, Consultant shall invoice Owner. Owner will make payment in accordance with the Illinois Local Government Prompt Payment Act (50 ILCS 505/1, *et seq.*). Acceptance of final payment by the Consultant, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the application for final payment.

3. TERM OF WORK. Consultant shall complete tasks according to the following milestones:
a. Preliminary Engineering submittal to be completed by July 31, 2024;

The foregoing milestone dates may not be extended without Owner's prior written approval.

4. CONFLICT OF INTEREST. Consultant covenants that neither it nor its principal presently has any interest, and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Agreement. No official, officer or employee of the Owner who exercises any functions or responsibilities in the review or approval of the work or services rendered by the Consultant under this Agreement shall participate in any decision relating to this Agreement which affects such individual's personal interest, or the interest of any corporation, partnership or association in which such individual is directly or indirectly interested, or have any interest, directly or indirectly, in this Agreement or the proceeds thereof.

5. INDEMNIFICATION. To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the Owner and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorney's and paralegals' fees and court costs arising out of or resulting from the performance of the Consultant's services, provided that any such claim, damage, loss or expense

(i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, other than the work itself, including the loss of use resulting therefrom and (ii) arises in whole or in part from any act or omission of the Consultant, Consultant's consultants and subconsultants, anyone directly employed by any of them or anyone for whose acts any of them may be liable, except to the extent it is caused in whole or in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Consultant shall similarly protect, indemnify, and hold and save harmless the Owner, its officers, officials, employees, volunteers, and agents against and from any and all claims, costs, causes, actions, and expenses including but not limited to legal incurred by reason of Consultant's breach of any of its obligations under, or Consultant's default of, any provision of the Contract. Consultant's obligations under this section shall survive the termination or completion of this Agreement.

6. STANDARD OF CARE. In performing its services hereunder, the Consultant will use that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession practicing in the same or similar locality.

7. INSURANCE REQUIREMENTS. Consultant shall meet all insurance requirements as set forth on Exhibit B, which is incorporated as if fully set forth herein.

8. TERMINATION. The Owner may terminate this Agreement for cause upon seven (7) days' written notice if the Consultant refuses or fails to meet any of the milestone dates without Owner's authorized extension of time; fails to make payment to subcontractors, subconsultants or suppliers in accordance with the respective agreements between the Consultant and the subcontractor, subconsultant or suppliers; or otherwise is guilty of substantial breach of a provision of the Contract Documents. In the event Owner terminates the Agreement for cause, Consultant shall be paid for services rendered up until the date of termination provided Consultant has delivered to Owner the work product it has completed up to the date of termination.

The Owner may terminate the Agreement for the Owner's convenience and without cause upon written notice to Consultant. Upon receipt of notice from the Owner of termination for the Owner's convenience, the Consultant shall cease operations as directed by the Owner in the notice; take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In case of termination for the Owner's convenience, the Owner shall pay the Consultant for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of subcontracts, and Consultant shall be obligated to provide Owner with its work product up to the date of termination for convenience.

9. PARTIES TO THE AGREEMENT. The services to be performed by the Consultant under this Agreement are intended solely for the benefit of the Owner. Nothing contained herein shall confer any rights upon or create any duties on the part of the Consultant toward any person or persons not a party to this Agreement, including, but not limited to, any contractor, subcontractor or supplier or the agents, officers, employees, insurers or sureties of any of them.

10. STATE OF ILLINOIS LAW APPLIES; ATTORNEY'S FEES. This Agreement is made and delivered in the State of Illinois and shall be construed and enforced in accordance with the laws thereof. Any action arising from any provision herein included shall be adjudicated in the State of Illinois in the Eighteenth Judicial Circuit Court, DuPage County, Illinois. In the event the Owner is required to use the services of an attorney to enforce this Agreement, Consultant shall pay the Owner's reasonable attorney's fees and all expenses and costs incurred by the Owner in enforcing the Agreement or in seeking any remedy for default under or breach of this Agreement.

11. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties, and there are no other agreements other than those expressed herein. The parties hereto agree that this Agreement shall not be construed or interpreted in favor of either party on the basis of draftsmanship or preparation and that this Agreement has been jointly drafted.

12. FAILURE TO EXERCISE. Neither failure nor any delay on the part of the Owner in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise or the exercise of any other right, power or privilege hereunder. The Owner's rights and remedies under this contract are cumulative and not exclusive of any other rights which the Owner may have at law or in equity.

13. SEVERABILITY. If any section, paragraph, clause, phrase or portion of this contract is, for any reason, determined by a court of competent jurisdiction to be invalid and unenforceable, such portion shall be deemed separate, distinct and an independent provision, and the court's determination shall not affect the validity or enforceability of the remaining portions of this contract.

14. COMPLIANCE WITH LEGAL REQUIREMENTS. The Consultant's products, services and facilities shall be in compliance with those federal, state and local health, environmental and safety laws, regulations, standards and ordinances, to the extent applicable to Consultant's Work. Furthermore, Consultant represents to the Owner that Consultant and any subcontractor has obtained any and all certificates required under applicable law for the rendering of said services and products and shall indemnify and hold the Owner harmless for any liability (including reasonable attorney's fees) incurred by the Owner should Consultant not be so certified.


15. LIENS. Consultant shall not permit any mechanic's lien to stand against Owner's property or funds for any work, labor or materials in connection with work of any character performed on Owner's property at the direction of Consultant. In the event of any such lien attaching to Owner's property or funds as a result of Consultant's work, Consultant shall immediately have such lien either released, or if contested by Consultant, bonded over in the amount of one hundred percent (100%) of the claim and defend Owner's interests against such lien.

16. SAFETY OF PERSONS AND PROPERTY. The Consultant shall determine the means and methods of carrying out its Work, and shall take reasonable precautions for the health and safety of, and shall provide reasonable protection to prevent damage, injury or loss to its employees engaged in the Work, Owner's employees and patrons and other persons who may be affected thereby, including the public on at the location of the Work. In addition to Consultant's obligations under this section, Consultant shall promptly remedy any damage or loss to Owner's property caused in whole or in part by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable

and for which the Consultant is responsible, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by Owner, or by anyone for whose acts Owner may be liable, and not attributable to the fault or negligence of the Consultant.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and in the year first above written.

WIGHT & COMPANY

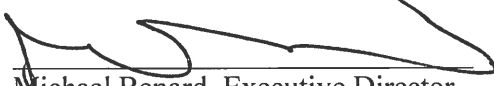


Jason Dwyer, President

6/3/2024

Date

WHEATON PARK DISTRICT



Michael Benard, Executive Director

6/6/24

Date

EXHIBIT B

Insurance Requirements

The Consultant shall maintain the following insurance for the duration of the Agreement. (Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

1. General Liability: Consultant shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 for each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location. CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing similar coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Owner shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing similar coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to Owner. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

2. Automobile Liability: Consultant shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 for each accident. Such insurance shall cover liability arising out of any auto including owned, hired, and non-owned autos. Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

3. Workers' Compensation: Consultant shall maintain workers compensation as required by statute and employer's liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$500,000 for each accident for bodily injury by accident or for each employee for bodily injury by disease. If Owner has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Consultant waives all rights of subrogation against Owner and its officers, officials, employees, volunteers, and agents for recovery of damages arising out of or incident to the Consultant's work.

4. Professional Liability: Consultant shall maintain professional liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 for each wrongful act arising out of the performance or failure to perform professional services and \$2,000,000 aggregate.

General Insurance Provisions

1. Evidence of Insurance: Prior to beginning work, Consultant shall furnish Owner with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. All certificates shall provide for 30 days' written notice to Owner prior to the cancellation or material change of any insurance referred to therein. Written notice to Owner shall be by certified mail, return receipt requested. Failure of Owner to demand such certificate, endorsement, or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Consultant's obligation to maintain such insurance. Owner shall have the right, but not the obligation, of prohibiting Consultant from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner. Failure to maintain the required insurance may result in termination of this Contract at Owner's option. Consultant shall provide certified copies of all insurance policies required above within 10 days of Owners' written request for said copies.

2. Acceptability of Insurers: For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Owner has the right to reject insurance written by an insurer it deems unacceptable.

3. Cross-Liability Coverage: If Consultant's liability policies, except Professional Liability, do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to the Owner.

5. Subcontractors: Consultant shall cause each subcontractor employed by Consultant to purchase and maintain insurance of the type specified above. When requested by the Owner, Consultant shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

EXHIBIT C

CONTRACTOR COMPLIANCE AND CERTIFICATIONS ATTACHMENT

Note: The following certifications form an integral part of the Agreement between the Owner and Contractor. Breach by Contractor of any of the certifications may result in immediate termination of the Contractor's services by Owner.

THE UNDERSIGNED CONTRACTOR HEREBY ACKNOWLEDGES, CERTIFIES, AFFIRMS AND AGREES AS FOLLOWS:

A. Contractor has carefully read and understands the contents, purpose and legal effect of this document as stated above and hereafter in this document. The certifications contained herein are true, complete and correct in all respects.

B. Contractor shall abide by and comply with, and in contracts which it has with all persons providing any of the services or Work on this Project on its behalf shall require compliance with, all applicable Federal, State and local laws and rules and regulations including without limitation those relating to 1) fair employment practices, affirmative action and prohibiting discrimination in employment; 2) workers' compensation; 3) workplace safety; 4) wages and claims of laborers, mechanics and other workers, agents, or servants in any manner employed in connection with contracts involving public funds or the development or construction of public works, buildings or facilities; and 5) steel products procurement.

C. All contracts for this Project are subject to the provisions of the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*), providing for the payment of the prevailing rate of wage to all laborers, workers and mechanics engaged in the Work. Contractor shall pay prevailing rates of wages in accordance with the Illinois Department of Labor's wage determination and any subsequent determinations issued by the Illinois Department of Labor, all in accordance with applicable law. These revisions may be accessed by computer at <http://labor.illinois.gov/>. Contractor is responsible for determining the applicable prevailing wage rates at the time of bid submission and at the time of performance of the Work. Failure of Contractor to make such determination shall not relieve it of its obligations in accordance with the Contract Documents. Contractor shall also comply with all other requirements of the Act including without limitation those pertaining to inclusion of required language in subcontracts, job site posting, maintenance and submission of certified payroll records and inspection of records. Contractor is not barred from entering into public contracts under Section 11a of the Illinois Prevailing Wage Act due to its having been found to have disregarded its obligations under the Act. All certified payroll documents for this project shall be submitted directly to the Illinois Department of Labor ("IDOL") through the IDOL Certified Transcript of Payroll Portal, which can be accessed at:

<https://www2.illinois.gov/idol/Laws-Rules/CONMED/Pages/certifiedtranscriptofpayroll.aspx>.

D. To the best of Contractor's knowledge, no officer or employee of Contractor has been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, or any unit of local government, nor has any officer or employee made an admission of guilt of such conduct which is a matter of record.

E. Contractor is not barred from bidding on or entering into public contracts due to having been convicted of bid-rigging or bid rotating under paragraphs 33E-3 or 33E-4 of the Illinois Criminal Code. Contractor also certifies that no officers or employees of the Contractor have been so convicted and that Contractor is not the successor company, or a new company created by the officers or owners of

one so convicted. Contractor further certifies that any such conviction occurring after the date of this certification will be reported to the Owner, immediately in writing, if it occurs during the bidding process, or otherwise prior to entering into the Contract therewith.

F. Pursuant to the Illinois Human Rights Act (775 ILCS 5/2-105), Contractor has a written sexual harassment policy that includes, at a minimum, the following information: (i) a statement on the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment utilizing examples; (iv) the Contractor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and directions on how to contact both; and (vi) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act. Contractor further certifies that such policy shall remain in full force and effect. A copy of the policy shall be provided to the Illinois Department of Human Rights upon request.

G. (i) Contractor's bid proposal was made without any connection or common interest in the profits anticipated to be derived from the Contract by Contractor with any other persons submitting any bid or proposal for the Contract; (ii) the Contract terms are in all respects fair and the Contract will be entered into by Contractor without collusion or fraud; (iii) no official, officer or employee of the Owner has any direct or indirect financial interest in Contractor's bid proposal or in Contractor, (iv) the Contractor has not directly or indirectly provided, and shall not directly or indirectly provide, funds or other consideration to any person or entity (including, but not limited to, the Owner and the Owner's employees and agents), to procure improperly special or unusual treatment with respect to this Agreement or for the purpose of otherwise improperly influencing the relationship between the Owner and the Contractor. Additionally, the Contractor shall cause all of its officers, directors, employees, (as the case may be) to comply with the restrictions contained in the preceding sentence.

H. Contractor knows and understands the Equal Employment Opportunity Clause administered by the Illinois Department of Human Rights, which is incorporated herein by this reference, and agrees to comply with the provisions thereof. Contractor further certifies that Contractor is an "equal opportunity employer" as defined by Section 2000 (e) of Chapter 21, Title 42 of the United States Code Annotated and Executive Orders #11246 and #11375 as amended, which are incorporated herein by this reference.

I. Neither Contractor nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act.

J. Contractor is not barred from contracting with the Owner because of any delinquency in the payment of any tax administered by the Illinois Department of Revenue, unless it is being contested. Contractor further certifies that it understands that making a false statement regarding delinquency in taxes is a Class A misdemeanor and, in addition, voids the Contract and allows the Owner, a municipal entity, to recover in a civil action all amounts paid to the Contractor.

K. If Contractor has 25 or more employees at the time of letting of the Contract, Contractor knows, understands and acknowledges its obligations under the Illinois Drug Free Workplace Act (30 ILCS 580/1 *et seq.*) and certifies that it will provide a drug-free workplace by taking the actions required under, and otherwise implementing on a continuing basis, Section 3 of the Drug Free Workplace Act. Contractor further certifies that it has not been debarred and is not ineligible for award of this Contract as the result of a violation of the Illinois Drug Free Workplace Act.

L. Contractor knows, understands and acknowledges its obligations under the Substance Abuse Prevention on Public Works Act, 820 ILCS 265/1 *et seq.* A true and complete copy of Contractor's Substance Abuse Prevention Program Certification is attached to and made a part of this Contractor Compliance and Certification Attachment.

M. The Contractor shall comply with the requirements and provisions of the Freedom of Information Act (5 ILCS 140/1 *et. seq.*) and, upon request of the Wheaton Park District's designated Freedom of Information Act Officer (FOIA Officer), Contractor shall within two (2) business days of said request, turn over to the FOIA Officer any record in the possession of the Contractor that is deemed a public record under FOIA.

CONTRACTOR

By: *[Signature]*

Its: President, Design & Construction

STATE OF Illinois)
COUNTY OF DuPage)ss

I, the undersigned, a notary public in and for the State and County, aforesaid, hereby certify that Jason Dwyer appeared before me this day and, being first duly sworn on oath, acknowledged that he/she executed the foregoing instrument as his/her free act and deed and as the act and deed of the Contractor.

Dated: 6/3/24

(SEAL)

[Signature]
(Notary Public)

