

## RESOLUTION R-54-07

### A RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT FOR A CONSULTING ENGINEER/ WILLOW AVENUE PARKING GARAGE

**WHEREAS**, the City of Wheaton, Illinois ("City") is an Illinois Home Rule Municipality pursuant to provisions of Article VII, Section 6, of the Illinois Constitution of 1970, and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

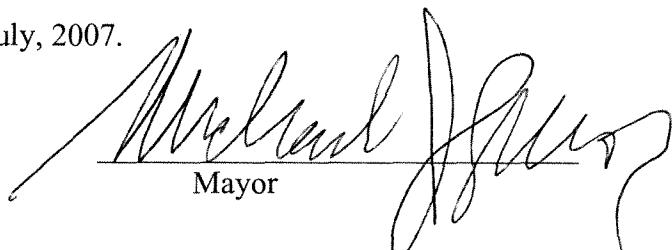
**WHEREAS**, the subject matter of this resolution pertains to the government and affairs of the City and its residents; and

**WHEREAS**, the City is seeking a qualified consulting engineer to provide durability, structural engineering, and functional design peer review services for the proposed Willow Avenue parking garage; and

**WHEREAS**, the City has determined the proposal provided by Walker Parking Consultants, Inc. meets the City's needs for professional services for the Willow Avenue parking garage project, and City staff is recommending to the Mayor and City Council that the proposal received from Walker Parking Consultants, Inc., Elgin, Illinois, be accepted.

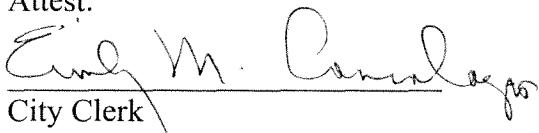
**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign and the City Clerk is authorized to attest to an agreement between the City of Wheaton and Walker Parking Consultants, Inc., as attached hereto and made a part thereof.

**ADOPTED** this 2nd day of July, 2007.



Michael J. Gresk  
Mayor

Attest:



Emily M. Cannady  
City Clerk

Ayes:

Roll Call Vote:  
Councilwoman Corry  
Councilman Johnson  
Councilman Levine  
Mayor Gresk  
Councilman Mouhelis  
Councilman Prendiville  
Councilman Suess

Nays:

None

Absent:

None

Motion Carried Unanimously

R54-07

**Agreement Between the City of Wheaton, Illinois  
And Walker Parking Consultants, Inc., Elgin, Illinois  
*Willow Avenue Parking Garage***

**This Agreement** is entered into by and between the City of Wheaton, an Illinois municipal corporation ("City"), 303 West Wesley Street, Wheaton, IL 60187, and Walker Parking Consultants, Inc. ("Consultant"), 505 Davis Road, Elgin, IL 60123.

**WITNESSETH:**

**WHEREAS**, the City is seeking a qualified consulting engineer to provide durability, structural engineering, and functional design peer review services for the proposed Willow Avenue parking garage ("Project"); and

**WHEREAS**, the City has determined the proposal provided by Walker Parking Consultants, Inc., a copy of which is attached hereto and incorporated herein as Exhibit A; meets the City's needs for professional services for the Willow Avenue parking garage project.

**Now, therefore**, for in consideration of their mutual promises, terms, covenants, agreements, and conditions recited in this Agreement, the City and the Consultant hereto do hereby agree as follows:

1. *Scope of Services.* The Consultant shall perform the services as described in the Consultant's Scope of Services identified in Exhibit A. The Consultant represents and warrants that it shall perform the services in a manner consistent with the level of care and skill customarily exercised by other professional Consultants under similar circumstances.

2. *Compensation.* The City shall compensate the Consultant for services performed as described in the Consultant's Proposal Cost identified in Exhibit A. Compensation shall be based on monthly invoices submitted to the City for services performed in conjunction with the project in the Consultant's previous billing cycle. Payment by the City shall be made within thirty (30) days from the date of the invoice.

3. *Additional Services.* The Consultant shall perform only those services specified in this Agreement and attached Exhibits. In the event the Consultant or the City determines that additional services are required to complete the project, such additional services shall not be performed unless directed in writing by the City. Terms, frequency, and prices for additional services shall be as mutually agreed upon in writing by the City and the Consultant.

4. *Hold Harmless and Indemnification.* The Consultant shall defend, hold harmless, and indemnify the City, its directors, officers, employees, and agents, from and against any and all liabilities, losses, claims, demands, damages, fines, penalties, costs, and expenses, including, but not limited to, reasonable attorneys' fees and costs of litigation, and all causes of action of any kind or character, except as otherwise provided herein, to the extent that such matter arises from either of the following:

- a) The Consultant's breach of any term, provision, warranty, standard or requirement of this Agreement including, but not limited to, those provisions of the contract documents pertaining to the Consultant's services; or
- b) The negligence or willful misconduct of the Consultant, its employees, agents, representatives, and subcontractors.

The City shall defend, hold harmless, and indemnify the Consultant, its directors, officers, employees, and agents, from and against any and all liabilities, losses, claims, demands, damages, fines, penalties, costs, and expenses, including, but not limited to, reasonable attorneys' fees and costs of litigation, and all causes of action of any kind or character, except as otherwise provided herein, to the extent that such matter arises from either of the following:

- a) The City's breach of any term, provision, warranty, standard or requirement of this Agreement including, but not limited to, those provisions of the contract documents pertaining to the City's work; or
- b) The negligence or willful misconduct of the City, its employees, agents, representatives, and subcontractors.

In the event that any claim for indemnification hereunder arises from the negligence or willful misconduct of both the Consultant and the City, the parties agree that any and all liabilities, losses, claims, demands, damages, fines, penalties, costs, and expenses shall be apportioned between the parties on the basis of their comparative degrees of fault, except as otherwise herein provided.

*5. Insurance.* The Consultant and each of its agents, subcontractors, and consultants hired to perform any services provided for herein shall purchase and maintain during the term of this contract insurance coverage which will satisfactorily insure the Consultant and, where appropriate, the City against claims and liabilities which may arise out of the services referred to in this Agreement. Such insurance shall be issued by companies authorized to do business in the State of Illinois and approved by the City. The insurance coverage's shall include, but not necessarily be limited to, the following:

- a) Worker's compensation insurance with limits as required by the applicable statutes of the State of Illinois. The employer's liability coverage under the worker's compensation policy shall have limits of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) each accident/injury and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) each employee/disease.
- b) Commercial general liability insurance protecting the Consultant against any and all public liability claims which may arise in the course of performance of this contract. The limits of liability shall be not less than ONE MILLION DOLLARS (\$1,000,000.00) each occurrence bodily injury/property damage combined single limit and ONE MILLION DOLLARS (\$1,000,000.00) aggregate bodily injury/property damage combined single limit. The policy of commercial liability insurance shall include contractual liability coverage and an endorsement naming the City as an additional insured.

c) Commercial automobile liability insurance covering the Consultant's owned, non-owned, and leased vehicles which protects the Consultant against automobile liability claims whether on or off of the City's premises with coverage limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident bodily injury/property damage combined single limit.

d) Umbrella or excess liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence bodily injury/property damage combined single unit. The umbrella or excess coverage shall apply in excess of the limits stated in subparagraphs B and C above, and shall either include an endorsement naming the City as an additional insured or provide "following form" coverage for the primary insurance.

e) Professional liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per claim covering the Consultant against all sums which the Consultant may become obligated to pay on account of any liability arising out of the performance of the professional services for the City under this contract when caused by any negligence act, error, or omission of the Consultant or of any person employed by the Consultant or any others for whose actions the Consultant is legally liable. The professional liability insurance shall remain in force for a period for not less than four (4) years after the completion of the services to be performed by the Consultant under this contract.

*6. Compliance with Laws.* The Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations, and all City ordinances, rules and regulations now in force or hereafter enacted, in the performance of the services required under this Agreement.

*7. Termination of Contract.* If the Consultant fails to perform according to the terms of this Agreement, then the City may terminate this Agreement upon seven (7) days written notice to the Consultant. In the event of a termination, the City shall pay the Consultant for services performed as of the effective date of termination, less any sums attributable, directly or indirectly, to the Consultant's breach. The written notice required under this paragraph shall be either (i) served personally during regular business hours; (ii) served by facsimile data transmission during regular business hours; or (iii) served by certified or registered mail, return receipt requested, addressed to the address listed in this Agreement with postage prepaid and deposited in the United States mail. Notice served personally and by facsimile data transmission shall be effective upon receipt, and notice served by United States mail shall be effective three (3) business days after mailing.

*8. Discrimination Prohibited.* The Consultant shall comply with the provisions of the Illinois Human Rights Act, as amended, 775 ILCS 5/1-101 et seq. (1992 State Bar Edition), and with all rules and regulations established by the Department of Human Rights. The Consultant agrees that it will not deny employment to any person or refuse to enter into any contract for services provided for in this Agreement to be performed on its behalf on the basis of unlawful discrimination as defined in the Illinois Human Rights Act.

9. *Status of Independent Consultant.* Both the City and the Consultant agree that the Consultant will act as an Independent Consultant in the performance of duties under this Agreement. Accordingly, the Independent Consultant shall be responsible for payment all taxes including federal, state, and local taxes arising out of the Consultant's activities in accordance with this Agreement, including by way of illustration but not limitation, federal and state income tax, social security tax, and any other taxes or license fees as may be required under the law. The Consultant further acknowledges under the terms of this Agreement, that it is not an agent, employee, or servant for the City for any purpose, and that it shall not hold itself out as an agent, employee, or servant of the City under any circumstance for any reason. The Consultant is not in any way authorized to make any contract, agreement, or promise on behalf of City, or to create any implied obligation on behalf of the City, and the Consultant specifically agrees that it shall not do so. The City shall have no obligation to provide any compensation or benefits to the Consultant, except those specifically identified in this Agreement. The City shall not have the authority to control the method or manner by which the Consultant complies with the terms of this Agreement.

10. *Assignment; Successors and Assigns.* This Agreement may not be assigned by either of the parties hereto without the written consent of all other parties. Upon approval of assignment, this Agreement and the rights, interests and obligations hereunder shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

11. *Recovery of Costs.* In the event the City is required to file any action, whether legal or equitable, to enforce any provision of this Agreement, the City shall be entitled to recover all costs and expenses incurred as a result of the action or proceeding, including expert witness and attorney's fees, if so provided in any order of the Court.

12. *Notification.* All notification under this Agreement shall be made as follows:

If to the Consultant:  
Walker Parking Consultants, Inc.  
Attn: Gary H. Koch, P.E.  
505 Davis Road  
Elgin, IL 60123

If to the City:  
City of Wheaton  
Attn: Director of Planning and Economic  
Development  
303 W. Wesley Street, Box 727  
Wheaton, IL 60189-727

13. *Waiver.* Any failure of either the City or the Consultant to strictly enforce any term, right, or condition of this Agreement shall not be construed as a waiver of such term, right, or condition.

14. *Integration.* The provisions set forth in this Agreement represent the entire agreement between the parties and supersede all prior agreements, contracts, promises, and representations, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement may be modified only by a further written agreement between the parties, and no modification shall be effective unless properly approved and signed by each party.

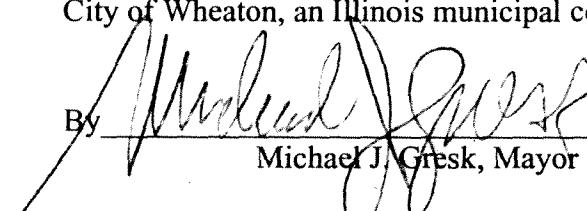
15. *Non-disclosure.* During the course of the work specified in this Agreement, the Consultant may have access to proprietary and confidential information including, but not limited to, methods, processes, formulae, compositions, systems, techniques, computer programs, databases, research projects, resident name and address information, financial data, and other data. The Consultant shall not use such information for any purpose other than described in this Agreement and Exhibits and shall not directly or indirectly disclose such information to any third party without the express written consent of the City.

16. *Severability.* If any provision of this Contract is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance; and in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and legal, valid and enforceable.

In Witness Whereof, the parties have entered into this Agreement this 2<sup>nd</sup> day of July, 2007.

City of Wheaton, an Illinois municipal corporation

By

  
Michael J. Gresk, Mayor

Attest:

  
Emily Consolazio, City Clerk

Walker Parking Consultants, Inc.

By

Its

Attest:

## **Exhibit “A”**



**WALKER**  
PARKING CONSULTANTS

R-54-07  
505 Davis Road  
Elgin, IL 60123

Voice: 847 697 2640  
Fax: 847 697 7439  
[www.walkerparking.com](http://www.walkerparking.com)

May 31, 2007

Mr. James P. Kozik, AICP

**City of Wheaton**

303 West Wesley Street

Wheaton, Illinois 60187

Re: Downtown Development  
Parking Structure  
Wheaton, Illinois

Dear Jim:

Per your request, Walker Parking Consultants/Engineers, Inc. is pleased to submit this proposal to provide durability, structural engineering and functional design peer review services for the proposed parking structure for the Downtown Development. We understand that the City would like Walker to review the parking structure design documents that are issued for City review and construction permit approval, and attend up to two (2) meetings with the City and Design Team to review the permit document comments. We will also provide site observation services to assist the City during construction. We understand that the free-standing, precast concrete parking structure contains about 450 parking stalls and will be constructed in 2007 and 2008.

We have provided a scope of service and fee proposal for Walker to provide engineering and functional design peer review services. The services to be provided by Walker are outlined in the section entitled "Walker Scope of Services". The professional fee and expenses for the services provided by Walker are described in the attached section entitled "Professional Fee". We understand that Walker Parking Consultants will be a consultant to the City of Wheaton for the services.

Since Walker is not the architect or engineer of record for the contract documents; we cannot be responsible for errors and omissions and any liability imposed on the design professionals on this project. Our reviews will attempt to guard you against such errors and omissions, but cannot guarantee such.



**WALKER**  
PARKING CONSULTANTS

Mr. James P. Kozik, AICP  
May 31, 2007  
Page Two

Trusting that you concur with the attached, please sign and return one of the letters to us as your acceptance and authorization to proceed.

We look forward to being of service to the City of Wheaton.

Respectfully submitted,  
Walker Parking Consultants/Engineers, Inc.

Gary H. Koch, P. E.  
Vice President

GHK: w

Enclosure: General Conditions of Agreement  
Standard Billing Rates for 2007

J:\PROPOSALS\LTR053107KozikCityWheaton.doc

## **CITY OF WHEATON**

Accepted by: \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_



## **WALKER SCOPE OF SERVICES**

### **I. Engineering Design Services**

- A. Provide comments on a progress set of drawings for general conformance to code and parking structure design standards to the City.
- B. Review the permit drawings and specifications for code compliance per the City of Wheaton Building Code and general conformance to parking structure design standards per ACI and PCI.
- C. Review the design calculations for code compliance and general conformance to parking structure design standards per ACI and PCI.
- D. Provide an outline of all design comments. The City will include this outline in the permit review package that is returned to the designer.
- E. Be available for up to two (2) meetings with the City and the designer to review the permit comments, if needed.
- F. Be available by telephone to answer any questions related to the permit review comments until permit comments are fulfilled and permit is awarded.
- G. Review shop drawings and material submittals for general conformance to the design documents, as requested.
- H. Perform construction observations in conjunction with the progress meetings during the construction phase. A total of sixteen (16) visits, one visit every two to three weeks, are anticipated. A report shall be issued following each jobsite visit describing our observation.

## **PROFESSIONAL FEE**

We propose to perform the services described in the previous section entitled "Walker Scope of Services" in accordance with the attached General Conditions of Agreement on an hourly rate basis, per the attached Standard Billing Rates for 2007, plus reimbursable expenses. We estimate our total hourly fee to be Forty-Five Thousand Dollars (\$45,000.00). As we approach this estimated total hourly fee, we will advise you and receive your authorization for services beyond this amount.

We anticipate spending about 60 hours in review of the drawings and specifications, about 40 hours in review of the calculations, about 40 hours in review of shop drawings, and about 100 hours for construction observations.



**WALKER**  
PARKING CONSULTANTS

Reimbursable expenses shall mean 1.15 times the actual cost of the following: transportation and subsistence of principals and employees when traveling in conjunction with the work, postage and courier fees, toll telephone calls and facsimiles; reproduction of reports, drawings and specifications, and similar project-related items. We estimate Two Thousand Dollars (\$2,000.00) for the total of reimbursable expenses.



## **SERVICES**

Walker Parking Consultants ("WALKER") will provide the CLIENT professional services that are limited to the work described in the attached letter ("the services"). Any additional services requested will be provided at our standard hourly rates or for a mutually agreed lump sum fee. The services are provided solely in accordance with written information and documents supplied by the CLIENT, and are limited to and furnished solely for the specific use disclosed to us in writing by the CLIENT. No third-party beneficiary is contemplated. All documents prepared or provided by WALKER are its instruments of service, and any use for modifications or extensions of this work, for new projects, or for completion of this project by others without WALKER's specific written consent will be at CLIENT's sole risk.

## **PAYMENT FOR SERVICES**

Prior to commencement of services the CLIENT agrees to make an Initial Payment to WALKER in an amount equal to 20% of the total fee or as stated in the attached letter. This amount will be credited to the last invoice(s) sent to the CLIENT. WALKER will submit monthly invoices based on work completed plus reimbursable expenses. Reimbursable expenses will be billed at 1.15 times the cost of travel and living expenses, purchase or rental of specialized equipment, photographs and renderings, document reproduction, postage and delivery costs, long distance telephone and facsimile charges, additional service consultants, and other project related expenses. Payment is due upon receipt of invoice. If for any reason the CLIENT does not deliver payment to WALKER within thirty (30) days of date of invoice, WALKER may, at its option, suspend or withhold services.

## **STANDARD OF CARE**

WALKER will perform the services in accordance with generally accepted standards of the profession using applicable building codes in effect at time of execution of this Agreement. WALKER's liability caused by its acts, errors or omissions shall be limited to the fee or \$10,000, whichever is greater.

Any estimates or projections provided by WALKER will be premised in part upon assumptions provided by the CLIENT. WALKER will not independently investigate the accuracy of the assumptions. Because of the inherent uncertainty and probable variation of the assumptions, actual results will vary from estimated or projected results and such variations may be material. As such, WALKER makes no warranty or representation, express or implied, as to the accuracy of the estimates or projections.

## **PERIOD OF SERVICE**

Services shall be complete the earlier of (1) the date when final documents are accepted by the CLIENT or (2) thirty (30) days after final documents are delivered to the CLIENT.



**PRINCIPALS**

Senior Principal	\$ 260.00
Principal	\$ 215.00

**PROJECT MANAGEMENT**

Senior Project Manager	\$ 200.00
Project Manager	\$ 165.00
Assistant Project Manager	\$ 125.00

**PARKING CONSULTANTS**

Senior Parking Consultant	\$ 200.00
Parking Consultant	\$ 165.00
Parking Analyst / Planner	\$ 125.00

**DESIGN**

Senior Engineer / Senior Architect	\$ 160.00
Engineer / Architect	\$ 135.00
Designer	\$ 125.00

**TECHNICAL**

Senior Technician	\$ 110.00
Technician	\$ 95.00
Field Auditor	\$ 75.00

**SUPPORT**

Senior Admin Assistant / Business Mgr	\$ 75.00
Administrative Assistant	\$ 55.00

*Subject to annual adjustment on January 1 each year.*