

RESOLUTION R-24-14

A RESOLUTION AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT FOR A PLANNING CONSULTANT GRUEN GRUEN + ASSOCIATES – ECONOMIC DEVELOPMENT PLAN

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

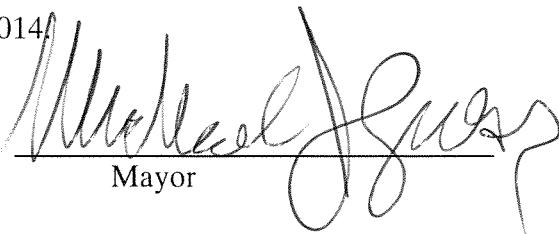
WHEREAS, the preparation of an economic development plan is identified as a key performance indicator addressing the strategic priority of Economic Development adopted by the City Council; and

WHEREAS, the 2014 -2015 Budget includes the necessary funds for the preparation of an economic development plan; and

WHEREAS, the City has determined the proposal provided by Gruen Gruen + Associates meets the City’s needs for professional services for preparation of an economic development plan.

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 Gruen Gruen + Associates, as attached hereto and made a part thereof.

ADOPTED this 21st day of April, 2014.



Michael Gruen
Mayor

Attest:



Sean Bennett
City Clerk

Roll Call Vote:

Ayes: Councilman Prendiville
Councilman Rutledge
Councilman Saline
Mayor Gresk
Councilwoman Pacino Sanguinetti
Councilman Scalzo
Councilman Suess

Nays: None

Absent: None

Motion Carried Unanimously

Agreement Between the City of Wheaton, Illinois and Gruen Gruen + Associates for Planning Consulting Services

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 Gruen Gruen + Associates ("Consultant"), 1121 Lake Cook Road, Suite A, Deerfield, IL 60015.

WITNESSETH:

Whereas, the City has determined that it is seeks to hire a consultant to provide labor, and/or materials and/or equipment (hereinafter the "Work") to prepare an economic development plan for the City; and

Whereas, the City has solicited a Request for Proposal for the Work; and

Whereas, the Service Provider submitted a proposal to the City for the Work, which is attached hereto and incorporated herein as Exhibit A; and

Whereas, the City finds the proposal submitted by the Consultant meets the City's service requirements for the Work.

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:

- **Scope of Services.** The Recital paragraphs are incorporated herein as substantive terms and conditions of this Agreement and as representing the intent of the Parties. The Consultant shall furnish all labor, materials, and equipment to provide and perform the Work. The Consultant represents and warrants that it shall perform the Work 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 according to the terms of the Consultant's proposal which is attached hereto as Exhibit A.
- 3. **Term of Agreement:** This Agreement shall become effective upon the latter of the date accepted and signed by the City and the date accepted and signed by the Contractor.
- 4. **Additional Services.** The Consultant shall provide only the Work specified in this Agreement and attached Exhibits. In the event the Consultant or the City determines that additional goods and/or services are required to complete the Work, such additional goods shall not be provided and/or such additional services shall not be performed unless authorized 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.
- 5. **Hold Harmless and Indemnification.** The Consultant shall defend, hold harmless, and indemnify the City, its directors, officers, employees, agents, and elected officials, in whole or in part 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 this Agreement pertaining to the Consultant's services; or
- b) The negligence or willful misconduct of the Consultant, 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.

6. **Insurance.** The Consultant and each of its agents, subcontractors, and consultants hired to perform the Work 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 Work. Such insurance shall be issued by companies authorized to do business in the State of Illinois and approved by the City. The insurance coverages 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) 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.

7. **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 provision of the goods and/or performance of the services required under this Agreement.

8. **Freedom of Information Act:** The Contractor shall, within twenty four hours of the City's request, provide any documents in the Contractor's possession related to the contract which the City is required to disclose to

a requester under the Illinois Freedom of Information Act. This provision is a material covenant of this Agreement.

9. ***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 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.
10. ***Cancellation for Unappropriated Funds:*** The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.
11. ***Default.*** In case of default by the contractor, the City will procure articles or service from other sources and hold the contractor responsible for any excess cost incurred as provided for in Article 2 of the Uniform Commercial Code. The City reserves the right to cancel the whole or any part of the contract if the contractor fails to perform any of the provisions in the contract, fails to make delivery within the time stated, becomes insolvent, suspends any of its operations, or if any petition is filed or proceeding commenced by or against the Seller under any State or Federal law relating to bankruptcy arrangement, reorganization, receivership, or assignment for the benefit of creditors. The contractor will not be liable to perform if situations arise by reason of strikes, acts of God or the public enemy, acts of the City, fires or floods.
12. ***Patents:*** The successful contractor agrees to protect, defend, and save the City harmless against any demand for payment for the use of any patented material process, article, or device that may enter into the manufacture and construction, or copywrited material that form a part of the Work covered by the contract.
13. ***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.
14. ***Status of Independent Consultant.*** Both City and Consultant agree that Consultant will act as an Independent Consultant in the performance of the Work. 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. 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. 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 City, and Consultant specifically agrees that it shall not do so. City shall have no obligation to provide any compensation or benefits to Consultant, except those specifically identified in this Agreement. City shall not have the authority to control the method or manner by which Consultant complies with the terms of this Agreement.

15. Assignment; Successors and Assigns. Neither this Agreement, nor any part, rights or interests hereof, may be assigned, , to any other person, firm or corporation 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.

16. 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.

17. Waivers of Lien: The City reserves the right to require waivers of lien before payment where the City deems it to be in its best interest to do so.

18. 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.

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

If to the Consultant:
Gruen Gruen + Associates
Attn: Aaron Gruen
1121 Lake Cook Road, Suite A
Deerfield, IL 60015

If to the City:
City of Wheaton
Attn: City Clerk
303 W. Wesley Street, Box 727
Wheaton, IL 60189-727

20. 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. No course of conduct before, or during the performance of this Agreement, shall be deemed to modify, change or amend this Agreement.

21. Non-disclosure. During the course of the Work s, 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. Consultant shall not use such information for any purpose other than described in this Agreement and Exhibits and shall not directly or indirectly disclose or disseminate such information to any third party without the express written consent of the City.

22. 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.

23. Force Majeure. No party hereto shall be deemed to be in default or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of services resulting directly or indirectly from acts of God, acts of civil or military disturbance, or war, which are beyond the control of such non-performing party.

24. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to its conflict-of-laws rules. Exclusive jurisdiction for any litigation involving any aspect of this Agreement shall be in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.

25. **Validity.** In the event that any provision of this Agreement shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

In Witness Whereof, the parties have entered into this 22nd day of July, 2014

City of Wheaton, an Illinois municipal corporation

By Donald Rose
Donald B. Rose, City Manager

Attest:

Sharon Barrett-Hagen
Sharon Barrett-Hagen, City Clerk

Gruen Gruen + Associates

By _____
Aaron N. Gruen, Principal

Attest:

Exhibit A

April 9, 2014

Mr. Jim Kozik, Director
City of Wheaton
Planning Department, First Floor
303 West Wesley Street
P.O. Box 327
Wheaton, Illinois 60187-0727

Dear Jim:

Gruen Gruen + Associates (GG+A) is pleased to submit this proposal to work with you to identify and evaluate the economic development factors that will continue and contribute to a desirable, healthy and vibrant community. The work program outlined below reflects a presupposed understanding that residential uses comprise the preponderance of the City's land use mix and that therefore it is critical that the City maintain the economic development factors that foster a high quality of life and a healthy and vibrant housing market and housing stock. The assumption that residential uses comprise the preponderance of the City's land use mix within the City will be documented through a summarization of historical development patterns, percentage of existing land use mix, and other metrics based on data provided by the City of Wheaton Planning Department. We propose working with you to identify strategies within the control of the City to take that will encourage maintenance and enhancement to the stock of housing and up-grading of the desirability of residential neighborhoods in Wheaton. In addition, we will also interview representatives of important service, leisure, educational and healthcare institutions as part of the evaluation of potential economic development and community enhancement opportunities.

SCOPE OF WORK

1. IDENTIFY AND DESCRIBE HISTORICAL DEVELOPMENT PATTERNS, DEMOGRAPHIC, AND HOUSING CONDITIONS

GG+A will summarize historical institutional, commercial, industrial, office, and residential growth development patterns and current economic development conditions. The implications for future economic development opportunities and constraints will be identified. A more focused study of population and household trends for the City of Wheaton will be done. GG+A will review, if available, future population and household projections.

To the extent the City Planning Department can provide information about the number and type of housing units that could be added to any vacant or under-utilized land identified for future greater development based on the City's Comprehensive Plan and other information available, we will incorporate this information into the description of demographic and housing conditions.



Realizing housing is a significant economic factor that forms the base for the City's economic development strategies and opportunities, GG+A will review and describe Wheaton's existing housing supply, including: (a) make-up of housing stock by type and age of unit, (b) tenure and vacancy rates, and (c) housing values. GG+A will also review employment by economic sector and the relationship between jobs and housing.

2. TOUR NEIGHBORHOODS AND CONDUCT A SURVEY OF LOCAL REAL ESTATE BROKERS AND BUILDERS TO IDENTIFY TRENDS ABOUT HOUSING LOCATION AND PRODUCT PREFERENCES, AND IDENTIFY POTENTIAL STRATEGIES

We would like to tour Wheaton residential neighborhoods with you and other knowledgeable staff. We will conduct interviews with local brokers, builders, property owners, and other knowledgeable individuals to identify from what locations households in various neighborhoods have moved and what other locations they consider and what has attracted them to the units. We will interview local residential real estate brokers and residential developers to identify locational preferences and the factors that shape the preferences as well as product preference trends and the underlying dynamics that contribute to these trends. We will seek to identify how locational characteristics such as proximity to nearby and similar amenities and services such as restaurants and shopping, transportation linkages, and school districts and the character and image of the neighboring uses and households influence the varying types of tear-down or other responses occurring within Wheaton (if there are neighborhoods of particular concern whether related to teardowns, or reductions in maintenance and reinvestment etc., it would be helpful to have these neighborhoods identified during our initial tour).

The interviews will also illicit information and insight on whether the values of existing, single family housing units in subareas or neighborhoods of Wheaton will increase, remain stable, or decrease over time and what kinds of policies or other actions may be needed to encourage the maintenance, enhancement, and replacement of housing stock in Wheaton.

We will meet with staff to review the results and implications of the above research. We will discuss whether real estate economic analysis of representative housing investment options typically faced by owners will be worthwhile to conduct in order to further help identify any real and perceived barriers to private investment in property maintenance and enhancement. We will discuss potential regulatory policy (building code and zoning) as well as economic incentives or other policy strategies that may be worthwhile to evaluate. One type of evaluation is to test whether such policies and strategies will alter the real estate economics of development, redevelopment, remodeling etc., sufficiently to encourage property maintenance, reinvestment, development, and redevelopment, while discouraging marginal development and under maintenance.

April 9, 2014
Mr. Jim Kozik

3. CONDUCT INTERVIEWS WITH REPRESENTATIVES OF LEISURE, EDUCATIONAL AND HEALTHCARE INSTITUTIONS

We will also interview representatives of School and Park Districts, Wheaton College and healthcare institutions to find out about their plans, concerns, residential locations of their workforces, and ideas for how to link and leverage their resources with other organizations and activities in Wheaton.

4. REVIEW SECONDARY REAL ESTATE AND SALES TAX DATA AND CONDUCT INTERVIEWS WITH REPRESENTATIVES OF REAL ESTATE DEVELOPMENT AND BROKERAGE INDUSTRY

GG+A will review relevant secondary real estate market data for nonresidential uses, sales tax data by retail category, and conduct interviews with active real estate developers, real estate brokers, and commercial property owners to obtain information and insight about the types of commercial uses that are supportive of Wheaton's quality of life and contribute to a desirable, healthy and vibrant community.

5. PREPARE WORKING MEMORANDA AND REPORT

We will prepare working memoranda covering tasks 1, 2, 3, and 4 outlined above and based on input gathered from a meeting with you prepare a final report. The report will summarize the work completed, initial findings, conclusions and policy recommendations. It will also if appropriate summarize recommended subsequent research or outreach tasks and the kinds of policy evaluation and strategic planning such tasks would help inform and position.

We will be available to meet with City officials and staff to consider the implications for "next steps".

STAFF RESPONSIBILITY

GG+A specializes in urban and regional economic analysis, market analysis, feasibility assessments, housing policy and identifying and assisting in the implementation of strategic action plans for public and private clients. These plans frequently relate to the development or redevelopment and enhancement of neighborhoods, downtowns, housing, retail, office, hotel, educational and health care, and mixed-use projects as well as policy frameworks directed toward sustainable economic development and community enhancement. Aaron Gruen, Esq., Principal, will be in Principal-in-charge of this project for GG+A and leading the GG+A Team. Working closely with Aaron Gruen will be Debra Jeans, Principal, and Andrew Ratchford, Senior Analyst along with other GG+A staff with appropriate training and experience.



April 9, 2014
Mr. Jim Kozik

COSTS AND DURATION

Our charges for professional services are based on the actual time devoted to your project by our personnel, billed at standard rates. Below listing of the standard hourly billing rates of staff assigned to the project. Expenses such as for travel, communication and report reproduction will be invoiced to you at their cost to us. Invoices will be submitted on a monthly basis and are payable upon receipt. Standard hourly rates good for 2014 for GG+A staff assigned to the project are listed below:

<u>Staff Member</u>	<u>2014 Standard Hourly Rate</u>
	(\$)
Aaron N. Gruen, Esq., Principal	240
Debra L. Jeans, Principal	240
Andrew Ratchford, Senior Analyst	140
Research Assistants-Research Associates	65-85

Based on our experience and present understanding of the situation, for the work outlined above, we suggest you set aside a budget for professional services and expenses not to exceed \$19,000 without prior written approval.

We are prepared to start work within one week of authorization to proceed and will exercise reasonable efforts to complete the work within 14 weeks after commencement.

LIABILITY FOR COSTS AND DAMAGES

Gruen Gruen + Associates shall not be liable for any costs or damages resulting from the use of any information, data projections, analyses, recommendations, methods, or any other material resulting from our work in any amount that exceeds \$25,000, or the fees and costs actually paid pursuant to this engagement, whichever is less. Nor shall Gruen Gruen + Associates be liable for costs or damages to any project due to judicial or administrative action, whether or not such action is based on the form or content of our report. Any services required by any party in any litigation on or related to this report shall be paid for by the party requesting such services at current consulting rates.

GENERAL PROVISIONS

Our agreement may be terminated on fifteen (15) days' written notice by either party or such lesser time as we may find necessary to conclude the work currently underway and summarize our findings to you.

In the event of litigation to enforce this agreement, Illinois law will apply. The prevailing party in any litigation or arbitration between us will be entitled to reasonable attorneys' fees and costs.

April 9, 2014
Mr. Jim Kozik

ACCEPTANCE

We look forward to working with you on this project. If this proposal is acceptable, please sign and return a fully signed copy of this letter as authorization to proceed.

Very truly yours,
Gruen Gruen + Associates LLC

By 
Aaron N. Gruen, Principal

ACCEPTED FOR CITY OF WHEATON

By _____
Its _____
Date _____

