

## RESOLUTION R-2018-12

### A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH UPLAND DESIGN LTD. FOR ADAMS PARK LANDSCAPE ARCHITECTURAL SERVICES AGREEMENT

WHEREAS, the City of Wheaton, DuPage County, Illinois is desirous to enter into an agreement for an Adams Park Landscape Architectural Services; and

WHEREAS, the City conducted a request for proposal process and received and reviewed four submittals for Adams Park Landscape Architectural Services; and

WHEREAS, it is determined by the City that the proposal received from Upland Design Ltd. meets the City's needs; and

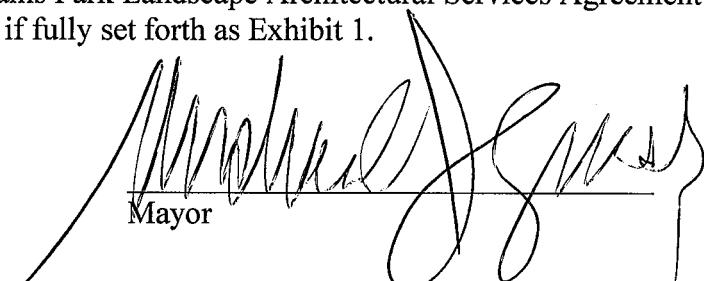
WHEREAS, it is necessary for the City to enter into an agreement with Upland Design Ltd. for the purpose of providing Adams Park Landscape Architectural Services.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois that the Mayor is hereby authorized to execute, and the City Clerk is hereby directed to attest to a professional service agreement between the City of Wheaton and Upland Design Ltd., Plainfield, Illinois, for an Adams Park Landscape Architectural Services Agreement attached hereto and incorporated herein as if fully set forth as Exhibit 1.

Adopted this 20<sup>th</sup> day of February 2018.

Attest:

  
Aaron Bennett Hagen  
City Clerk

  
Mayor

#### Roll Call Vote:

Ayes: Councilman Scalzo  
Councilman Barbier  
Mayor Gresk

Nays: Councilwoman Fitch

Absent: Councilman Prendiville  
Councilman Rutledge  
Councilman Suess

Motion Carried Unanimously

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## EXHIBIT 1

This number must appear on the  
face of all invoices and  
documents related to this  
Agreement **C 37014**

### **CITY OF WHEATON, ILLINOIS ADAMS PARK LANDSCAPE ARCHITECTURAL SERVICES AGREEMENT**

**THIS AGREEMENT** is made and entered into this 20th day of February 2018, by and between the **CITY OF WHEATON**, an Illinois municipal corporation ("City"), located at 303 W. Wesley Street, Wheaton, Illinois, 60189 and Upland Design Ltd., ("Architect"), located at 24042 W. Lockport Street, Plainfield, IL 60544.

WHEREAS, the City has determined that it is reasonable and necessary to engage a professional landscape architectural services firm to provide conceptual, schematic, design development services and documentation for refreshing and improving the landscaping in Adams Park, consistent with the Request for Proposal dated January 25<sup>th</sup>, 2018 which is attached hereto and incorporated herein as **Group Exhibit A**; and

WHEREAS, Architect has submitted to the City a proposal for providing conceptual, schematic, design development services and documentation concerning landscape improvements in Adams Park; a copy of which is attached hereto and fully incorporated herein as if fully set forth as **Group Exhibit B**; and;

WHEREAS, Architect represents that it has the necessary expertise and experience to furnish such professional landscape architectural services upon the terms and conditions set forth herein below.

NOW, THEREFORE, in consideration of the recitals and the mutual covenants, agreements, and conditions set forth in the Agreement, the parties agree as follows:

#### **SECTION 1. SCOPE OF SERVICES.**

**A. Recitals.** The recitals set forth above, including **Group Exhibit A** and **Group Exhibit B**, are incorporated herein as substantive terms and conditions of this Agreement and represent the intent of the parties. Any inconsistency between the services as stated by the City in Group Exhibit A and the services as proposed by the Architect in Group Exhibit B shall be controlled by the services as stated by the City in Group Exhibit A, unless specifically waived in writing. Where this Agreement is inconsistent with any provision of **Group Exhibit A** or **Group Exhibit B**, this Agreement shall control.

**B. Project Name.** The name of this project is the Adams Park Landscape Design Services Project (hereinafter "Project").

**C. Retention and Services.** The City retains the Architect to perform, and the Architect agrees to perform, pursuant to the terms and conditions of the Agreement, all necessary landscape architectural services (hereinafter "Services") for the completion of this Project, as more fully described in the attached proposal, Group Exhibit B, which shall be considered contractual requirements that must be met by Architect.

**D. Access to Facilities and Property.** The City shall make its properties available and accessible for inspection by Architect and arrange for access to make all provisions for the Architect to enter upon public property as required by the Architect to perform his Services.

**E. Reporting.** The Architect shall regularly report to the City's Project Manager, or his designee, regarding the progress of the Services during the term of this Agreement.

**F. Time of Performance.** The Architect shall perform the Services as indicated in the attached proposals, **Group Exhibit B**, and in accordance with Section 6(B) of this Agreement.

**G. Additional Services.** The Architect shall provide only the Services specified in this Agreement and its attached Exhibits. Upon recognizing the need to perform Additional Services, the Architect shall notify the City with reasonable promptness and explain the facts and circumstances giving rise to the need, and submit to the City a written proposal for amendment to this Agreement for the City's review and approval setting forth the details of the requested Additional Services. Additional services that are not part of the Services of this Agreement may be assigned subject to prior written approval or direction of the City. Payment for additional services shall be as mutually agreed upon by the parties before the commencement of any additional services. Any additional services shall be subject to the terms and conditions of this Agreement.

**H. Change in Services.** The City reserves the right by written change order or amendment to make changes in requirements, services, or professional time schedule adjustments, and Architect shall adhere to such changes provided that the Parties negotiate appropriate contract adjustments to accommodate the changes which are acceptable to both Parties. Notwithstanding anything to the contrary in this Agreement, the City shall not be responsible to pay, and the Architect shall not be entitled to receive compensation, for any Change in Services if such services were required due to the fault of the Architect or the Architect's failure to perform in accordance with the terms of this Agreement or in accordance with the degree of care and skill employed by landscape architects in Illinois on similar projects.

**I. City's Review of Construction Documents.** The Architect acknowledges that the City is not a landscape design professional and that the City's review or approval of any plans, drawings, specifications, or other materials provided by the Architect is solely for consistency with the City's overall project. The City's review or approval of any plans, drawings, specifications or other materials provided by Architect shall not limit the Architect's responsibility for the services provided under this Agreement or relieve the Architect of any responsibilities under this Agreement.

**J. Pre-Construction Conference.** A pre-construction meeting shall be scheduled before construction begins on any designed portions of this Project. The Architect shall be required to attend this meeting. The date and time of this meeting shall be set a later date.

## **SECTION 2. COMPENSATION AND METHOD OF PAYMENT.**

**A. Agreement Amount.** The total amount billed by the Architect for the Services performed under this Agreement shall not exceed **\$22,444.00** including reimbursable expenses, without the prior express written authorization of the City.

**B. Invoices and Payments.** The Architect shall be paid as provided in Group Exhibit B. The Architect shall submit invoices to the City containing sufficient detail of the Services performed to enable the City to properly evaluate the payout request. The City shall pay Architect in accordance with the Illinois Local Government Prompt Payment Act. Payment shall be made to the Architect

either through the City's Purchasing Card Program, MasterCard, in which payment shall occur at the time of Service delivery, or through a Architect generated invoice. Invoices shall be submitted to the City within six (6) months of completion of the Services. Any invoices submitted in excess of six (6) months from the date that Services were completed, shall not be paid. Under no circumstances shall a third party be reimbursed for Services performed under this Agreement.

**C. Unappropriated Funds.** The obligation of the City for payment to the Architect is limited to the availability of funds appropriated in a current fiscal period, and continuation of this Agreement into a subsequent fiscal period is subject to the appropriation of funds, unless otherwise authorized by law.

**D. Taxes, Benefits, and Royalties.** The Agreement Amount includes all applicable federal, state and City taxes of every kind and nature applicable to the Services as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or similar benefits and all costs, royalties, and fees arising from the use of, or the incorporation into, the Services, of patented or copyrighted equipment, materials, supplies, tools, appliances, devices, processes, or inventions. All claims or right to claim additional compensation by reason of the payment of any such tax, contribution, premium, costs, royalties, or fees is hereby waived and released by Architect.

**E. Records.** The Architect shall maintain records of the services performed, actual time devoted, and costs incurred with the Services performed under this Agreement, and shall permit the authorized representative of the City to inspect, audit, and make copies of all data and records of the Architect for the Services done under this Agreement. All such records shall be clearly identifiable. The records shall be made available to the City during normal business hours during the Agreement period, and for three years after the termination of the Agreement.

**F. Interest Waiver.** Contractor hereby waives any and all claims or rights to interest on money claimed to be due pursuant to this Agreement, and all such rights to interest to which it may otherwise be entitled pursuant to law, including, but not limited to, pursuant to the Local Government Prompt Payment Act, (50 ILCS 505/1 *et seq.*) as amended or the Illinois Interest Act (815 ILCS 205/1, *et seq.*) as amended.

### **SECTION 3. REPRESENTATIONS OF ARCHITECT.**

**A. Qualifications.** The Architect represents that it is:

registered as a professional design firm with the Illinois Department of Financial and Professional Regulation and that all landscape architects performing architectural services for the City pursuant to this Agreement are properly licensed by the State of Illinois Department of Financial and Professional Regulation; or

a landscape designer with at least five year's experience; or

(initials)

a planning firm with landscape design services provided in conformance with Illinois State law.

(initials)

**B. Standard of Care.** The Architect represents, certifies and warrants that it shall perform and complete the Services in a manner consistent with the level of care, skill, and diligence exercised by other recognized Architects under similar circumstances at the time the services are performed. The representations, certifications, and warranties expressed shall be in addition to any other representations, certifications, and warranties expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the City. Consistent with its standard of care, Architect shall be responsible for the accuracy and coordination of all drawings and design documents relating to Architect's design and used for the Project, regardless of whether such drawings and documents are prepared or performed by Architect, or by Architect's consultants. Consistent with its standard of care, Architect shall be responsible for coordination and internal checking of all drawings and for the accuracy of all dimensional and layout information contained in the drawings and specifications prepared by Architect's consultants, as fully as if each drawing were prepared by Architect.

**C. Solvency.** The Architect represents that it is financially solvent and has the necessary financial resources to perform the Services with the standard of care required under this Agreement.

**D. Key Project Personnel/Personnel.** The Key Project Personnel identified in Group Exhibit B shall be primarily responsible for carrying out the Services on behalf of the Architect. The Key Project Personnel shall not be changed without the City's prior written approval. The Architect shall provide all personnel necessary to complete the Services.

#### **SECTION 4. INDEMNIFICATION; INSURANCE; LIABILITY**

**A. Indemnification.** The Architect shall, without regard to the availability or unavailability of any insurance, either of the City or of the Architect, indemnify, save harmless, and defend the City, and its officials, directors, officers, employees, agents, and attorneys, in whole or in part from and against any and all lawsuits, claims, demands, damages, liabilities, losses, fines, judgments, settlements, penalties, costs, and expenses, including, but not limited to reasonable expert witness and attorneys' fees, as well as costs of litigation, that arise, or may be alleged to have arisen, out of or in connection with the Architect's performance or failure to perform, the Services or any part thereof, whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of the Architect, except to the extent caused by the sole negligence of the City. The obligation on the part of the Architect to defend, hold harmless, and indemnify the City shall survive the expiration or termination of this Agreement. Nothing in this Agreement shall be construed as prohibiting the City, its officials, directors, officers, employees, agents or attorneys from defending, through the selection and use of their own agents, attorneys and experts, any claims, actions or suits brought against them arising out of the performance of this Agreement.

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

**B. Insurance.** Contemporaneous with the Architect's execution of this Agreement, the Architect shall provide certificates and policies of insurance, all with coverages and limits acceptable to the City, and evidencing at least the minimum insurance coverages and limits as set forth by the City in the Special Provisions for: Insurance Coverage for Professional Service Providers, which is attached hereto and incorporated as if fully set forth, as Exhibit D to this Agreement.

C. **No Personal Liability.** No elected or appointed official, director, officer, agent or employee of the City shall be personally liable, in law or in contract, to the Architect as the result of the execution, approval or attempted execution of this Agreement.

D. **No Liability to Any Third Party.** The City shall have no liability to any third party in contract, tort or otherwise for incidental or consequential damages of any kind, including, without limitation, punitive or economic damages or lost profits, regardless of whether the City shall be advised, shall have reason to know or in fact shall know of the possibility.

E. **Third Party Beneficiaries.** There are no third party beneficiaries of this Agreement.

F. **Patents.** The Architect agrees to protect, defend, and save the City harmless against any demand for payment for the use of any patented material, process, good or device utilized or supplied in connection with the performance of the Work required or provided pursuant to the terms of this Agreement.

## **SECTION 5. CONFIDENTIAL INFORMATION.**

A. **Confidential Information.** The term "Confidential Information" shall mean information in the possession or under the control of the City relating to the technical, business, or corporate affairs of the City; City property; user information, including, without limitation, any information pertaining to usage of the City's computer system, including and without limitation, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms and conditions of, this Agreement. City Confidential Information shall not include information that can be demonstrated: (i) to have been rightfully in the possession of the Architect from a source other than the City prior to the time of disclosure of said information to the Architect under this Agreement ("Time of Disclosure"); (ii) to have been in the public domain prior to the Time of Disclosure; (iii) to have become part of the public domain after the Time of Disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the Architect or the City; or (iv) to have been supplied to the Architect after the Time of Disclosure without restriction by a third party who is under no obligation to the City to maintain such information in confidence.

B. **No Disclosure of Confidential Information by the Architect.** The Architect acknowledges that it shall, in performing the Services for the City under this Agreement, have access to or be directly or indirectly exposed to Confidential Information. The Architect shall hold confidential all Confidential Information and shall not disclose or use such Confidential Information without express prior written consent of the City. The Architect shall use reasonable measures at least as strict as those the Architect uses to protect its own confidential information. Such measures shall include, without limitation, requiring employees and sub-contractors of the Architect to execute a non-disclosure agreement before obtaining access to Confidential Information.

C. **Breach of Confidentiality.** In the event of breach of the confidentiality provisions of Section 5 of this Agreement, it shall be conclusively presumed that irreparable injury would result to the City and there would be no adequate remedy at law. The City shall be entitled to obtain temporary and permanent injunctions, without bond and without proving damages, to enforce this Agreement. The City shall be entitled to damages for any breach of the injunction, including but not limited to, compensatory, incidental, consequential, exemplary and punitive damages. The confidentiality provisions of this Agreement survive the termination or performance of this Agreement.

## **SECTION 6. INDEPENDENT ARCHITECT; TERM; TERMINATION; DEFAULT.**

**A. Independent Architect Status.** The Architect shall act as an independent Architect in providing and performing the Services. Nothing in, nor done pursuant to, this Agreement shall be construed (i) to create the relationship of principal and agent, employer and employee, partners, or joint-venturers between the City and Architect; or (ii) to create any relationship between the City and any sub-contractor of the Architect. Architect is not in any way authorized to make any contract, agreement, or promise on behalf of the City, or to create any implied obligation on behalf of the City, and Architect specifically agrees that it shall not do so. The City shall not have the authority to control the method or manner by which Architect complies with the terms of this Agreement.

**B. Term.** 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 Architect. The Services shall commence upon the giving of written notice by the City to the Architect to proceed with its performance of the Services for each proposal and shall continue expeditiously from that date until final completion or by the time frame contained in the Contractor's proposal as set forth in Group Exhibit B. This Agreement shall terminate upon the expiration date of the Contractor's obligation to correct the Contractor's Work. A determination of completion shall not constitute a waiver of any rights or claims which the City may have or thereafter acquire with respect to any term or provision of this Agreement.

**C. Termination.** Notwithstanding any other provision hereof, the City may terminate this Agreement, with or without cause, at any time upon fifteen (15) days prior written notice to the Architect. In the event that this Agreement is so terminated, the City shall pay Architect for the Services performed and reimbursable expenses actually incurred as of the effective date of termination, less any sums attributable, directly or indirectly, to Architect's breach of this Agreement. The written notice required under this subsection shall be either (i) served personally during regular business hours; (ii) served by facsimile during regular business hours (iii) served by certified or registered mail, return receipt requested, addressed to the address listed at the end of this Agreement with postage prepaid and deposited in the United States mail or (iv) by e-mail sent to the Architect's Key Project Personnel. Notice served personally, by facsimile transmission or e-mail shall be effective upon receipt, and notice served by mail shall be effective upon receipt as verified by the United States Postal Service. Architect shall provide the City with its Key Project Personnel's e-mail address upon its execution of this Agreement. On receiving such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice to the City showing in detail the Services performed under this Agreement up to the termination date. Contractor's receipt of payment for Services rendered upon City's termination of this Agreement, is Contractor's sole and exclusive remedy for termination for convenience by the City. City's termination for convenience does not constitute a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT FOR SERVICES PERFORMED), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM CITY'S TERMINATION FOR CONVENIENCE.

**D. Default.** If it should appear at any time that the Architect has failed or refused to prosecute, or has delayed in the prosecution of, the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Services or any other requirement of this Agreement ("Event of Default"), then the City shall have the right, without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. **Cure by Architect.** The City may require the Architect, within a reasonable time, to complete or correct all or any part of the Services that are the subject of the Event of Default; and to take any or all action necessary to bring the Architect and the Services into compliance with this Agreement.

2. **Termination of Agreement by City.** The City may terminate this Agreement as to any or all Services yet to be performed, effective at a time specified by the City, and shall pay Architect for the Services performed or reimbursable expenses actually incurred as of the effective date of termination.

3. **Withholding of Payment by City.** The city may withhold from any payment, whether or not previously approved, or may recover from the Architect, any and all costs, including attorneys' fees and administrative expenses, incurred by the City as the result of any Event of Default by the Architect or as a result of actions taken by the City in response to any Event of Default by the Architect.

## **SECTION 7. COMPLIANCE WITH LAWS AND GRANTS.**

A. **Generally: Permits/Codes/Business Laws/Safety Standards/Grants.** Architect shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and shall comply with all applicable municipal, county, state and federal statutes, ordinances, rules, and regulations, including without limitation all applicable building and fire codes, now in force or which may hereafter be in force, any statutes regarding qualification to do business, and all local, state and federal safety standards. Architect shall comply with all conditions of any federal, state, or local grant received by Owner or Architect with respect to this Agreement or the Services. Architect shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with Architect's, or its sub-contractors', performance of, or failure to perform, the Services or any part thereof. Every provision of law required by law to be inserted into this Agreement shall be deemed to be inserted herein.

B. **Freedom of Information Act.** The Architect shall, within four (4) business days of the City's request, provide any documents in the Architect's possession related to this Agreement which the City is required to disclose to a requester under the Illinois Freedom of Information Act ("FOIA"). This provision is a material covenant of this Agreement. Architect agrees to not apply any costs or charge any fees to the City regarding the procurement of records required pursuant to an FOIA request. Should Architect request that the City utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, Architect agrees to pay all costs connected therewith (such as reasonable attorneys' fees and witness fees, filing fees, and any other expenses) to defend the denial of the request. The defense shall include, but not be limited to, challenged or appealed denials of FOIA requests to either the Illinois Attorney General or a court of competent jurisdiction. Architect agrees to defend, indemnify, and hold harmless the City, and agrees to pay all costs in connection therewith (such as reasonable attorneys' and witness fees, filing fees, and any other expenses) to defend any denial of a FOIA request by Architect's request to utilize a lawful exemption to the City.

C. **No Delinquent Taxes.** The Architect represents and certifies that the Architect is not barred from contracting with a unit of state or local government as a result of a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless the Architect is

contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax, or has entered into an agreement with Department of Revenue for payment of all taxes due and is currently in compliance with that agreement, as set forth in 11-42.1-1 et seq. of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 et seq.

**D. No Collusion.** The Architect represents and certifies that the Architect is not barred from contracting with a unit of state or local government as a result of a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 2012, 720 ILCS 5/33E-1 et seq. The Architect represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the City prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that the Architect has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Architect shall be liable to the City for all loss or damage that the City may suffer, and this Agreement shall, at the City's option, be null and void.

**E. Sexual Harassment Policy.** The Architect shall certify that it has a written sexual harassment policy in full compliance with Section 2-105(A)(4) of the Illinois Human Rights Act, 755 ILCS 5/2-105(A)(4).

**F. Patriot Act (USA Freedom Act) Compliance.** The Architect represents and warrants to the City that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly for or on behalf of a Specially Designated National and Blocked Person. The Architect further represents and warrants to the City that the Architect and its principals, shareholders, members, partners, or affiliates, as applicable, are not directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specially Designated National and Blocked Person. The Architect hereby agrees to defend, indemnify and hold harmless the City, its corporate authorities, and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from and against any and all claims, damages, losses, risks, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the representations and warranties in this subsection.

**G. Anti-Discrimination Laws.** Architect shall comply with all federal and state laws prohibiting discrimination because of, or requiring affirmative action based on race, color, religion, sex, sexual orientation, marital status, order of protection status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to ability, military status or an unfavorable discharge from military service, and shall execute the Equal Employment Opportunity Clause compliance certification attached to this Agreement in Group Exhibit C.

**H. Americans with Disabilities Act.** Architect shall utilize standards and/or methods that do not discriminate against the disabled in compliance with the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq.

**I. Drug Free Workplace Act.** Architect shall comply with all conditions of the Illinois Drug Free Workplace Act, 30 ILCS 580/3 et seq.

**J. Public Works Employment Discrimination Act.** Architect shall comply with all conditions and requirements of the Illinois Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq.

**K. Execution of Certifications.** Architect shall execute the legal certifications and compliance with laws documentation which is attached hereto and incorporated herein as if fully set forth as Group Exhibit C.

## **SECTION 8. GENERAL PROVISIONS.**

**A. Integration.** The provisions set forth in this Agreement represent the entire agreement between the parties and supersede all prior agreements, promises, and representations, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement.

**B. Amendment.** No amendment or modification to this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed.

**C. Assignment.** This Agreement, or any part, rights or interests hereof, may not be assigned by the City or by the Architect to any other person, firm or corporation without the prior written consent of the other party.

**D. Binding Effect.** The terms of this Agreement shall bind and inure to the benefit of the parties hereto and their agents, successors, and assigns.

**E. News Releases.** The Architect shall not issue any news releases or other public statements regarding the Services without prior approval from the City Manager.

**F. License.** Upon execution of this Agreement, the Architect grants to the City a nonexclusive license to use the Architect's conceptual plans, schematics, drawings, and other design documents solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the City to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the City's consultants to reproduce applicable portions of the plans, drawings, specifications and other intellectual property contained within any of the conceptual plans, schematics, drawings or other design documents solely and exclusively for use in the performing of services or construction for the Project. In the event of any termination of the architect, this license is irrevocable.

**G. Waiver.** Any failure of either the City or the Architect to strictly enforce any term, right or condition of this Agreement, whether implied or express, shall not be construed as a waiver of such term, right or condition, nor shall it be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.

**H. Severability.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**I. Time.** Time is of the essence as to those provisions in which time is an element of performance.

**J. Governing Laws/Jurisdiction.** This Agreement shall be interpreted according to the laws of the State of Illinois. Exclusive jurisdiction for any litigation involving any aspect of this Agreement shall be in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.

**K. Force Majeure.** No party hereto shall be deemed to be in default or to have breached any provision of this Agreement as the 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.

**L. Headings.** The headings of the several paragraphs of this Agreement are inserted only as a matter of convenience and for reference and are in no manner intended to define, limit or describe the scope of intent of any provision of this Agreement, nor shall they be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**M. Rights Cumulative.** Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

**N. Limitation of Liability.** CITY SHALL NOT BE LIABLE TO CONTRACTORS FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS (DIRECT OR INDIRECT) AND LOST REVENUES HOWSOEVER ARISING, WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT OR OTHER THEORY OF LIABILITY, EVEN IF CITY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY SUCH DAMAGES.

**O. Counterpart Execution.** This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**P. Contract Numbering.** The faces of all invoices and documents shall contain the following contract number **C 37014** reference purposes.

**Q. Notice.** Unless otherwise expressly provided in this Agreement, any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic internet mail ("e-mail"). Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidence by a return receipt. By notice complying with the requirements of this Subsection, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications shall be addressed to, and delivered to as follows:

If to the Architect:

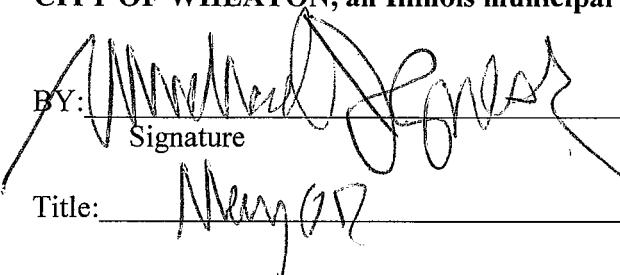
Upland Design Ltd.  
Attn: Michelle Kelly  
24042 W. Lockport Street, Suite 200  
Plainfield, IL 60544  
E-Mail: [mkelly@uplanddesign.com](mailto:mkelly@uplanddesign.com)  
Fax #: 815-254-6010

If to the City:

City of Wheaton  
Attn: City Clerk  
303 W. Wesley Street, Box 727  
Wheaton, IL 60187-727  
E-Mail: [cityclerk@wheaton.il.us](mailto:cityclerk@wheaton.il.us)  
Fax #: 630-260-2017

IN WITNESS WHEREOF, the parties have entered into this Agreement this 20<sup>th</sup> day of February 2018.

**CITY OF WHEATON, an Illinois municipal corp.**

BY:   
Signature

Date: 2/20/18

Title: Mayor

ATTEST,

BY:   
Sharon Barrett-Hagen, City Clerk

**ARCHITECT**

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

Its: \_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_

Title: \_\_\_\_\_

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