

RESOLUTION R-2018-113

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH UPLAND DESIGN LTD. FOR ENGINEERING SERVICES FOR PHASE I & II RENOVATIONS FOR ADAMS PARK

WHEREAS, the City of Wheaton, DuPage County, Illinois finds it reasonable and appropriate to enter into an agreement for engineering services for Phase I & II Renovations for Adams Park; 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, the City has a satisfactory relationship with Upland Design Ltd. as described in the Local Government Professional Services Selection Act 50 ILCS 510/4; and

WHEREAS, it is necessary for the City to enter into an agreement with Upland Design Ltd. for the purpose of providing engineering services for Phase I & II Renovations for Adams Park.

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 an agreement between the City of Wheaton and Upland Design Ltd, Chicago, Illinois, for engineering services for Phase I & II Renovations for Adams Park.

ADOPTED this 17th day of December 2018.



Michael J. Gresk
Mayor

ATTEST:



Karen Bennett-Hagan
City Clerk

Roll Call Vote:

Ayes: Councilman Suess
Councilman Barbier
Councilman Prendiville
Mayor Gresk
Councilman Scalzo

Nays: Councilwoman Fitch
Absent: Councilman Rutledge
Motion Carried

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EXHIBIT 1

This number must appear on
the face of all invoices and
documents related to this
Agreement No. 26

**CITY OF WHEATON, ILLINOIS
ADAMS PARK
DESIGN-BID ASSISTANCE-CONSTRUCTION ADMINISTRATION AGREEMENT**

THIS AGREEMENT is made and entered into this 27th day of December 2018, by and between the **CITY OF WHEATON**, an Illinois municipal corporation ("City"), located at 303 W. Wesley Street, Wheaton, Illinois, 60187 and Upland Design Ltd. ("Design Professional"), located at 564 W. Randolph Street, Chicago, Illinois, 60661. City and Design Professional are at times collectively referred to hereinafter as the "Parties."

WHEREAS, the City has determined that it is reasonable and necessary to engage a professional landscape architect firm to provide engineering design, construction document development, permitting assistance, construction contractor procurement assistance, and construction administration services for improvements to the City's Adams Park; and

WHEREAS, the Design Professional has provided professional landscape architectural design services for the City and the City has a satisfactory relationship with the Design Professional for those services; and

WHEREAS, Design Professional has submitted a cost proposal to provide engineering design, construction document development, permitting, construction contractor procurement assistance, and construction administration services for improvements to the City's Adams Park, a copy of the Design Professional's cost proposal is attached hereto and incorporated herein as if fully set forth as **Group Attachment A**, and Design Professional represents that it has the necessary expertise and experience to provide engineering design, construction document development, permitting assistance, construction contractor procurement assistance, and construction administration services for improvements to the City's Adams Park, upon the terms and conditions set forth herein below.

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

ARTICLE 1 – RELATIONSHIP OF THE PARTIES

- 1.1 **City's Relationship with Design Professional.** The relationship between the City and the Design Professional with regard to the Project shall be one of good faith and fair dealing. The Design-Professional agrees to provide engineering design, construction document development, permitting, construction contractor procurement assistance, and

construction administration services for improvements to the City's Adams Park as set forth in greater detail below.

1.2 General Description of Services. The City retains the Design Professional to furnish engineering design, construction document development, permitting, construction contractor procurement assistance, and construction administration services ("Basic Services") as more fully described in Article 4 herein and in the scope of services contained in ***Group Attachment A***, which shall be considered contractual requirements that must be met by Design Professional and which are required for completion of the **City of Wheaton Adams Park Design-Bid Assistance-Construction Administration Project** ("Project"). Design Professional agrees to furnish to the City the Basic Services described in ***Group Attachment A*** and such Additional Services (hereinafter defined) as may from time-to-time be agreed upon by the City and the Design Professional by Written Amendment. All services performed by the Design Professional not identified as Additional Services in a Written Amendment shall be deemed to be Basic Services that are to be provided without additional compensation. The Design Professional represents that it is thoroughly familiar with and understands the requirements of the Project scope and is experienced in the design, permitting, development of contract documents, procurement, and construction administration of park improvement projects of the type and scope contemplated by the City for the Project.

1.3 Consultants. Services not performed by Design Professional shall be performed by consultants hired by Design Professional ("Consultants"). To the extent deemed necessary by Design Professional, Design Professional shall employ civil engineers licensed as such by the State of Illinois, and such other Consultants necessary for the provision of Basic Services under this Agreement. All such consultants provided shall be paid by Design Professional.

Nothing in the foregoing shall create any contractual relationship between the City and any Consultants employed by Design Professional under the terms of this Agreement. Design Professional is responsible for the performance of its consultants as it would be if it had rendered these services itself.

1.4. Designated Design Professional Representative. Design Professional shall designate a principal or a staff member as the Project Engineer. So long as the Project Engineer performs in a manner acceptable to the City, and remains in the Design Professional's employ, the Project Engineer shall remain the first point of contact for all design and other Basic Services required under this Agreement, including attending design-related meetings for the Project, unless a substitution mutually acceptable to Design Professional and City is made. The City-approved Project Engineer shall be the person named below:

Upland Design Ltd.

Additionally, the City may require other individuals working for the Design Professional or its consultants to attend design-related meetings as requested by the City.

1.5 **Incorporation of Cost Proposal.** The Design Professional's Proposal dated November 28, 2018 is hereby incorporated into the description of Basic Services by reference. Discrepancies between this Agreement and the Design Professionals' Cost Proposal shall be resolved as provided in Section 16.11.

ARTICLE 2 – DEFINITIONS

2.1 **Addenda.** Written or graphic instruments which make additions, deletions, or revisions to the Contract Documents.

2.2 **Additional Services.** Those services that may be provided by the Design Professional in connection with the Project for additional compensation as approved by the City Manager by Written Amendment.

2.3 **Agreement.** The written contract between the City and the Design Professional covering the Basic Services to be performed, which includes all other documents that are attached to the Agreement or incorporated by reference and made a part thereof. It shall be understood that the words "contract" and "Agreement" are synonymous in these documents.

2.4 **Agreement Amount.** The total amount billed by the Design Professional for the provision of Basic Services rendered in accordance with this Agreement, including reimbursable expenses.

2.5 **Basic Services.** The Basic Services consist of all of the engineering design, construction document development, permitting, construction contractor procurement assistance, and construction administration services to be performed by the Design Professional under this Agreement, as further specified in the Scope of Services in the City's Request for Proposal in the Invitation for Bid package in ***Group Attachment A***, and includes supporting documentation, and all other products, services, facilities and satisfaction of obligations which are necessary for the Design Professional's complete performance pursuant to the Contract Documents.

2.6 **Bid.** The offer or proposal of a bidder submitted for the Work to be performed.

2.7 **Bidding Documents.** The Bidding Requirements and the proposed Construction Contract Documents (including all Addenda issued prior to receipt of Bids).

2.8 **Bidding Requirements.** The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any Addenda.

2.9 **Certificate of Final Completion.** Certificate issued by the City when the Work has been completed in accordance with the Construction Contract Documents and the City has received all documents and items necessary for closeout for the Work.

2.10 **Change Order.** A document recommended by the Design Professional that is signed by a Contractor and the City and authorizes the additional, deletion, or revision in the Work or an adjustment in a Construction Contract Price or Construction Contract Time, issued on or after the effective date of the Construction Contract.

2.11 **City.** The City of Wheaton, Illinois, an Illinois home rule municipality.

2.12 **City Representative.** The City's Representative is the Director of Public Works or his designee. The City's Representative shall be responsible, on behalf of the City, for interfacing with the Design Professional on all elements of the Basic Services to be performed. The Design Professional shall be provided with the City Representative's City and/or City cell phone number prior to commencement of the Work.

2.13 **Completion Date.** The date upon which the Basic Services are to be completed.

2.14 **Construction Contract.** The written instrument that is evidence of an agreement between the City and a Contractor covering the Work.

2.15 **Construction Contract Documents.** The documents that establish the rights and obligations of the City and Contractor and include the Construction Contract, the Bidding Requirements, the Bidding Documents, the Addenda (that pertain to the Construction Contract Documents), the Contractor's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Construction Contract, the Notice to Proceed, the Bonds, the General Conditions, the Supplementary Conditions and any Special Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Contract, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and Design Professional's written interpretations and clarifications issued on or after the effective date of the Construction Contract. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Construction Contract Documents. Only printed or hard copies of the items listed in this paragraph are Construction Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by City to Contractor are not Construction Contract Documents.

2.16 **Construction Contract Price.** The moneys payable by City to a Contractor for completion of the Work in accordance with the Construction Contract Documents.

2.17 **Construction Contract Time.** The number of days or the dates stated in the Construction Contract Documents to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion;

and (iii) complete the Work so that it is ready for final payment as evidenced by Design Professional's written recommendation of final payment.

2.18 Contract Documents. The Contract Documents consist of:

2.18.1 Written Amendments to this Contract signed by both the City and the Design Professional;

2.18.2 This Agreement and all Attachments to this Agreement;

2.18.3 Existing maps and plans of the Site, and any surveys, geo-technical information and other information which may be provided by the City pursuant to this Agreement;

2.18.4 The concept plans and rendering, including any Addenda thereto;

2.18.5 The Design Professional's proposal.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the Documents shall govern in the order in which they are listed above.

2.19 Contractor. An individual or entity engaged directly by the City pursuant to a Construction Contract. The term "Contractor" includes the terms "Subcontractor" and "Supplier" and the Contractor's, Subcontractor's and Supplier's successors, assigns, employees, agents, consultants and other representatives and anyone for whose acts a Contractor, Subcontractor or Supplier is legally liable.

2.20 Consultants. Any individuals or entities having a contract with Design Professional to furnish services as Design Professional's independent professional associate or consultant with respect to the Project.

2.21 Cost Proposal. The Design Professional's written proposal to the City of Wheaton dated November 28, 2018, pertaining to Phase I and Phase II Renovations for Adams Park.

2.22 Day. Each day shown on the calendar.

2.23 Design Professional. The individual or entity named as such in the Agreement. The term "Design Professional" means the Design Professional and the Design Professional's Consultants and their successors, assigns, employees, agents, consultants and other representatives and anyone for whose acts the Design Professional is legally liable.

2.24 Design Professional Representative. The Design Professional representative who shall be responsible on a day to day basis to interface with the City and its representatives on all elements of the Basic Services. The City shall be provided with the Design Professional's

Representative's work and work cell phone numbers prior to commencement of the Basic Services.

2.25 Design Professional's Services. The professional services and other services required or necessary under this Agreement, consisting of Basic Services and such Additional Services as are agreed upon by the City and Design Professional by Written Amendment or otherwise in accordance with this Agreement.

2.26 Drawings. That part of the Construction Contract Documents prepared or approved by Design Professional which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings hereunder.

2.27 Effective Date of the Agreement. The latter of the date on which this Agreement is accepted and signed by the City and the date this Agreement is signed and accepted by the Design Professional.

2.28 Field Order. A written order issued by Design Professional that requires minor changes in the Work but that does not involve a change in the Construction Contract Price or the Construction Contract Times.

2.29 General Conditions. That part of the Construction Contract Documents that supplements a Construction Contract and that describes the rights, responsibilities and relationships of the City, Design Professional and Contractor.

2.30 Key Milestone Listing. The list of the sequence and timing of the design and construction activities. See Section 6.2.

2.31 Laws and Regulations. Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction over the Project.

2.32 Milestone Dates. The dates set forth in the Key Milestone listing.

2.33 Project. The implementation of improvements to Adams Park in two phases (Phase I and Phase II) which include the removal and replacement of the main walks in Adams Park to comply with the Americans with Disabilities Act which include the following phases in which the Design Professional is to provide services to the City: Construction Contract Documents Phase, Permitting Phase, Construction Contract Procurement Phase, and Construction Administration Phase. The Project may be enlarged to include Additional Services through Written Amendments or as otherwise allowed herein.

2.34 Project Manual. The bound documentary information prepared for bidding and constructing the Work and includes the Advertisement for Bids, Instructions to Bidders,

Bid Forms, Agreements, Bonds, General Conditions, Supplementary Conditions, Special Conditions, Specifications, and Appendices.

- 2.35 **Samples.** Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
- 2.36 **Shop Drawings.** All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for a Contractor and submitted by Contractor to illustrate some portion of the Work.
- 2.37 **Site.** The lands or areas that will be indicated in the Construction Contract Documents as being furnished by City, upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by City that are designated for the use of Contractor. The Site may not be specifically identified until after the Effective Date of this Agreement, but shall be specified in the Construction Contract Documents, and reference herein to the "Site" shall mean such areas once determined and specified.
- 2.38 **Specifications.** That part of the Construction Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto. Specifications include all Sections included under the Technical specifications of the Project Manual.
- 2.39 **Subcontractor.** An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work on the Project.
- 2.40 **Substantial Completion.** The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of the Design Professional and with the approval of the City, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
- 2.41 **Subsubcontractor.** A Subsubcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's Work.
- 2.42 **Supplementary Conditions.** That part of the Construction Contract Documents that amends or supplements the General Conditions.
- 2.43 **Special Conditions.** That part of the Construction Contract Documents that amends or supplements the Supplementary Conditions.

2.44 Supplier. A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with a Contractor or Subcontractor to furnish materials or equipment to be incorporated in the Work by a Contractor or Subcontractor.

2.45 Total Project Cost; Total Project Cost Estimate. The "Total Project Cost Estimate" is an estimate of the total cost of the Project developed in accordance with Section 4.2. The "Total Project Cost" is the Total Project Cost Estimate that is approved by the City in accordance with Section 4.2.

2.46 Utilities Infrastructure. All underground or above-ground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

2.47 Work. The entire completed construction or the various separately identifiable parts thereof required to be provided to the City under the Construction Contract Documents by parties other than the Design Professional. The Work includes and is the result of performing or providing all labor, services, and documentation necessary or appropriate to produce such construction, and furnishing, installing, and incorporating all necessary or appropriate materials and equipment into such construction, all as more specifically described in the Construction Contract Documents.

2.48 Written Amendment. A written statement modifying the Agreement, signed by the City and Design Professional on or after the Effective Date of the Agreement.

ARTICLE 3 - RESPONSIBILITIES OF THE DESIGN PROFESSIONAL

3.1 Standard of Care

3.1.1 The Design Professional 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 Design Professionals 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, Design Professional shall be responsible for the accuracy and coordination of all drawings and design documents relating to Design Professional's design and used for the Project, regardless of whether such drawings and documents are prepared or performed by Design Professional, or by Design Professional's consultants. Consistent with its standard of care, Design Professional 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 Design Professional's consultants, as fully as if each drawing were prepared by Design Professional.

- 3.1.2** The Design Professional shall be responsible for all errors or omissions in the Drawings, Specifications, and other documents prepared by the Design Professional in a manner consistent with the level of care recognized by other design professionals. It shall be the responsibility of the Design Professional throughout the period of performance under this Agreement to use reasonable professional care and judgment to guard the City against defects and deficiencies in the Work.
- 3.1.3** The Design Professional shall assure that all Drawings, Specifications and other documents prepared by the Design Professional or the Design Professional's Consultants hereunder are in accordance with all Laws and Regulations and that all necessary or appropriate applications for approvals are submitted to federal, state and local governments or agencies in a timely manner so as not to delay the design or construction activities of the Project, in a manner consistent with its standard of care.
- 3.1.4** The Design Professional shall correct at no additional cost to the City any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts in the Drawings, Specifications and other documents prepared by the Design Professional or Design Professional's Consultants in a manner consistent with its standard of care.
- 3.1.5** In addition to any other damages that might be due to City hereunder in connection with the breach of this Agreement by Design Professional, Design Professional shall reimburse City, for costs, damages and expenses that are the result of errors, omissions or delays of the Design Professional or the Design Professional's Consultants in a manner consistent with its standard of care.
- 3.1.6** The Design Professional shall perform the Design Professional's Services in a timely manner in accordance with all schedules for the Project and the Construction Contract Documents in a manner consistent with its standard of care.
- 3.1.7** No changes to the Design Professional's key project personnel identified in its proposal shall be permitted except with the prior written consent of the City.
- 3.1.8** The Design Professional shall perform those portions of the Basic Services that the Design Professional customarily performs with its own personnel. All other portions of the Basic Services shall be performed by Consultants under

appropriate agreements with the Design Professional as provided in Section 3.4.2. of this Agreement.

3.2 Professional License. The Design Professional 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, and that any Consultants performing Basic Services or Additional Services, have all applicable licenses required by the State of Illinois to perform such Services.

3.3 Solvency. The Design Professional represents that it is financially solvent and has the necessary financial resources to perform the Basic Services with the Standard of Care required under this Agreement.

3.4 Design Professional's Consultants.

3.4.1 No changes to the Design Professional's Consultants for the Project, along with their key project personnel, as identified in the Design Professional's Proposal shall be permitted except with the prior written consent of the City, which consent shall not be unreasonably withheld.

3.4.2 All of the Design Professional's contracts with the Design Professional's Consultants shall be in writing and shall expressly provide that if this Agreement is terminated for any reason, the City may, at its sole option, take the assignment of the Design Professional's Consultants' contracts with the Design Professional, that such assignment shall automatically take place upon notification in writing by the City to the Design Professional's Consultants and the Design Professional's Consultants shall continue to be bound by their contract after such assignment. A copy of each contract between the Design Professional and a Design Professional's Consultant shall be furnished to the City within seven (7) days of its execution.

ARTICLE 4 - BASIC SERVICES

4.1 Commencement of Basic Services. The Design Professional's Basic Services shall commence upon the occurrence of the Effective Date of the Agreement and Design Professional's receipt of a Notice to Proceed from City.

4.2 Total Project Cost Estimates and Total Project Cost.

4.2.1 At the times designated herein, the Design Professional shall develop a Total Project Cost Estimate, including the Design Professional's fees, costs of the construction, costs of equipment, and signage, permit fees and appropriate contingencies. These costs shall be prepared and submitted to the City, with

supporting documents listing quantities, unit price, labor rates, man-hour estimates, overhead and profit.

- 4.2.2** The Total Project Cost Estimates shall be prepared at completion of 80% of the Construction Contract Documents Phase.
- 4.2.3** When the first of the Total Project Cost Estimates has been approved in writing by the City, the Design Professional shall be obligated, without additional compensation, to adjust the design of the Project to assure that it remains within the approved Total Project Cost. Such approved Total Project Cost Estimate shall be referred to herein as the "Total Project Cost."
- 4.2.4** Should bidding or negotiation with Contractors produce prices which, when added to the other elements of the approved Total Project Cost, produce a cost that is in excess of the approved Total Project Cost, the Design Professional shall participate with the City in rebidding, renegotiation and design adjustments to the extent such are necessary to obtain prices within the approved Total Project Cost. All activity of the Design Professional with respect to these matters shall constitute Basic Services and shall be performed by the Design Professional without additional compensation.
- 4.2.6** Unless and until the City authorizes an increase in the Total Project Cost, later Total Project Cost Estimates that are greater than the approved Total Project Cost shall not imply or otherwise result in an increase in the approved Total Project Cost.

- 4.3** **Basic Services.** The Basic Services to be provided by the Design Professional hereunder include the specific services associated with the following phases ("Phase(s)") of the Project: construction contract documents phase ("Construction Contract Documents Phase"), permitting phase ("Permitting Phase") construction contract procurement/bid assistance phase ("Construction Contract Procurement/Bid Assistance Phase") and construction administration phase ("Construction Administration Phase"). The provision of Basic Services for each Phase shall be contingent upon a full prior appropriation of funds to pay for such Basic Services, as required by Section 8-1-7 of the Illinois Municipal Code (65 ILCS 5/8-1-7).

4.3.1 Construction Contract Documents Phase.

- 4.3.1.A** The Design Professional shall consult with the City to ascertain the requirements of the Project and shall review available surveys, tests, and reports to ascertain that each is consistent and comparable with the others and the requirements of the Project.

4.3.1.B The Design Professional shall perform a preliminary evaluation of the Site, any necessary survey work, and all utility investigation.

4.3.1.C Based on the information obtained during the preliminary evaluation, the Design Professional shall prepare Preliminary drawings for approval by the City.

4.3.1.D The Design Professional shall prepare from the approved Preliminary Design, for approval by the City, the Design Development Documents, which shall include any Site plans and elevations, and other appropriate drawings, and outline specifications as are necessary to fix and illustrate the size and character of the entire Project as to kinds of materials, type of structural, mechanical and such other work as may be required, including when appropriate:

- Civil design
- Civil engineering
- Cost estimates
- Summary report

4.3.1.E Upon City's approval of the Design Development Documents, the Design Professional shall prepare the Construction Contract Documents for Phase I and Phase II of the Project as indicated it is Cost Proposal (**Group Attachment A**) and shall furnish copies of complete Construction Contract Documents to the City for review.

4.3.1.F A complete tabulation shall be furnished showing the breakdown of Total Project Cost with attached detailed estimates for major categories.

4.3.1.G Upon the City's review, the Design Professional shall revise the Construction Contract Documents for Phase I and Phase II of the Project in accordance with the City's comments. The Design Professional shall furnish final copies to the City and obtain written approval prior to issuance of the Construction Contract Documents to Contractors for pricing.

4.3.1.H Design Professional shall provide all technical Specifications and standard detail Drawings unless otherwise directed by the City.

4.3.1.I Specifications shall be prepared for review purposes and shall be subdivided into sections similar to Construction Specifications Institute standards. Specifications must be typewritten using the latest edition

of the MasterSpec or SpecText system and be clearly legible. Review sets shall be complete with all forms and documents. Submit on 8-1/2" x 11" paper, securely side bound and print double sided.

- 4.3.1.J** If necessary, field and laboratory testing of compacted soils, and excavated material shall be identified in Construction Contract Documents. All such tests shall be conducted by a qualified independent laboratory in accordance with ASTM specifications in a contract with and paid for directly by the City. The testing laboratory utilized and the Contract for such services shall be approved by the City. Additional tests resulting from failure of initial tests to meet Specification requirements shall be reimbursed to the City by the Contractor.
- 4.3.1.K** Unless previously completed by the City, subsurface investigation, where conditions are unknown or questionable, shall be conducted by a qualified testing laboratory, coordinated by the Design Professional and paid for directly by the City. The testing laboratory utilized and the contract for its services shall be approved and executed by the City. Reports of tests shall be bound with the Specifications.
- 4.3.1.L** The date for receipt of Bids shall be established by the Design Professional in consultation with the City. Generally, a period of two to four weeks will be required between publication of the Notice to Bidders and the receipt of Bids. Advertisement costs shall be paid directly to the advertising firm by the City.
- 4.3.1.M** The Construction Contract Documents for Phase I and Phase II of the Project shall require that Contractors, Subcontractors and Suppliers develop and submit operation and maintenance manuals in a form acceptable to the City. Instructional and training sessions shall be required to properly train the City's maintenance personnel. The City's Standard Project Closeout specifications shall be included in Bidding Documents.
- 4.3.1.N** The City and Design Professional will establish a Project Manual with procedures in accordance with City standards for bidding and construction of the Work. The Project Manual shall be followed for review and processing of all Shop Drawings, catalog submissions, Project reports, Change Order proposals, test reports, maintenance manuals, and other necessary documentation.

4.3.2 Permitting Phase. The Design Professional shall assist the City in obtaining all permits as specified in Attachment A. The Design Professional shall prepare all

necessary sketches, permit application drawings, and complete all application forms for any such specified federal, state, or local permits. The Design Professional shall reply to all permitting agency's requests for additional information related to a permit application. The Design Professional shall send the appropriate and complete sets of documents to agencies specified in Attachment A from which a permit or other approval is required and shall coordinate the Project requirements with such specified agencies.

4.3.3 Construction Contract Procurement/Bid Assistance Phase. The Design Professional shall review all proposals received and make written recommendations to the City relative to acceptance/rejection of proposals and award of Construction Contract(s) to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for performance of the Construction Contract Documents.

4.3.4 Construction Administration Phase. The Construction Management Administration Phase shall include construction observation services and construction contract administration for Phase I of the Project and shall be provided for Phase II of the Project upon the City's exercise of its option to extend the agreement and increase services as further specified in Section 5.2 of this Agreement. The Construction Management Administration Phase will commence with the award of the Construction Contract(s) and, together with the Design Professional's obligation to provide Basic Services under this Agreement and will terminate when final payment to the Contractor is due.

4.3.4.A The Design Professional shall work with the other parties providing services and materials in connection with the Project that is the subject of the Construction Contract Documents, which other parties may be specifically identified in the Construction Contract Documents or by instruction from the City to Design Professional as to another party's participation in the Project.

4.3.4.B The Design Professional shall make eight (8) visits to the Site during construction of the Work. The Design Professional shall make its required visits as may be necessary and consistent with its Cost Proposal to monitor the progress and observe in detail the quality of the Work and to determine if the Work is proceeding in accordance with the Construction Contract Documents. The Design Professional shall promptly notify the City and Contractor of any defective Work, deficiency, or Work that does not conform to the Contract Documents as observed by Design Professional and shall make and issue a written report within four (4) working days of observing any such defect, deficiency or nonconformity to the City and Contractor(s). The Design Professional will advise and consult with the City regarding the

performance and progress of the Contractor(s) and regarding solutions to conditions or problems that may arise out of the design or construction. The Design Professional shall have authority to act on behalf of the City to the extent provided in the Construction Contract Documents. The Design Professional shall not have the control over, charge of, or responsibility for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Design Professional be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents. The Design Professional shall be available by phone to answer questions, review pay applications and submittals. At project completion, the seventh (7th) Site visit shall be a walk through with City staff in order to develop a punch list. The City's approval, acceptance, use of or payment for all or any part of the Design Professional's Basic Services hereunder or of the Project itself shall in no way alter or diminish the Design Professional's obligations or the City's rights hereunder.

4.3.4.C The Design Professional shall administer the Change Order procedures provided in the Construction Contract Documents. Any changes or alterations to the Project affecting, inclusive of, but not limited to, scope, cost, milestones, deadlines or other significant factors shall be integrated in writing on a City of Wheaton Change Order Form [**Attachment E**]; verbal approval is not considered a Change Order and is not authorization to proceed. All Change Orders shall clearly identify the impact of cost and the effect on time required to perform the Services. Any proposed change to the Project that increases the Agreement price or the costs to be expended by an amount of \$20,000 or more shall require the approval of the City of Wheaton City Council before such changes may be made. Any services that are performed beyond the approved Agreement scope or Agreement price shall not be paid without the City's prior written consent through an approved Change Order.

The Design Professional shall review and evaluate Change Order proposals submitted by a Contractor and shall recommend, as applicable, the Contractor's proposals for acceptance by the City. Each recommendation of acceptance will be based upon the Design Professional's professional opinion that a proposal is complete, in conformance with the Construction Contract Documents, represents fair and reasonable pricing, and justifies Change Order action in the case of claims for extra Work, or does not warrant procurement by competitive bid in the case of added Work. The Design Professional shall promptly prepare Change Order documentation complete with

narrative description and justification for each item, so as to not delay the Work. The Design Professional shall not permit variations from the Construction Contract Documents unless and until Change Orders have been approved by the City.

- 4.3.4.D** The Design Professional shall provide the City and Contractor(s), within a maximum of four (4) working days, interpretations of the requirements of the Construction Contract Documents. The Design Professional shall make all interpretations consistent with the intent of the Construction Contract Documents. Should errors, omission, discrepancies, ambiguities, mistakes or conflicts be discovered in the Construction Contract Documents, the Design Professional shall prepare and submit to the City and Contractor(s), within a maximum of four (4) working days, such amendments or supplementary documents associated with change proposal documentation and provide consultation as may be required.
- 4.3.4.E** Unless specifically provided otherwise herein, the Design Professional shall schedule, conduct and document meetings to be held at the Site consistent with its Cost Proposal. All such meetings will be considered site visits. Attendance at the meetings is to be by authoritative home office and Project representatives of each Contractor. The Design Professional shall chair the meetings, prepare and distribute to the City and all others in attendance a report of the pertinent and salient matters considered, and conclusions reached at each meeting, together with such matters relating to the Project progress.
- 4.3.4.F** The Design Professional shall create and maintain a typewritten project directory including names and phone numbers of key personnel.
- 4.3.4.G** The Design Professional shall process Shop Drawings and all other submittals, provide details and interpretations, process materials lists and other data with sufficient dispatch to preclude delaying the progress of construction.
- 4.3.4.H** The Design Professional shall determine the amounts owed to any Contractor based upon observation of the work and evaluation of an Application for Payment, and shall issue Certificates for Payment in such amounts, as provided in the Construction Contract Documents. The issuance of a Certificate for Payment shall constitute a representation by the Design Professional to the City, based on the Design Professional's observations at the Site and on the data comprising the Contractor's Application for Payment, that the Work

has progressed to the point indicated and that the Contractor is entitled to payment in the amount certified.

- 4.3.4.I** When the City and Design Professional agree that the Work or portions of the Work are substantially complete, the Design Professional and its Consultants shall inspect the Work or portions of the Work and prepare and submit to the City and Contractor(s) punch lists of the Work that is not in conformance with the Construction Contract Documents. The Design Professional shall issue a Certificate of Substantial Completion at such time that the work is determined to be substantially complete as defined in the Construction Contract Documents. When incomplete, defective or deficient work has been remedied, the Design Professional will inspect the work and advise the City in writing that all work has been satisfactorily completed. The Design Professional will then issue a Certificate of Final Completion.
- 4.3.4.J** Upon completion of the Project and prior to issuing Final Certificates for Payment, the Design Professional shall compute the total time for completion as allowed in the Construction Contract Documents, plus any time extensions granted, and determine the number of days if any in excess of the Construction Contract Time for which a Contractor appears liable for liquidated damages. The Design Professional shall notify the affected Contractor of any proposed assessments of liquidated damages and allow the Contractor time to respond thereto. Subsequently, the Design Professional shall prepare a recommendation to the City as to the amount of liquidated damages, if any, to be assessed and the portion of such assessment attributed to each Contractor.
- 4.3.4.K** Upon correction of the deficiency reports (punch lists), and acceptance of all other closeout submittals and certificates, the Design Professional shall approve a final application for final payment for each Contractor and forward it to the City.
- 4.3.4.L** Upon completion of the Project, the Design Professional shall provide an as-built survey and shall deliver to the City reproducible record drawings along with an electronic data base containing record drawing data in accordance with City CAD guidelines.
- 4.3.4.M** The Design Professional shall conduct a Site visit of the Project thirty (30) working days prior to warranty expiration and shall provide the City and Contractor(s) with a written report identifying all defective and deficient work covered by the Project warranty. The written

deficiency report shall be sent to all parties by Certified Mail within four (4) working days after the date of the Warranty Site visit.

ARTICLE 5 - ADDITIONAL SERVICES

5.1 **Additional Services.** The Design Professional shall provide only the Basic Services as specified in this Agreement and the ***Group Attachment A***. The Design Professional acknowledges and agrees that the City shall not be liable for any costs incurred by the Design Professional in connection with any services provided by the Design Professional that are outside the scope of this Agreement, regardless of whether such Additional Services are requested or directed by the City, except upon the execution of a Written Amendment. Additional Services that have been authorized by a Written Amendment shall be subject to the terms and conditions of this Agreement and payment for Additional Services shall be mutually agreed upon by the parties before commencement of any Additional Services.

5.1 **Option to Extend Agreement and Increase Services.** The City retains the right to exercise any of the options for Design Professional's performance of additional construction administration services under this Agreement as set forth in the Design Professional's Cost Proposal (***Group Attachment A***) at the prices stated therein and consistent with the scope of construction observation services as stated in Attachment A and in this Agreement, by giving written notice to the Design Professional and executing a written Option to Extend the Agreement for a term to be agreed upon by the Parties which shall be consistent with the Construction Documents for Phase II prepared by Design Professional under this Agreement.

ARTICLE 6 - DURATION OF DESIGNER'S SERVICES

6.1 **Term.** This Agreement shall become effective upon the latter of the date on which this Agreement is accepted and signed by the City and the date this Agreement is signed and accepted by the Design Professional, and it shall continue in full force and effect until the earlier of the following occurs: (i) the termination of this Agreement; or (ii) the final completion of all Basic Services required after the issuance of a Certificate of Final Completion, as specified in this Agreement, by **June 30, 2019** or to a new date mutually agreed upon by the parties in writing; or (iii) the completion by Design Professional and City of their respective obligations under this Agreement, in the event such completion occurs before the date in item (ii) above. 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. The parties agree that time is of the essence in the performance of this Agreement.

6.2 **Scheduling of Services.**

- 6.2.1** The Design Professional's schedule for the performance of its activities and the activities of Design Professional's Consultants is included in ***Group Attachment A***, and shall constitute the "Key Milestone Listing."
 - 6.2.2** The Design Professional shall schedule and perform its activities so as to meet the Milestone Dates shown in the Key Milestone Listing (the schedule in Attachment A). No delay by the Design Professional in meeting the deadlines in the Key Milestone Listing shall be allowed hereunder without prior written approval by the City.
 - 6.2.3** Should the City determine that the Design Professional is behind schedule, it may require the Design Professional to expedite and accelerate its efforts, including providing additional manpower and/or overtime, as necessary, to perform its services in accordance with the Key Milestone Listing, at no additional cost to the City.
- 6.3** **Adjustments to the Schedule.** If the Design Professional's Services are or will be delayed for more than sixty (60) days through no fault of the Design Professional, or if the City increases or decreases the scope or size of the Project by ten percent (10%) of the currently approved Total Project Cost, the Design Professional shall give prompt written notice to the City. Provided that such notice has been given, the Design Professional may request in writing an adjustment in the Key Milestone Listing dates, which shall be granted by the City to the extent reasonable.

ARTICLE 7 - DESIGN PROFESSIONAL'S COMPENSATION

7.1 Compensation for Basic Services.

- 7.1.1** Each phase of Basic Services shall be bid in a "not to exceed" amount as specified below:

- 7.1.1.A** for the Construction Contract Documents Phase: the compensation for the Design Professional's provision of construction contract document services ("Construction Contract Documents Fee"), which shall include all design and survey related services as further described in Section 4.3.1 of this Agreement and in the Design Professional's Cost Proposal, not to exceed the amount of \$21,250.00 as set forth in ***Group Attachment A***;
- 7.1.1.B** for the Permitting Phase: the compensation for the Design Professional's provision of permitting services ("Permitting Phase Fee"), which shall include all permitting assistance described in Section 4.3.2 of this Agreement and in the Design Professional's

Cost Proposal, not to exceed the amount of \$3,600.00 as set forth in ***Group Attachment A***;

7.1.1.C for the Construction Contract Procurement/Bid Assistance Phase: the compensation for the Design Professional's construction contract procurement/bid assistance services ("Bid Assistance Phase Fee"), which shall include the construction contract procurement/bid assistance described in Section 4.3.3 of this Agreement and in the Design Professional's Cost Proposal, not to exceed the amount of \$700.00 as set forth in ***Group Attachment A***;

7.1.1.D for the Construction Administration Phase: the compensation for the Design Professional's construction management and administration services ("Construction Administration Phase Fee"), which shall include the construction administration services described in Section 4.3.5 of this Agreement and in the Design Professional's Cost Proposal, not to exceed the amount of \$11,200.00 as set forth in ***Group Attachment A***.

7.1.2 The City shall pay, and the Design Professional shall accept, as full and complete payment for all Basic Services, the sum of the above stated items in Sections 7.1.1A, 7.1.1.B, 7.1.1.C, and 7.1.1.D, which sum shall not exceed **\$37,194.50** ("Agreement Amount"), including reimbursable expenses, without the prior express written authorization of the City.

7.1.3 Payments for Basic Services shall become due and payable on a monthly basis for work completed, in an amount not to exceed the amounts listed in Section 7.1.1 above for each specific Phase, after the City's approval of all services designated hereunder as Basic Services to be provided by Design Professional for the Phase for which payment is sought.

7.1.4 For Basic Services, the Design Professional shall be compensated on a monthly basis, in an amount not to exceed the amount listed in Section 7.1.1 above for each specific Phase, unless the City and the Design Professional otherwise agree in writing.

7.1.5 The Design Professional shall submit invoices on a monthly basis to the City and such invoices shall contain sufficient detail of the Basic Services performed to enable the City to properly evaluate the payout request. After approval of all services provided by Design Professional for a particular Phase, Payments will be made by the City in accordance with the Illinois Local Government Prompt Payment Act which states that any bill approved for payment shall be paid within thirty (30) days after the date of approval. Invoices must be submitted within six (6) months of the date Basic Services were performed for the particular Phase for

which payment is being sought. Any invoices submitted more than six (6) months from the date Basic Services were performed for the particular Phase for which payment is sought shall not be paid. Under no circumstances will a third party be reimbursed for Services provided under this Agreement.

- 7.1.6** In the event the City finds any part of an invoice not to be acceptable, it shall identify to the Design Professional the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. The City shall have the right to deduct from payments to the Design Professional any costs or damages incurred, or which may be incurred, by the City as a result of the Design Professional's failure to perform on any Phase of the Project.
- 7.1.7** If the City increases or decreases the scope of the Project by ten percent (10%) or more of the currently approved Total Project Cost, the compensation for Basic Services shall be equitably adjusted.

7.2 Compensation for Additional Services.

- 7.2.1** Payments for Additional Services shall become due and payable on a per-service basis, after City's approval of the Additional Service performed by the Design Professional, in accordance with Article 5 and/or a Written Agreement, for which payment is sought.
- 7.2.2** For Additional Services, the Design Professional shall be compensated at the hourly billing rates in the Design Professional's Cost Proposal.
- 7.2.3** Upon completion of the Additional Services, the Design Professional shall submit invoices to the City containing sufficient detail of the Additional Services performed to enable the City to properly evaluate the payout request. After approval of the Additional Services provided by Design Professional, payments will be made by the City in accordance with the Illinois Local Government Prompt Payment Act which states that any bill approved for payment shall be paid within thirty (30) days after the date of approval. Invoices must be submitted within six (6) months of the date Additional Services were performed. Any invoices submitted more than six (6) months from the date Additional Services were performed will not be paid. Under no circumstances will a third party be reimbursed for Additional Services provided under this Agreement.
- 7.2.4** In the event the City finds any part of an invoice not to be acceptable, it shall identify to the Design Professional the part or parts which are not acceptable and shall pay the part or parts of the invoice which are acceptable, if any. The City shall have the right to deduct from payments to the Design Professional any costs or damages incurred, or which may be incurred, by the City as a result of the Design Professional's failure to perform on any Phase of the Project.

7.3 Taxes, Benefits, and Royalties. The Agreement Amount includes all applicable federal, state and City taxes of every kind and nature applicable to the Basic 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 Basic 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 Design Professional.

7.4 Intellectual Property. The Design Professional shall pay all royalties and license fees which may be due to the inclusion of any patented or copyrighted materials, methods or systems selected by the Design Professional and incorporated into the Basic Services or any properly approved Additional Services provided. The Design Professional shall indemnify and hold the City harmless from all losses due to the infringement of any patent rights or copyrights arising out of such selection. The City agrees to indemnify, and hold the Design Professional harmless from any losses due to the infringement of any patent rights arising out of any patented materials, methods or systems required or specified by the City.

7.5 Interest Waiver. Design Professional 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.

7.6 Unappropriated Funds. The obligation of the City for payment to the Design Professional 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.

7.7 Accounting Records. Design Professional shall maintain records showing actual time devoted and costs incurred in connection with the Basic Services or any Additional Services performed under this Agreement, and shall permit the City to inspect, audit and make copies of all data and records of the Design Professional pertaining to this Project for 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 (3) years after the issuance of the Certificate of Final Completion.

ARTICLE 8 - RESPONSIBILITIES OF THE CITY

8.1 Cooperation and Coordination.

- 8.1.1** The City shall meet with the Design Professional as necessary at mutually convenient times to provide information necessary to enable the Design Professional to develop a detailed written analysis and needs summary of the Project.
- 8.1.2** The City shall examine documents submitted by the Design Professional and shall make reasonable efforts to render decisions pertaining thereto no later than the dates specified in the schedule for such decisions described in Section 6.2.

8.2 **Information and Services.** The City shall provide:

- 8.2.1** Any existing maps and plans of the Site which it may have in its possession;
- 8.2.2** Any necessary approvals, easements and assessments, fees and charges required for the construction and use of permanent structures, including any legal and other required services; and
- 8.2.3** Any other information or services stated in the Contract Documents as being provided by the City.
- 8.2.4** **Reliance.** The Design Professional shall be entitled to rely on the completeness and accuracy of the information and services required by paragraph 8.2 above, and the City agrees to provide such information and services in a timely manner so as not to delay the Work, unless a reasonably well-qualified Design Professional would have identified incompleteness or inaccuracies and the Design Professional fails to bring the incompleteness or inaccuracy to the City's attention.
- 8.2.5** **Notice of Defect.** If the City becomes aware of any error, omission or other inadequacy in the Contract Documents or of the Design Professional's failure to meet any of the requirements of the Contract Documents, or of any other fault or defect in the Work, the City shall give prompt written notice to the Design Professional; however, the City's failure to provide notice shall not relieve the Design Professional of its obligations under this Contract.
- 8.2.6** **Technical Assistance.** The City may elect to provide technical assistance to the Design Professional in order to complete satisfactory performance of the Work. If the City is performing the function that the Design Professional is required to perform pursuant to this Agreement, the City may deduct the cost of providing such technical assistance from the Design Professional's compensation for that Phase. Prior to providing any such extraordinary technical assistance, the City shall notify the Design Professional that it considers such assistance to be above and beyond its duties hereunder and of its intention to deduct the cost of providing such assistance from the total compensation. The Design Professional

shall not be entitled to reject technical assistance when the City determines that such assistance is necessary for the successful completion of the Work.

8.2.7 City's Review of Construction Documents. The Design Professional acknowledges that the City is not a design professional and that the City's review or approval of any plans, drawings, specifications, or other materials provided by the Design Professional 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 Design Professional shall not limit the Design Professional's responsibility for the services provided under this Agreement or relieve the Design Professional of any responsibilities under this Agreement.

8.2.8 Inspections. The City shall be authorized to inspect all Work done and material furnished. Such inspections may extend to all or any part of the Work and to the preparation or manufacture of material to be used. City designated inspectors are authorized to report to the City's Representative as to the progress of the Work and manner in which it is being performed and to report whenever it appears that materials furnished, and Work performed by the Contractor fails to fulfill requirements of the specifications and contract. City inspectors shall call to the attention of the Design Professional any such failures or default.

City inspectors shall not be authorized to revoke, alter, enlarge, relax, or release any requirements of the plans and specifications. City inspectors shall in no case act as foremen or perform other duties for the Design Professional or Contractor, nor interfere with management of the Work by the latter. Any instructions, which City inspectors may give the Design Professional shall in no way be construed as releasing the Design Professional from fulfillment of the terms of the this Agreement.

ARTICLE 9 - INSURANCE

9.1 General Requirements

9.1.1 The Design Professional shall purchase and maintain and shall cause each of the Design Professional's Consultants to purchase and maintain during the period of performance of this Agreement, and for two years after issuance of a Certificate of Final Completion of the Project, insurance for protection from claims under workers' or workmen's compensation acts; Commercial General Liability Insurance (including contractual liability and completed operations, explosions, collapse, and underground hazards coverage) covering claims arising out of or relating to bodily injury, including bodily injury, sickness, disease or death of any of the Design Professional's or Design Professional's Consultants' employees or any other person and to real and personal property including loss of use resulting thereof; Commercial Automobile Liability Insurance, including hired and non-

owned vehicles, if any, covering personal injury or death, and property damage; and Professional Liability Insurance, covering personal injury, bodily injury and property damage and claims arising out of or related to the performance under this Agreement by the Design Professional. The City shall be included under the Design Professional's and under each of the Design Professional's consultants' insurance, except for Worker's Compensation, Professional Liability and Commercial Umbrella Liability coverages, as an additional primary insured with respect to claims and/or liability arising out of Basic Services performed for the City by the Design Professional.

9.1.2 Insurance policies required hereunder shall include provisions or endorsements that:

- a) the insurer shall have no right of recovery or subrogation against the City, its agents or agencies;
- b) the insurance companies issuing the policy or policies shall have no recourse against the City, its agents or agencies for the payment of any premiums or for assessments under any form of policy;
- c) any and all deductibles under the insurance policies shall be assumed by and be at the sole risk and expense of the Design Professional;
- d) coverage afforded will not be canceled until at least 30 days prior written notice has been given to City and Design Professional via U.S. Mail; and
- e) otherwise comply with the City's Special Provisions for: Insurance Coverage for Professional Service Providers; a copy of which is attached hereto and incorporated by reference as **Attachment C**.

9.1.3 The minimum insurance ratings for any company insuring the Design Professional shall be an A- according to the AM Best Insurance Rating Scale and an VIII or better financial classification (or an equivalent rating by Standard & Poor or Moody's). Should the ratings of any insurance carrier insuring the Design Professional fall below the minimum rating, the City may, at its option, require the Design Professional to purchase insurance from a company whose rating meets the minimum standard. Design Professional's insurance carrier(s) shall be licensed and admitted to do business in the state of Illinois. If Design Professional is unable to find a licensed and admitted carrier for any line of insurance coverage, Design Professional shall notify City in writing.

9.1.4 All consultants and subcontractors of Design Professional shall comply with each and every insurance provision in **Attachment C**. Design Professional shall not allow any consultants or subcontractors to commence Work or Basic Services on any subcontract to perform any part of the Basic Services or agreed upon Additional

Services until it has provided evidence satisfactory to the City that the consultant or subcontractor has secured all insurance required under this Agreement.

9.2 Insurance Limits of Liability.

9.2.1 Minimum limits of insurance coverage shall be as follows:

Commercial General Liability Insurance

| | |
|-------------------------------------|-------------|
| Each Occurrence Limit | \$1,000,000 |
| General Aggregate Limit | \$2,000,000 |
| Products/Completed Operations Agg. | \$2,000,000 |
| Personal & Advertising Injury Limit | \$1,000,000 |
| Fire Damage (any one fire) | \$100,000 |
| Medical Expenses, each person | \$10,000 |

Comprehensive Automobile Liability Insurance

| | |
|--------------------------------------|-------------|
| Combined Single Limit, each accident | \$1,000,000 |
|--------------------------------------|-------------|

Or

| | |
|--------------------------------|-------------|
| Bodily Injury (per person) | \$1,000,000 |
| Bodily Injury (per accident) | \$1,000,000 |
| Property Damage (per accident) | \$1,000,000 |

Worker's Compensation & Employer's Liability

| | |
|---------------------------|-------------------------|
| Worker's Compensation | Statutory Limits |
| Employer's Liability | |
| Bodily Injury by Accident | \$500,000 each accident |
| Bodily Injury by Disease | \$500,000 policy limit |
| Bodily Injury by Disease | \$500,000 each employee |

Commercial Umbrella/Excess Liability

| | |
|-----------------|-------------|
| Each Occurrence | \$2,000,000 |
| Aggregate | \$2,000,000 |

Professional Liability

| | |
|-----------|-------------|
| Per Claim | \$2,000,000 |
| Aggregate | \$2,000,000 |

9.2.2 Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies and an Excess or Umbrella Liability policy. The policies shall contain a provision that coverage will not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to the City via U.S Mail.

9.3 **Proof of Coverage.** Each policy shall provide that the City shall receive not less than thirty (30) days prior written notice of any cancellation, non-renewal or reduction of coverage of any of the policies. Upon notice of such cancellation, non-renewal or reduction, the Design Professional shall procure substitute insurance so as to assure the City that the minimum limits of coverage are maintained continuously throughout the periods specified herein. Certificates of insurance showing required coverage to be in force shall be provided to the City upon the Design Professional's execution of this Agreement.

9.4 **Primary Insurance.** The Design Professional's commercial general liability insurance and comprehensive automobile liability insurance shall be primary insurance as respects the City. Any insurance or self-insurance maintained by the City shall be excess of Design Professional's insurance and shall not contribute with it. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City.

9.5 **Waiver of Subrogation.** The Design Professional waives all rights against the City for damages caused by risks covered by insurance provided in Paragraph 9.2 to the extent they are covered by that insurance. The Design Professional shall require similar waivers from all Consultants and shall require each of them to include similar waivers in their sub-consulting agreements. If the policies of insurance referred to in this Paragraph require an endorsement to provide continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

ARTICLE 10 - INDEMNIFICATION

The Design Professional shall be responsible for any and all damages to property or persons arising out of an error, omission, and/or negligent act by Design Professional or its employees, agents or subcontractors, in the provision of or failure to provide Basic Services or agreed upon Additional Services to the extent that damages arise out of the negligent performance of professional services, and shall indemnify, hold harmless, and defend the City, its elected or appointed officials, directors, officers, employees, attorneys, and agents (hereinafter collectively, the "**City Indemnitees**") from all lawsuits, claims, demands, losses, damages, injuries, liabilities, fines, judgments, settlement, penalties, costs, and expenses of any nature whatsoever (hereinafter the "**Claims**") resulting therefrom. The Design Professional shall assume all restitution and repair costs arising out of an error, omission and/or negligence.

The Design Professional, without regard to the availability or unavailability of any insurance, either of the City or of the Design Professional, shall indemnify, save harmless, and defend the City and City Indemnitees, in whole or in part from and against any and all Claims, including, but

not limited to reasonable expert witness and attorneys' fees, as well as costs of litigation incident thereto, and any Claims made by employees of the Design Professional or any of its subcontractors, as well as all other persons, that arise, or may be alleged to have arisen, out of or in connection with: (i) Design Professional's failure to meet the representations and certifications set forth in **Article 3** and **Article 14** of this Agreement; (ii) Design Professional's infringement of any patent or copyright in the sale or use of materials, processes, products, goods, or devices provided to the City or City Indemnitees by Design Professional or Design Professional's employees, agents or subcontractors; and (iii) the Basic Services covered by this Agreement or the equipment used in connection therewith. It is understood that this agreement shall apply to any and all Claims whether arising from the negligence or the intentional acts of the Design Professional, the Design Professional's employees, contractors, or subcontractors, the City or City Indemnitees or otherwise, with the single exception of any Claim arising solely out of the negligence or intentional misconduct of the City or City Indemnitees. The Design Professional is solely responsible for determining the accuracy and validity of any information provided to the Design Professional by the City or its representatives. This indemnification shall apply to the fullest extent of the law, and in the event that any provision hereof is determined to be unenforceable, the indemnification obligations shall be severable and the fullest extent of indemnification that may lawfully apply shall remain in full force and effect.

Design Professional (and any subcontractor into whose subcontract this clause is incorporated) shall assume the entire liability for all personal injury claims suffered by its own employees and waives any limitation of liability defense based upon the Worker's Compensation Act and cases decided there under. Design Professional agrees to indemnify and defend the City and City Indemnitees from and against all such loss, expense, damage or injury, including reasonable attorneys' fees, which the City or City Indemnitees may sustain as a result of personal injury claims by Design Professional's employees, except to the extent those claims arise as a result of the City's own negligence.

The obligation on the part of the Design Professional 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 or City Indemnitees 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 Design Professional 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.

All Consultants hired by Design Professional shall execute an indemnification in favor of the Design Professional and City similar in form to this Article 10.

ARTICLE 11 - AMENDMENTS TO THE AGREEMENT

- 11.1 Changes in the Basic Services.** Changes in the Basic Services and entitlement to additional compensation or a change in duration of this Agreement shall be made by a Written Amendment. The Design Professional shall proceed to perform the Services required by the Written Amendment only after receiving a fully executed Written Amendment from the City.
- 11.2 City Changes.** The City may, without invalidating this Agreement, make written changes in the Basic Services or Additional Services of this Agreement by preparing and executing a Written Amendment to the Agreement. Within three (3) days of receipt of such a Written Amendment, the Design Professional shall notify the City in writing of any change contained therein that the Design Professional believes significantly increases or decreases the Design Professional's Services and request an adjustment in compensation with respect thereto. If the Written Amendment significantly increases or decreases the Design Professional's Services, the Design Professional's compensation may be equitably adjusted as agreed to by the City.

ARTICLE 12 - TERMINATION AND SUSPENSION

- 12.3 Compensation After Termination.**

- 12.3.1** In the event of termination for the convenience of the City, the Design Professional shall be paid that portion of the Agreement Amount that it has earned to the date of termination, less any costs or expenses incurred or anticipated to be incurred by the City due to errors or omissions of the Design Professional. Upon receiving notice of termination, Design Professional shall immediately and expeditiously terminate any ongoing Basic Services and Additional Services it is to provide hereunder and inform Design Professional's Consultants of the termination of this Agreement, so as to minimize the costs and expenses sustained prior to the effective date of the termination.
- 12.3.2** In the event of termination by reason of a material breach of the Agreement by the City, the Design Professional shall be entitled to the same compensation as it would have received had the City terminated the Agreement for convenience, and the Design Professional expressly agrees that said compensation is fair and appropriate as liquidated damages for any and all costs and damages it might incur as a result of such termination.
- 12.3.3** In the event of termination by reason of a material breach of the Agreement by the Design Professional, the Design Professional shall be paid that portion of the Agreement Amount that it has earned to the date of termination, less any costs or expenses incurred or anticipated to be incurred by the City due to errors or

omissions of the Design Professional or by reason of the Design Professional's breach of this Agreement.

12.3.4 Should this Agreement be terminated, for whatever reason, the Design Professional shall, at the request of the City, expend such additional effort as may be necessary, at its cost and expense, to provide professionally certified and sealed drawings to the City, with respect to any Phase or item of the project. If the Design Professional provides such certified and sealed drawings, Design Professional shall be compensated in accordance with this Agreement.

12.4 **Survival.** Termination of this Agreement, for whatever reason, shall not terminate Design Professional's representations and warranties to City hereunder, nor nullify any indemnity of City by Design Professional hereunder.

12.5 **Limitation of Liability.** CITY SHALL NOT BE LIABLE TO DESIGN PROFESSIONAL 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.

12.5 Suspension.

12.5.1 The City may order the Design Professional in writing to suspend, delay or interrupt all or any part of the Design Professional's Services on the Project for the convenience of City.

12.5.2 In the event the Design Professional believes that any suspension, delay or interruption of the Project ordered by City may require an extension of the duration of Basic Services or an increase in the level of staffing by Design Professional, it shall so notify the City and propose an amendment of the Key Milestone Listing for consideration of the City. Such amendment or extension shall be effective only upon the written approval of the City. In the event the duration of Basic Services is extended or shortened or the level of staffing by the Design Professional is increased or decreased, the Compensation for Basic Services may be equitably adjusted.

12.5.3 A suspension, delay or interruption of the Project shall not terminate this Agreement; provided, however, that if such suspension, delay or interruption causes a suspension of the Design Professional's Services for a period exceeding ninety (90) days, the Compensation for Basic Services may be equitably adjusted.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS

- 13.1 City's Ownership of Documents.** The City shall be granted a license for use of documents, at no additional cost, including all documents, drawings, and electronic data relating to the Project, including a license for instructions, manuals, and written recommendations, relating to the Project prepared by or in the possession of the Design Professional. The Design Professional shall turn over to the City in good unaltered condition, reproducibles of all drawings, specifications, and documents in digital format, within seven (7) days after issuance of the Certificate of Final Completion or after termination, whether for the City's convenience or otherwise. The Design Professional may retain drawings and digital files for its records.
- 13.2 Termination.** In the event of termination, whether for the City's convenience or otherwise, should the City use such drawings for completion of the Project, the City shall indemnify and hold the Design Professional harmless from and against any cost, expense, damage or claim arising out of the loss of life, personal injury or damage to tangible property occasioned wholly or in part by any act or omission by the City or a Contractor in connection with City's improper use (or misuse) of such drawings, plans, specifications, renderings, models and other work provided as part of Basic Services and Additional Services.
- 13.3 Other Projects.** Said drawings, specifications, documents and materials relating to the Project prepared by or in the possession of the Design Professional may be used by the City on any other project without additional compensation to the Design Professional. The use of the documents by the City or by any person or entity for any purpose other than the Project as set forth in this Agreement shall be at the full risk of the City or such person or entity.
- 13.4 Incorporation of Provision in all Contracts.** The Design Professional specifically agrees to incorporate the provisions of this Article 13 in all contracts for the services of Design Professional's Consultants.

ARTICLE 14 - STATUTORY AND OTHER REQUIREMENTS

- 14.1 No Delinquent Taxes.** The Design Professional represents and certifies that the Design Professional 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 Design Professional 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.

14.2 No Collusion. The Design Professional represents and certifies that the Design Professional 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 Design Professional 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 Design Professional has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Design Professional 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.

14.3 Sexual Harassment Policy. The Design Professional 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).

14.4 Patriot Act (USA Freedom Act) Compliance. The Design Professional 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 Design Professional further represents and warrants to the City that the Design Professional 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 Design Professional 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.

14.5 Anti-Discrimination Laws. Design Professional 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 Attachment D**.

14.6 Americans with Disabilities Act. Design Professional 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.

14.7 Drug Free Workplace Act. Design-Build Firm shall comply with all conditions of the Illinois Drug Free Workplace Act, 30 ILCS 580/3 et seq.

14.8 CDL Driver Controlled Substances and Alcohol Use and Testing. To the extent that the Design Professional and any employees, agents, or subcontractors thereof, will operate any commercial vehicles requiring the necessity for a state issued Commercial Driver's License, Design Professional shall comply with Federal Highway Authority Rules on Controlled Substances and Alcohol Use and Testing, 49 CFR Parts 40 and 382 and shall notify the City of any employee, agents, or subcontractor driver participating in a drug and alcohol testing program pursuant to the aforementioned rules during the term of this Agreement.

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

14.10 Freedom of Information Act. The Design Professional shall, within four (4) business days of the City's request, provide any documents in the Design Professional'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. Design Professional 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 Design Professional request that the City utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, Design Professional 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. Design Professional 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 Design Professional's request to utilize a lawful exemption to the City.

14.11 Execution of Certifications. Design Professional shall execute the legal certifications and compliance with laws documentation which is attached hereto and incorporated herein as if fully set forth in **Group Attachment D.**

14.12 Compliance with Laws and Grants. Design Professional shall comply with all applicable municipal, county, state and federal statutes, ordinances, rules, and regulations, including without limitation, any statutes regarding qualification to do business, and all local, state and federal safety standards. Design Professional shall comply with all conditions of any federal, state, or local grant received by City or Design Professional with respect to this Agreement or the Basic Services. Every provision of law required by law to be inserted into this Agreement shall be deemed to be inserted herein.

ARTICLE 15 - CONFIDENTIAL INFORMATION

15.1 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 Design Professional from a source other than the City prior to the time of disclosure of said information to the Design Professional 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 Design Professional or the City; or (iv) to have been supplied to the Design Professional 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.

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

15.3 Breach of Confidentiality. In the event of breach of the confidentiality provisions of Article 15 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.

ARTICLE 16 - ADDITIONAL PROVISIONS

16.1 Independent Contractor Status. The Design Professional shall act as an independent Contractor in providing and performing the Basic Services and any approved Additional 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 Design Professional; or (ii) to create any relationship between the City and any Consultant of the Design Professional. Design Professional 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 Design Professional specifically agrees that it shall not do so. The City shall not have the authority to control the method or manner by which Design Professional complies with the terms of this Agreement.

16.2 No Personal Liability. No elected or appointed official, director, officer, agent or employee of the City and no partner, owner, or employee of the Design Professional shall be personally liable, in law or in contract, to either Party of this Agreement as the result of the execution, approval or attempted execution of this Agreement.

16.3 Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of any and all privileges, immunities, or defenses provided to or enjoyed by the City under common law or pursuant to statute, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/2-101 *et seq.*

16.4 Third Party Beneficiaries. There are no third-party beneficiaries of this Agreement.

16.5 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.

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

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

16.8 News Releases. The Design Professional shall not issue any news releases or other public statements regarding the Basic Services and/or any Additional Services without prior approval from the City Manager.

16.9 Waiver. Any failure of either the City or the Design Professional 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.

16.10 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.

16.11 Resolving Discrepancies. Except as may be otherwise specifically stated in the Agreement, the provisions of the Agreement shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Agreement and the Attachments, the Design Professional's Cost Proposal, and the provisions of any standard, specification, manual, code or instruction. Aspects of the Design Professional's Proposal, if not specifically covered in this Agreement (and there are no inconsistent provisions of this Agreement to such aspects) shall be deemed incorporated herein as part of the Design Professional's Basic Services.

16.12 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.

16.13 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.

16.14 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 Design Professional:

Upland Design Ltd.
Attn: Michelle Kelly
24042 W. Lockport Street
Plainfield, IL 60544
E-Mail: mkelly@uplanddesign.com

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

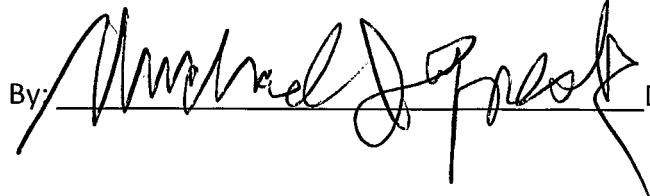
16.15 Contract Numbering. The faces of all invoices and documents shall contain the following contract number 26 for reference purposes.

16.16 Electronic Signatures. The parties may execute this Agreement in writing or by facsimile transmission or by e-mail delivery of a ".pdf" formal file, and any such signature shall have the same legal effect as a handwritten signature for the purposes of validity, enforceability and admissibility. In addition, a true and correct facsimile copy or computer image of this Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

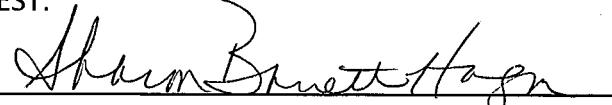
16.17 Authority to Enter Agreement. Design Professional has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

IN WITNESS WHEREOF, the parties have entered into this Agreement this 27th day of December, 2018.

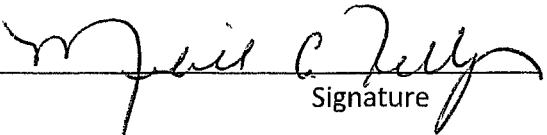
CITY OF WHEATON, an Illinois municipal corp.

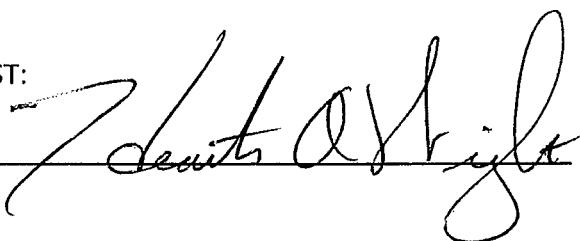
By:  Date: 12/27/18

ATTEST:

BY: 
Sharon Barrett-Hagen, City Clerk

Upland Design Ltd.

BY:  Date: December 20, 2018
Signature
Its: President

ATTEST:
BY: 
Title: Vice-President

Vice-President