

RESOLUTION R-2024-21

**A RESOLUTION AUTHORIZING THE EXECUTION OF AGREEMENT NO. 450
WITH STUDIOGC, INC. TO PROVIDE ARCHITECTURAL AND ENGINEERING SERVICES FOR THE
WATER DIVISION EXTERIOR RENOVATION FOR A TOTAL AMOUNT NOT TO EXCEED \$105,604,
AND A 10% CONTINGENCY**

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

WHEREAS, the City requested a proposal from StudioGC, Inc. for Architectural and Engineering Services for the Water Division Exterior Renovation; and

WHEREAS, StudioGC, Inc. submitted a proposal to provide Architectural and Engineering Services for the Water Division Exterior Renovation for a total amount not to exceed \$105,604; and

WHEREAS, both parties agree to the terms and conditions set forth in the City's agreement for Architectural and Engineering Services for the Water Division Exterior Renovation; and

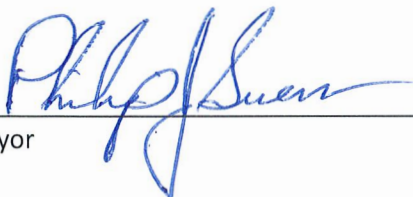
WHEREAS, the City budgeted funds in the TIF #3 Fund in an amount of \$20,000 for Architectural and Engineering Services for the Water Division Exterior Renovations, and reserves are available to accommodate the additional cost; and

WHEREAS, the corporate authorities of the City of Wheaton, DuPage County, Illinois find it reasonable and appropriate to enter into an agreement with StudioGC, Inc. located at 223 W. Jackson Blvd., Suite 1200, Chicago, Illinois 60606, for Architectural and Engineering Services for the Water Division Exterior Renovation for a total amount not to exceed \$105,604, and a 10% contingency.

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 City of Wheaton Agreement No. 450 with StudioGC, Inc. for Architectural and Engineering Services for the Water Division Exterior Renovation; and that a copy of that certain City of Wheaton Agreement No. 450 is on file with the City Clerk's office and is incorporated herein as if fully set forth as Exhibit A.

ADOPTED this 4th day of March 2024.



Mayor

ATTEST:



City Clerk

Roll Call Vote:

Ayes: Councilman Weller
Councilman Barbier
Mayor Suess
Councilman Clousing
Councilwoman Robbins

Nays: None
Absent: Councilwoman Bray-Parker
Councilman Brown
Motion Carried Unanimously

**CITY OF WHEATON, ILLINOIS
PROFESSIONAL ARCHITECTURAL SERVICES AGREEMENT FOR
THE WATER DIVISION BUILDING EXTERIOR RENOVATIONS**

THIS AGREEMENT is made and entered into this 1 day of March, 2024, by and between the **CITY OF WHEATON**, an Illinois municipal corporation ("**City**"), located at 303 W. Wesley Street, Wheaton, Illinois, 60187 and **StudioGC, Inc. ("Architect")**, located at 223 W. Jackson Blvd., Suite 1200, Chicago, Illinois, 60606. City and Architect are at times collectively referred to hereinafter as the "Parties."

WHEREAS, the City has determined that it is reasonable and appropriate to engage a professional architectural services firm to provide architectural services for the Water Division Building Exterior Renovations ("**Project**"), and;

WHEREAS, the Architect has submitted to the City a cost proposal to provide architectural services for the Water Division Building Exterior Renovations (hereinafter, "**Proposal**"), a copy of which is attached hereto and fully incorporated herein as if fully set forth as **Exhibit B**, and;

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

WHEREAS, the City finds that the Architect's proposal meets the City's requirements for the Project.

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

SECTION 1. CONTRACT DOCUMENTS.

1.1 Incorporated Documents. The Contract Documents consist of this Agreement and the following attached exhibits which are incorporated into this Agreement:

- a. The City's Request for Quote and all related documents is attached as **Exhibit A**;
- b. The Architect's Proposal and all related documents is attached as **Exhibit B**;
- c. Insurance Coverage for Professional Service Providers is attached as **Exhibit C**;
- d. Legal certifications and compliance with laws documentation is attached as **Exhibit D**; and
- e. Change Order Form, is attached as **Exhibit E**.

These attachments along with this Agreement represent the entire integrated Contract between the Parties and supersede any and all prior negotiations, representations, or agreements, written or oral.

The Contract Documents also shall include any subsequent Change Orders or Written Amendments to any documents listed above or included within the incorporated exhibits, and other documents amending, modifying, or supplementing the Contract Documents, which may be delivered or issued after the effective date of the Agreement and are not attached hereto.

It shall be understood that words "Agreement" and "Contract" are synonymous in this document and its incorporated exhibits.

1.2 Controlling Document. In the event of a conflict between this Agreement and any attachment or exhibit, the provisions of this Agreement shall control.

SECTION 2. SCOPE OF SERVICES.

2.1 Retention and Services. The City retains the Architect to perform architectural services for the completion of this Project. For and in consideration of the Agreement Amount indicated in **Section 4.1** herein, the Architect promises and agrees that it shall, at its own cost and expense, perform, pursuant to the terms and conditions of the Agreement, all necessary architectural services for the Project ("**Services**"), in accordance with the Project Scope of Services or Scope of Work requirements stated in **Exhibit A**, and the Proposal submitted by Architect (**Exhibit B**).

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

2.3 Agreement Administration. A "Notice to Proceed" order will be issued by the City upon confirmation of a properly executed Agreement. Once the "Notice to Proceed" order is issued, the Architect's primary contact with the City will become the Project Manager. The Project Manager's primary responsibility is to assure that the City receives the professional services in accordance with the terms and conditions of this Agreement. The Project Manager or his or her designee shall oversee the entire Project from kick-off activities through close out and payment of final invoice, monitor Project progress; address any quality issues and change orders, and review and approve service deliverables

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

2.5 Project Manager. The City's Project Manager for the Project is Al Schefske. The Project Manager's contact information is as follows: (630) 260-2867 or via email at aschefske@wheaton.il.us.

2.6 Time of Performance. The Architect shall perform the Services within the Term of this Agreement as set forth in **Section 8.1** of this Agreement, in accordance with the schedule of services as indicated in the attached proposal (**Exhibit A**) and with any other completion schedule or milestones which may be separately agreed upon in writing by both City and Architect. Architect represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. Upon request of City, Architect shall provide a more detailed schedule of anticipated performance to meet the schedule of services.

2.7 Additional Services. The Architect shall provide only the Services specified in this Agreement and the attached **Exhibit A** and **Exhibit B**. The Architect acknowledges and agrees that the City shall not be liable for any costs incurred by the Architect in connection with any services provided by the Architect that are outside the scope of this Agreement ("**Additional Services**"), regardless of whether such Additional Services are requested or directed by the City, except upon the prior written consent of the City through an approved Change Order. Upon recognizing the need to perform Additional Services, the Architect shall notify the City with reasonable promptness and explain the facts and circumstances giving rise to the need and submit to the City a written Change Order Form for amendment to this Agreement for amendment to this Agreement for the City's review and approval setting forth the details of the requested Additional Services. Additional services that have been authorized in writing by the City shall be subject to the terms and conditions of this Agreement and shall be compensation at the hourly rates included in the Architect's cost proposal included in **Exhibit B**, and in the absence of such hourly rates, then payment for Additional Services shall be mutually agreed upon by both the City and the Consultant before the commencement of any Additional Services.

2.8 Change in Services. Any changes or alterations to this 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 (**Exhibit 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 the Architect in an amount of \$35,000 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.

Notwithstanding anything to the contrary in this Agreement, the City shall not be responsible to pay, and the Architect shall not be entitled to receive compensation, for any change in Services if such services were required due to the fault of the Architect or the

Architect's failure to perform in accordance with the terms of this Agreement or the degree of care and skill employed by architects in Illinois on similar projects.

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

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

SECTION 3. PERSONNEL; SUBCONTRACTORS.

3.1 Key Project Personnel. The Key Project Personnel identified in the attached **Exhibit B** shall be primarily responsible for carrying out the Services on behalf of the Architect. The Key Project Personnel shall not be changed without the City's prior written approval.

3.2 Availability of Personnel. The Architect shall provide all personnel necessary to complete the Services including, without limitation, any Key Project Personnel identified in this Agreement. The Architect shall notify the City as soon as practicable prior to terminating the employment of, reassigning, or receiving notice of the resignation of, any Key Project Personnel. The Architect shall have no claim for damages and shall not bill the City for additional time and materials charges as the result of any portion of the Services which must be duplicated or redone due to such termination or for any delay or extension of the Time of Performance as a result of any such termination, reassignment, or resignation.

3.3 Use of Subcontractors. The Architect shall perform the Services with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved in advance by the City in writing. All subcontractors and subcontracts used by the Architect shall be acceptable to, and approved in advance by, the City. The City's approval of any subcontractor or subcontract shall not relieve the Architect of full responsibility and liability for the provision, performance, and completion of Services as required by this Agreement. All Services performed under any subcontract shall be subject to all of the provisions of this Agreement in the same manner as if performed by employees of the

Architect. For purposes of this Agreement, the term "Architect" shall be deemed also to refer to all subcontractors of the Architect, and every subcontract shall include a provision binding the subcontractor to all provisions of this Agreement.

3.4 Removal of Personnel and Subcontractors. If any personnel or subcontractor fails to perform the Services in a manner satisfactory to the City and consistent with commonly accepted professional architectural design practices, the Architect shall immediately upon notice from the City remove and replace such personnel or subcontractor. The Architect shall have no claim for damages, for compensation in excess of the amount contained in this Agreement, or for a delay or extension of the Time of Performance as a result of any such removal or replacement.

3.5 No Additional Obligation. The Parties acknowledge and agree that the City is under no obligation under this Agreement or otherwise to negotiate or enter into any other or additional contracts or agreements with the Architect or with any vendor solicited or recommended by the Architect.

3.6 Corporate Authorities of the City. Notwithstanding any provision of this Agreement, any negotiations, or agreements with, or representations by the Architect to, vendors shall be subject to the approval of the City Manager or Corporate Authorities of the City. For the purposes of this Section, "vendors" shall mean entities engaged in subcontracts for the provision of additional services directly to the City. The City shall not be liable to any vendor or third party for any agreements made by the Architect without the knowledge and approval of the City Manager or of the City's Corporate Authorities.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

4.1 Agreement Amount. The total amount billed by the Architect for the Services performed under this Agreement shall not exceed **\$105,604** including reimbursable expenses, without the prior express written authorization of the City.

4.2 Invoices and Payments. The Architect shall be paid in accordance with the amounts set forth in the Proposal (**Exhibit B**). The Architect shall submit an itemized invoice(s) containing sufficient detail of the Services performed to enable the City to properly evaluate the payout request along with all supporting documentation as required by the City. Supporting documentation may include but is not limited to a supporting schedule of hours worked making explicit the percentage of completion of Services as of the date of the invoice; supplier's invoices to justify material mark-up; and receipts for sub-contracted services. The City shall pay Architect in accordance with the Illinois Local Government Prompt Payment Act. The City shall make all payments on the basis of approved invoices and supporting documents. The City shall use its best efforts to make payments within thirty (30) days after review and approval of the invoice. Each payment requires the City Council's approval of the expenditure which occurs at publicly scheduled meetings. Invoices shall be submitted to the City within six (6) months of completion of the Services. Any invoices submitted in excess of six (6) months

from the date that Services were completed, will not be paid. Under no circumstances will a third party be reimbursed for Services performed under this Agreement.

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

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

4.5 Interest Waiver. Architect 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.

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

SECTION 5. REPRESENTATIONS OF ARCHITECT.

5.1 Design Firm Registration and Professional License. The Architect represents that it is registered as a professional design firm with the Illinois Department of Financial and Professional Regulation and that all 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 all engineers performing engineering services pursuant to this Agreement are properly licensed by the State of Illinois Department of Financial and Professional Regulation.

5.2 Standard of Care. The Architect represents, certifies, and warrants that it shall perform and complete the Services in a manner consistent with the level of care, skill, and diligence exercised by other recognized Licensed Architects under similar circumstances at the

time the services are performed. Architect warrants that the design preparation of drawings, models, and surveys, the designation or selection of materials and equipment, the selection and supervision of personnel, and the performance of other services under this Agreement, is pursuant to a high standard of performance in the architectural design profession. The representations, certifications, and warranties expressed shall be in addition to any other representations, certifications, and warranties expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the City. Consistent with its standard of care, Architect shall be responsible for the accuracy and coordination of all drawings and design documents relating to Architect's design and used for the Project, regardless of whether such drawings and documents are prepared or performed by Architect, or by Architect's consultants. Consistent with its standard of care, Architect shall be responsible for coordination and internal checking of all drawings and for the accuracy of all dimensional and layout information contained in the drawings and specifications prepared by Architect's consultants, as fully as if each drawing were prepared by Architect. The City's approval shall not constitute, or be deemed, a release of the responsibility and liability of the Architect, its employees, agents or associates for the exercise of skill and diligence to promote the accuracy and competency of their designs, information, plans, specifications or any other document, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid documents prepared by the Architect, its employees, associates, agents, or sub-contractors. Architect shall promptly correct any defective designs, drawings, models, surveys, or specifications furnished by the Engineer at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of the Architect's services hereunder shall in no way alter the Architect's obligations or the City's rights hereunder.

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

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

SECTION 6. INDEMNIFICATION; INSURANCE; LIABILITY

6.1 Indemnification. The Architect shall be responsible for any and all damages to property or persons arising out of an error, omission, and/or negligent act by Architect or its employees, agents or subcontractors, in the provision of Services or failure to provide the 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 Architect shall assume all restitution and repair costs arising out of an error, omission and/or negligence.

The Architect, without regard to the availability or unavailability of any insurance, either of the City or of the Architect, 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 Architect 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) Architect's failure to meet the representations and certifications set forth in **Section 5** and **Section 9** of this Agreement; (ii) Architect'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 Architect or Architect's employees, agents or subcontractors; and (iii) the 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 Architect, the Architect'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 Architect is solely responsible for determining the accuracy and validity of any information provided to the Architect 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.

Architect (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. Architect 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 Architect'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 Architect to defend, hold harmless, and indemnify the City shall survive the expiration or termination of this Agreement. Nothing in this Agreement shall be construed as prohibiting the City 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 Architect and the City, the parties agree that any and all lawsuits, claims, demands, damages, liabilities, losses, fines, judgments, settlements, penalties, costs, and expenses shall be apportioned between the parties on the basis of their comparative degrees of fault, except as otherwise herein provided.

6.2 Insurance. Contemporaneous with the Architect's execution of this Agreement, the Architect shall provide certificates and policies of insurance, all with coverages and limits

acceptable to the City, and evidencing at least the minimum insurance coverages and limits as set forth by the City in the **Special Provisions for: Insurance Coverage for Professional Service Providers**, which is attached hereto and incorporated as if fully set forth, as **Exhibit C** to this Agreement. The City shall be included under the Architect's insurance as an additional primary insured with respect to claims and/or liability arising out of Services performed by the City by Architect. All subcontractors shall comply with each and every insurance provision in **Exhibit C**. Architect shall not allow any subcontractor to commence work/services on any subcontract to perform any part of the Services until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this Agreement. The insurance described herein as set forth in **Exhibit C** shall be maintained for the duration of the Agreement, including any warranty period.

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

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

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

6.6 Limitation of Liability. CITY SHALL NOT BE LIABLE TO ARCHITECT 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.

SECTION 7. CONFIDENTIAL INFORMATION.

7.1 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 Architect from a source other than the City prior to the time of disclosure of said information to the Architect under this Agreement ("**Time of Disclosure**"); (ii) to have been in the public domain prior to the Time of Disclosure; (iii) to have become part of the public domain after the Time of Disclosure by a publication or by any other

means except an unauthorized act or omission or breach of this Agreement on the part of the Architect or the City; or (iv) to have been supplied to the Architect after the Time of Disclosure without restriction by a third party who is under no obligation to the City to maintain such information in confidence.

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

7.3 Breach of Confidentiality. In the event of breach of the confidentiality provisions of **Section 7** of this Agreement, it shall be conclusively presumed that irreparable injury would result to the City and there would be no adequate remedy at law. The City shall be entitled to obtain temporary and permanent injunctions, without bond and without proving damages, to enforce this Agreement. The City shall be entitled to damages for any breach of the injunction, including but not limited to, compensatory, incidental, consequential, exemplary, and punitive damages. The confidentiality provisions of this Agreement survive the termination or performance of this Agreement.

SECTION 8. TERM; TERMINATION; DEFAULT.

8.1 Term. This Agreement shall become effective upon the latter of the date accepted and signed by the City and the date accepted and signed by the Architect, and shall continue in full force and effect until the earlier of the following occurs: (i) the termination of this Agreement; or (ii) final completion of the Services specified in the Agreement by **June 3, 2024** or to a new date mutually agreed upon by the parties in writing, or (iii) the completion by Architect and City of their respective obligations under this Agreement, in the event such completion occurs before the date(s) 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 City retains the right to utilize the services of the Architect for future phases of this project.

8.2 Termination. Notwithstanding any other provision hereof, the City may terminate this Agreement, with or without cause, at any time upon fifteen (15) days prior written notice to the Architect. In the event that this Agreement is so terminated, the City shall pay Architect for the Services performed and reimbursable expenses actually incurred as of the effective date of termination, less any sums attributable, directly, or indirectly, to Architect's breach of this Agreement. The written notice required under this subsection shall be either (i) served personally during regular business hours; (ii) served by facsimile during regular business

hours (iii) served by certified or registered mail, return receipt requested, addressed to the address listed at the end of this Agreement with postage prepaid and deposited in the United States mail or (iv) by e-mail sent to the Architect's Key Project Personnel. Notice served personally, by facsimile transmission or e-mail shall be effective upon receipt, and notice served by mail shall be effective upon receipt as verified by the United States Postal Service. Architect shall provide the City with its Key Project Personnel's e-mail address upon its execution of this Agreement. On receiving such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice to the City showing in detail the Services performed under this Agreement up to the termination date. Contractor's receipt of payment for Services rendered upon City's termination of this Agreement, is Contractor's sole and exclusive remedy for termination for convenience by the City. City's termination for convenience does not constitute a default or breach of this Agreement.

If this Agreement is terminated as provided herein, City may require Architect to provide all finished or unfinished documents and data and other information of any kind prepared by Architect in connection with the performance of the Services under this Agreement. Architect shall be required to provide such documents, data, and other information within fifteen (15) days of the request.

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

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

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

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

SECTION 9. COMPLIANCE WITH LAWS AND GRANTS.

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

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

9.3 No Delinquent Taxes. The Architect represents and certifies that the Architect is not barred from contracting with a unit of state or local government as a result of a delinquency in the payment of any tax administered by the Illinois Department of Revenue unless the Architect is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax, or has entered into an agreement with Department of Revenue for payment of all taxes due and is currently in compliance with that agreement, as set forth in 11-42.1-1 et seq. of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 et seq.

9.4 No Collusion. The Architect represents and certifies that the Architect is not barred from contracting with a unit of state or local government as a result of a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 2012, 720 ILCS

5/33E-1 et seq. The Architect represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the City prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that the Architect has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Architect shall be liable to the City for all loss or damage that the City may suffer, and this Agreement shall, at the City's option, be null and void.

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

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

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

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

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

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

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

SECTION 10. GENERAL PROVISIONS.

10.1 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.

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

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

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

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

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

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

10.8 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.

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

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

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

10.12 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.

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

10.14 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.

10.15 Notice. Unless otherwise expressly provided in this Agreement, any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic internet mail ("e-mail"). Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidence by a

return receipt. By notice complying with the requirements of this Subsection, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

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

If to the Architect:

StudioGC, Inc.
Attn: Nikki Bridges
223 W. Jackson Blvd., Suite 1200
Chicago, IL 60606
E-Mail: n.bridges@studiogc.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

10.16 Contract Numbering. The faces of all invoices and documents shall contain the following contract number **450** for reference purposes.

10.17 Electronic Signature. The parties may execute this Agreement in writing or by facsimile transmission or by e-mail delivery of a “.pdf” format data 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.

10.18 Authority to Enter Agreement. Architect 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. If the Architect is a corporation, the legal name of the corporation shall be set forth below, together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation; if Architect is a co-partnership the true name of the firm shall be set forth below, together with the signatures of all partners; and if the Architect is an individual, the Architect shall sign his or her name below. If signature is by an agent other than an officer of a corporation or a member of a partnership, a power-of-attorney must be attached hereto.

IN WITNESS WHEREOF, the parties have entered into this Agreement this _____ day of _____ 2024.

CITY OF WHEATON, an Illinois municipal corp.

By: Philip J. Swan Date: 3/5/24
Mayor

ATTEST:

By: Andrea Renedale
City Clerk

StudioGC, Inc.

By: [Signature] Date: March 1, 2024
Signature

Its: President

ATTEST:

By: [Signature]
Signature

Title: Secretary