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RESOLUTION R-04-05

**A RESOLUTION AUTHORIZING THE EXECUTION OF A  
CONTRACT BETWEEN THE CITY OF WHEATON AND BRUCE MOSS**

WHEREAS, Bruce Moss has served as the Director of the Wheaton Municipal Band; and

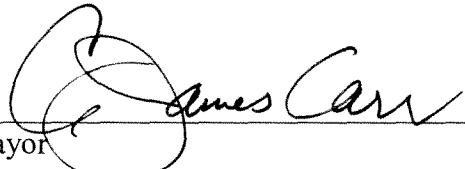
WHEREAS, Bruce Moss desires to continue to serve as the Wheaton Municipal Band's Director subject to the terms of a written contract between the City of Wheaton and Bruce Moss.

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 a contract between the City of Wheaton and the Wheaton Municipal Band Director (Bruce Moss) dated January 18, 2005, and that the City Clerk is directed to attest to the signature of the Mayor.

ADOPTED this 18th day of January, 2005.

ATTEST:

Eric M. Anderson  
City Clerk

  
\_\_\_\_\_  
James Carr  
Mayor

Ayes:

Roll Call Vote:  
Councilman Mouhelis  
Councilman Bolds  
Councilwoman Corry  
Councilman Johnson  
Mayor Carr  
Councilman Mork

Nays:

None  
Councilwoman Johnson

Absent:

Motion Carried Unanimously

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## CONTRACTOR AGREEMENT BETWEEN THE CITY OF WHEATON AND THE WHEATON MUNICIPAL BAND DIRECTOR

This Agreement is effective this 18<sup>th</sup> day of January, 2005, between the City of Wheaton, an Illinois (home rule) municipality, with its principal place of business at 303 West Wesley Street, City of Wheaton, Illinois (hereinafter referred to as "Wheaton") and Dr. Bruce Moss, of 537 Monroe Court, City of Bowling Green, State of Ohio, (hereinafter referred to as "Contractor").

### RECITALS

1. Wheaton is an Illinois (home rule) municipality engaged in the provision of municipal services and desires to contract with Contractor to perform as **Conductor** of the Wheaton Municipal Band (hereinafter referred to as "WMB") during the 2005 through 2007 summer seasons and as **Music Director** of WMB throughout each year of this agreement.
2. It is intended by Wheaton, the Contractor, and WMB, that the Contractor shall not be an employee of the City of Wheaton or WMB, and in doing all things specified in this contract, shall be considered an independent contractor.
3. In exchange for those considerations described herein, Contractor agrees to perform the contractual services set forth in this Agreement.

#### **Section 1: Recitals Incorporated**

The foregoing Recitals are incorporated into this Agreement as representing the intent of the parties and as constituting substantive representations and covenants by and among Wheaton and Contractor.

#### **Section 2: Nature of the Work**

Contractor shall perform services as **Music Director** and **Conductor** of WMB in conformance with this contract with respect to all matters relating to or affecting WMB as further described herein. As **Music Director**, Contractor will be responsible throughout the course of the academic year, as well as during the summer season, with the planning and preparation of the concert series. Such duties entail, but are not limited to, all aspects of music selection and preparation, scheduling of guest artists, housing and travel arrangements, assisting with the purchase and location of music, and planning/negotiating for special events. As **Music Director**, Contractor will oversee all aspects of the organization that would fall under the general category of "artistic direction."

As **Conductor**, Contractor shall render services, primarily at Memorial Park, City of Wheaton, Illinois, of rehearsing the WMB in preparation for related concerts, and conducting such concerts during the summer months, maintaining the quality musical standards existing within WMB.

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### Section 3: Place of Work

Contractor's services shall be rendered primarily at Memorial Park, City of Wheaton, Wheaton, Illinois and at any other location Contractor deems necessary and appropriate to comply with the terms and conditions of this agreement. Contractor will establish the schedule of practice for the WMB as Contractor deems sufficient and appropriate to permit the musicians of the WMB to perform those concerts and other musical services so as to maintain those quality musical standards currently existing within the WMB.

### Section 4: Time Devoted to Work

Contractor's performance of services and the hours of Contractor's work on any given day will be entirely within the Contractor's control, except that in order to be entitled to payment under this Agreement, contractor shall provide services as **Conductor** at rehearsal and scheduled concerts. The requirements of this section, however, shall not be interpreted to prohibit Contractor from periodically recruiting guest conductors for rehearsals and scheduled concerts to substitute for him.

### Section 5: Schedule of Payments

Subject to all of the conditions and covenants set forth in this Agreement, Wheaton will pay Contractor the following annual sums: 2005 - \$18,600; 2006 - \$19,350; 2007 - \$20,125, this annual fee is understood to cover his duties as both **Music Director** and as **Conductor**. The duties as **Conductor** refer specifically to the eleven week "concert season." The concert season, for purpose of this agreement, refers to ten related concerts and rehearsals occurring on the typical Wednesday/Thursday evening sequence during the summer months, in addition to one added week-end performance, such as the concert held at Edman Chapel. Any additional concerts or rehearsal/concert sequences will be negotiated separately.

It is understood by the parties that the aforementioned annual fee includes Contractor's services as both **Music Director**, which occur year-round in planning in preparing for the season, and **Conductor**, which occur during the summer months only. For services as **Conductor** beyond the eleven weeks of the concert season, Contractor will receive an additional per service fee, the amount of which will be negotiated by the parties.

During his absence, Contractor will be permitted to negotiate with guest conductors for their services as substitute conductors and the fees paid to the guest conductors will be paid from Contractor's payments under this contract.

For services rendered under this agreement, Wheaton agrees to pay Contractor in the following manner:

One-half ( $\frac{1}{2}$ ) of the compensation set forth in Section 5 above by July 1<sup>st</sup> of the concert year.

The remaining one-half ( $\frac{1}{2}$ ) of the compensation set forth in Section 5 above on or before the final concert date.

### Section 6: Duration

This contract shall be a firm commitment on Wheaton and the Contractor's part for the WMB summer seasons for the years 2005, 2006, and 2007.

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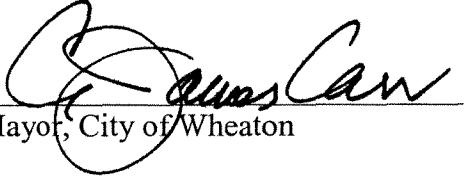
### **Section 7: Status of Contractor**

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

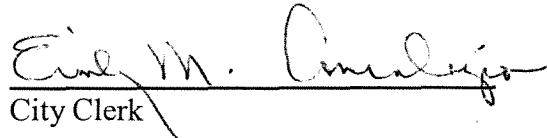
### **Section 8: Merger and Amendment**

All prior negotiations between Wheaton and Contractor are embodied herein. This agreement may not be modified except in writing signed by both Wheaton and Contractor.

**IN WITNESS WHEREOF**, the parties have executed this Agreement at Wheaton, Illinois, effective the day and year first above written.

  
Mayor, City of Wheaton

\_\_\_\_\_  
Signature of Contractor

  
City Clerk

\_\_\_\_\_  
Address of Contractor

\_\_\_\_\_  
City/State/Zip Code of Contractor

\_\_\_\_\_  
Social Security Number of Contractor

\_\_\_\_\_  
Date