

## RESOLUTION R-11-04

### **A RESOLUTION AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT FOR THE CREATION OF A MARKET ANALYSIS- DOWNTOWN WHEATON**

WHEREAS, the City of Wheaton, DuPage County, Illinois, is desirous of engaging the services of a planning and real estate consultant to conduct a market analysis for Downtown Wheaton; and

WHEREAS, the City has received a proposal from Valerie S. Kretchmer Associates, Inc., of Evanston ("VSKA"); and

WHEREAS, it is necessary for the City to enter into an agreement with VSKA for the proposed real estate and planning services.

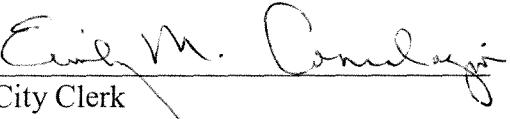
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to execute a professional services agreement between the City of Wheaton and VSKA of Evanston for real estate and planning services associated with the preparation of a Downtown Market Analysis.

ADOPTED this 17<sup>th</sup> day of February, 2004.



\_\_\_\_\_  
Mayor

ATTEST:



\_\_\_\_\_  
Evelyn M. Condegg  
City Clerk

#### Roll Call Vote

Ayes:

Councilwoman Johnson  
Councilman Bolds  
Councilwoman Corry  
Councilman Johnson  
Mayor Carr  
Councilwoman Johnson

Nays:

Councilman Mork  
Councilman Mouhelis

Absent:

None

Motion Carried

**AGREEMENT BETWEEN THE CITY OF WHEATON, ILLINOIS,  
AND VALERIE S. KRETCHMER ASSOCIATES, INC., EVANSTON, ILLINOIS -  
DOWNTOWN MARKET ANALYSIS**

THIS AGREEMENT is made and entered into by and between THE CITY OF WHEATON, an Illinois municipal corporation ("City"), 303 West Wesley Street, Wheaton, IL 60187, and VALERIE S. KRETCHMER ASSOCIATES, INC., ("Consultant"), 2707 Walnut Avenue, Evanston, Illinois 60201.

**RECITALS**

A. WHEREAS, the City of Wheaton desires to conduct a downtown market analysis; and

B. WHEREAS, the City of Wheaton has determined it to be in its best interest to obtain the services of a consultant who specializes in the preparation of real estate market studies to conduct such an analysis; and

C. Consultant desires to provide the necessary services upon the terms set forth in this contract.

IN CONSIDERATION OF the mutual promises, terms, and conditions recited in this contract, the City and Consultant agree as follows:

1. *Scope of Services.* Consultant shall perform the services described in the proposal dated November 20, 2003 and January 15, 2004, which are attached to, and incorporated in, this contract as Exhibit A. Consultant represents and warrants that it shall perform its services in a manner consistent with the level of care and skill customarily exercised by other professional consultants under similar circumstances at the time the services are performed. In the event that any information, data, reports, records and maps are useful for carrying out the services described in Exhibit A, the City shall promptly furnish this material to the Consultant. The City will be responsible for the organization and conduct of all meetings necessary to carry out the services described in Exhibit A. The City designates the Director of Planning to act as its representative with respect to the work to be performed under this agreement, and such person

shall have the authority to transmit instructions, receive information, interpret and define the City's policies and provide decisions in a timely manner pertinent to the services described in Exhibit A until the Consultant has been advised in writing that such authority has been revoked.

2. *Compensation.* The total fees paid to the Consultant for the work identified in Exhibit A shall not exceed TWENTY TWO THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$22,250).

3. *Additional Services.* Consultant shall perform only those services specified herein. In the event Consultant and the City determines that additional services are required to complete the project, such additional services shall not be performed unless directed in writing by the City. Payment for additional services shall be as mutually agreed upon in writing by the parties.

4. *Hold Harmless and Indemnification.* Consultant shall defend, hold harmless, and indemnify City, its directors, officers, employees, and agents, from and against any and all liabilities, losses, claims, demands, damages, fines, penalties, costs, and expenses, including, but not limited to, reasonable attorneys' fees and costs of litigation, and all causes of action of any kind or character, except as otherwise provided herein, to the extent that such matter arises from either of the following:

A. Consultant's breach of any term, provision, warranty, standard or requirement of this Agreement including, but not limited to, those provisions of the contract documents pertaining to Consultant's work; or

B. The negligence or willful misconduct of Consultant, its employees, agents, representatives, and subcontractors.

City shall defend, hold harmless, and indemnify Consultant, its directors, officers, employees, and agents, from and against any and all liabilities, losses, claims, demands, damages, fines, penalties, costs, and expenses, including, but not limited to, reasonable attorneys' fees and costs of litigation, and all causes of action of any kind or character, except as otherwise provided herein, to the extent that such matter arises from either of the following:

A. City's breach of any term, provision, warranty, standard or requirement of this Agreement including, but not limited to, those provisions of the contract documents pertaining to City's work; or

B. The negligence or willful misconduct of City, its employees, agents, representatives, and subcontractors.

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

5. *Insurance.* Consultant and each of its agents, subcontractors, and consultants hired to perform any services provided for herein shall purchase and maintain during the term of this contract insurance coverage which will satisfactorily insure Consultant and, where appropriate, the City against claims and liabilities which may arise out of the services referred to in this contract. Such insurance shall be issued by companies authorized to do business in the State of Illinois and approved by the City. The insurance coverages shall include, but not necessarily be limited to, the following:

A. Worker's compensation insurance with limits as required by the applicable statutes of the State of Illinois. The employer's liability coverage under the worker's compensation policy shall have limits of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident/injury and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each employee/disease.

B. Commercial general liability insurance protecting Consultant against any and all public liability claims which may arise in the course of performance of this contract. The limits of liability shall be not less than ONE MILLION DOLLARS (\$1,000,000) each occurrence bodily injury/property damage combined single limit and ONE MILLION DOLLARS (\$1,000,000) aggregate bodily injury/property damage combined single limit. The policy of

commercial liability insurance shall include contractual liability coverage and an endorsement naming the City as an additional insured.

C. Commercial automobile liability insurance covering Consultant's owned, non-owned, and leased vehicles which protects Consultant against automobile liability claims whether on or off of the City's premises with coverage limits of not less than ONE MILLION DOLLARS (\$1,000,000) per accident bodily injury/property damage combined single limit.

D. Umbrella or excess liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence bodily injury/property damage combined single unit. The umbrella or excess coverage shall apply in excess of the limits stated in subparagraphs B and C above, and shall either include an endorsement naming the City as an additional insured or provide "following form" coverage for the primary insurance.

E. Professional liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000) per claim covering Consultant against all sums which Consultant may become obligated to pay on account of any liability arising out of the performance of the professional services for the City under this contract when caused by any negligence act, error, or omission of Consultant or of any person employed by Consultant or any others for whose actions Consultant is legally liable. The professional liability insurance shall remain in force for a period for not less than four (4) years after the completion of the services to be performed by Consultant under this contract.

6. *Evidence of Insurance.* Consultant shall furnish the City with a certificate of insurance and, upon the request of the City, copies of all insurance policies and endorsements evidencing the coverages stated above. The insurance certificates and policies shall provide that no cancellation or modification of the policies shall occur without at least thirty (30) days prior written notice to the City. Consultant shall not commence any services under this contract until evidence of the required insurance is received and approved by the City.

7. *Compliance with Laws.* Consultant and City shall comply with all applicable federal, state, and local laws, rules, and regulations, and all City ordinances, rules, and

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regulations now in force or hereafter enacted in the performance of the services required under this contract.

8. *Contract of Services.* The City shall not be responsible for or have control over the means, methods, techniques, or procedures with respect to the performance by Consultant of the services in this contract.

a. *Excusable Delays.* The Consultant shall not be in default by reason of any failure in performance of the services described in Exhibit A (including any failure by the Consultant to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Consultant. Such causes may include, but are not restricted or limited to, acts of God, or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, illness, accidents, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Consultant.

10. *Termination of Contract.* If either party fails to perform according to the terms of this contract, they may terminate this contract upon seven (7) days written notice to the other party. In the event of a termination, the City shall pay Consultant for the services performed and expenses incurred as of the effective date of termination, less any sums attributable, directly or indirectly, to Consultant's breach. The written notice required under this paragraph shall be either (i) served personally during regular business hours; (ii) served by facsimile during regular business hours; or (iii) served by certified or registered mail, return receipt requested, addressed to the address listed in this contract with postage prepaid and deposited in the United States mail. Notice served personally or by facsimile transmission shall be effective upon receipt, and notice served by mail shall be effective three (3) business days after mailing.

11. *Discrimination Prohibited.* Consultant shall comply with the provisions of the Illinois Human Rights Act, as amended, 775 ILCS 5/1-101, *et seq.* (1992 State Bar Edition), and

with all rules and regulations established by the Department of Human Rights. Consultant agrees that it will not deny employment to any person or refuse to enter into any contract for the performance of any services provided for in this contract to be performed on its behalf on the basis of unlawful discrimination as defined in the Illinois Human Rights Act.

12. *Recovery of Costs.* In the event the City is required to file any action, whether legal or equitable, to enforce any provision of this contract, the City shall be entitled to recover all costs and expenses incurred as a result of the action or proceeding, including expert witness and attorney's fees, if so provided in any order of Court.

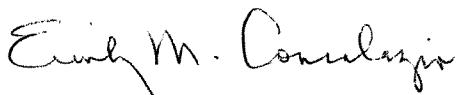
13. *Integration.* The provisions set forth in this contract represent the entire agreement between the parties and supersede all prior agreements, promises, and representations, as it is the intent of the parties to provide for a complete integration within the terms of this contract. This contract may be modified only by a further written agreement between the parties, and no modification shall be effective unless properly approved and signed by each party.

IN WITNESS WHEREOF, the parties have entered into this contract this 18<sup>th</sup> day of February 2004.

CITY OF WHEATON, an Illinois municipal corporation

By: 

Attest:



City Clerk

VALERIE S. KETCHMER ASSOCIATES, INC.

By: \_\_\_\_\_

Attest: