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RESOLUTION NO. R-20-04

A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT  
BETWEEN THE CITY OF WHEATON AND GARY R. WEBER ASSOCIATES, INC.  
FOR LANDSCAPE ARCHITECTURAL DESIGN SERVICES

WHEREAS, the City of Wheaton, Illinois ("City") is an Illinois Home Rule Municipality pursuant to 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 subject matter of this resolution pertains to the government and affairs of the City and its residents; and

WHEREAS, the City will be completing a major construction effort involving the Wheaton Public Library which includes an addition and renovation of existing spaces; and

WHEREAS, the Wheaton Public Library Project contemplates the vacation of the Cross Street right-of-way allowing for the integration of library uses with Adams Park uses; and

WHEREAS, a landscape design will be an integral component of integrating the Wheaton Public Library and Adams Park uses; and


WHEREAS, the City has previously engaged Gary R. Weber Associates, Inc. for similar landscape design services and based upon such work has determined it to be in its best interests and its residents to enter into an agreement with Gary R. Weber Associates, Inc. to develop a concept landscape design plan for the Wheaton Public Library/Adams Park and a final landscape design for the Wheaton Public Library

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign and the City Clerk is authorized to attest to an agreement between the City of Wheaton and Gary R. Weber Associates, Inc

ADOPTED this 5<sup>th</sup> day of April, 2004.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Ayes:

Roll Call Vote:  
Councilman Mouhelis

Councilman Bolds  
Councilwoman Corry  
Mayor Carr  
Councilman Mork

Nays: None  
Absent: Councilman Johnson  
Councilwoman Johnson

Motion Carried Unanimously

Published: April 6, 2004

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**AGREEMENT BETWEEN THE CITY OF WHEATON, ILLINOIS (CITY)  
AND GARY R. WEBER ASSOCIATES, INC. (CONSULTANT)  
LANDSCAPE ARCHITECTURAL SERVICES/LIBRARY & ADAMS PARK**

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 Gary R. Weber Associates, Inc. ("Consultant"), an Illinois corporation, 224 South Main Street, Wheaton, Illinois.

**RECITALS**

*Whereas*, the City will be completing an addition and renovation to the existing Wheaton Public Library at 225 North Cross Street; and

*Whereas*, the City determined that it is necessary to obtain the services of a landscape architect to provide landscape architectural services for the Wheaton Public Library addition and renovation project; and

*Whereas*, Gary R. Weber Associates, Inc., Consultant, has been previously engaged by the City to complete similar landscape architecture design projects; and

*Whereas*, the Consultant has the facilities, personnel, resources and expertise to perform the services necessary to develop a concept landscape design plan for the Wheaton Public Library/Adams Park and final landscape design for the Wheaton Public Library Addition/Renovation Project.

NOW, THEREFORE, in consideration of the forgoing, and of the mutual covenants, terms and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. *Scope of Services.* Consultant shall perform the services described in the Proposal to City of Wheaton for Wheaton Public Library Addition/Adams Park Wheaton, Illinois ("Proposal") dated March 23, 2004 which is attached to and incorporated in this Agreement 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.

2. *Compensation.* The City will pay a fee to the Consultant based upon an hourly rate as specified in the Proposal for work identified in Exhibit A and shall not exceed TWENTY THOUSAND ONE HUNDRED FORTY-SIX DOLLARS (\$20,146). This not-to-exceed fee is based upon hours determined by the Consultant to be appropriate and adequate to develop a concept and final landscape design for the Wheaton Public Library Project. Payment will be made for only those services completed by the Consultant upon receipt by the City of a monthly statement describing those completed services in sufficient detail as determined by the City.

3. *Additional Services.* Consultant shall perform only those services specified in this Agreement. In the event Consultant and the City determine 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 Agreement 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 Agreement 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 Agreement 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 Agreement. 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:

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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 (\$500,000.00) each accident/injury and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) each employee/disease.

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 (\$1,000,000.00) each occurrence bodily injury/property damage combined single limit and ONE MILLION DOLLARS (\$1,000,000.00) 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.

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 (\$1,000,000.00) per accident bodily injury/property damage combined single limit.

Umbrella or excess liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) 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.

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 Agreement until evidence of the required insurance is received and approved by the City.

7. *Compliance with Laws.* Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations, and all City ordinances, rules, and regulations now in force or hereafter enacted in the performance of the services required under this Agreement.

8. *Independent Contractor.* The relationship of Consultant to the City shall be that of an independent contractor, and no principal/agent or employer/employee relationship will be created by this Agreement. Consultant is an independent vendor and shall have no authority, express or implied, to act for or bind the City by virtue of anything contained in this Agreement. Nothing contained within this Agreement shall be deemed or construed by the City or Consultant or by any third party to create the relationship of a partnership or a joint venture. Consultant agrees that it, its agents, servants, employees and subcontractors, shall not, in any manner whatsoever, by their actions or deeds commit the City to any obligations irrespective of the nature thereof, and shall not at any time or for any purpose be deemed employees or contractors of the City.

9. *Termination of Contract.* If Consultant fails to perform according to the terms of this Agreement, the City may terminate this Agreement upon seven (7) days written notice to Consultant. 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.

10. *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.

11. *Recovery of Costs.* In the event either Party is required to file any action, whether legal or equitable, to enforce any provision of this Agreement, the Party 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.

12. *Assignment.* Neither part shall delegate nor assign its duties under this Agreement without the prior written consent of the other party, and each party hereby binds itself to the authorized successors and assigns of the other party in respect to all covenants of this Agreement. This Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.

13. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to its conflict-of-laws rules.

14. *Notification.* Except for notification requirements specified in Section 9 of this Agreement, all notices under this Agreement shall be in writing and shall be deemed delivered upon the expiration of five (5) days following mailing by certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses:

If to the Consultant: Gary R. Weber Associates, Inc.  
224 South Main Street  
Wheaton, Illinois 60187  
Attn: Gary R. Weber

If to the City: City of Wheaton  
City Clerk  
303 West Wesley Street  
Wheaton, Illinois 60187


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15. *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.

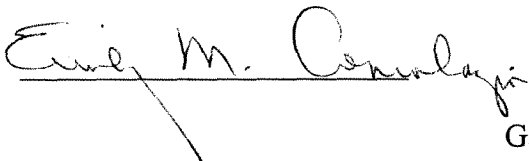
16. *Validity.* In the event that any provision of this Agreement shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement this 5<sup>th</sup> day of April, 2004.

City of Wheaton, an Illinois municipal corporation

By  \_\_\_\_\_  
Mayor

ATTEST:

 \_\_\_\_\_

Gary R. Weber, Associates, Inc. an Illinois corporation

By \_\_\_\_\_

ATTEST:

\_\_\_\_\_



**GARY R. WEBER ASSOCIATES, INC.**  
LAND PLANNING • LANDSCAPE ARCHITECTURE

March 23, 2004

Mr. Michael Dzugan  
Assistant City Manager  
City of Wheaton  
303 West Wesley Street  
Wheaton, Illinois 60187

**SUBJECT:** Wheaton Public Library Addition/Adams Park  
Wheaton, Illinois

Dear Michael:

Thank you for the opportunity to submit the following proposal for landscape architectural services at the above referenced project:

**CONCEPT DESIGN - Scope of Services**

<u>Task</u>	<u>PR</u>	<u>SLA</u>	<u>LA</u>	<u>LD</u>	<u>Support</u>
1. Make Site Visitation to Note Existing Conditions.	2.00	2.00	0.00	0.00	0.00
2. On Site Plan Provided by Engineer, Prepare Concept Sketches, and Conceptual Plan for Library and Park.	8.00	8.00	12.00	16.00	2.00
3. Two Project Meetings.	4.00	0.00	0.00	0.00	0.00
4. Revise Conceptual Plan per City Comments, Prepare Rendered Board.	2.00	2.00	4.00	8.00	1.00
<b>Total</b>	<b>16.00</b>	<b>12.00</b>	<b>16.00</b>	<b>24.00</b>	<b>3.00</b>

**ESTIMATED COST**

<u>Personnel</u>	<u>Hourly Rate</u>	<u>Total Hours</u>	<u>Total Cost</u>
Principal	\$120.00	16.00	\$1,920.00
Senior Landscape Architect	\$100.00	12.00	\$1,200.00
Landscape Architect	\$85.00	16.00	\$1,360.00
Landscape Designer	\$66.00	24.00	\$1,584.00
Support	\$42.00	3.00	\$126.00
<b>Total Labor:</b>			<b>\$6,190.00</b>
<b>Direct Costs - Copies, Mileage, Materials, Etc.</b>			<b>\$250.00</b>
<b>Total Concept Design:</b>			<b>\$6,440.00</b>



**FINAL DESIGN - Scope of Services (Wheaton Public Library Addition)**

<b><u>Task</u></b>	<b><u>PR</u></b>	<b><u>SLA</u></b>	<b><u>LA</u></b>	<b><u>LD</u></b>	<b><u>Support</u></b>
1. Initial Project Meeting to Review Design Direction.	3.00	0.00	0.00	0.00	0.00
2. Assist in Design and Selection of Materials for Plaza Pavements and Site Amenities, Including Layout Plan. (All to be Included in Engineering Plans.)	4.00	8.00	12.00	16.00	1.00
3. On Site Plan Provided by Engineer, Prepare Final Landscape Plan, Plant List, Specifications and Landscape Details and Assemble Bid Forms and Contract Documents.	4.00	8.00	16.00	24.00	4.00
4. Two Project Meetings.	6.00	0.00	0.00	0.00	0.00
5. Revise Plans per City Comments.	1.00	2.00	2.00	4.00	1.00
<b>Total</b>	<b>18.00</b>	<b>18.00</b>	<b>30.00</b>	<b>44.00</b>	<b>6.00</b>

**ESTIMATED COST**

<b><u>Personnel</u></b>	<b><u>Hourly Rate</u></b>	<b><u>Total Hours</u></b>	<b><u>Total Cost</u></b>
Principal	\$120.00	18.00	\$2,160.00
Senior Landscape Architect	\$100.00	18.00	\$1,800.00
Landscape Architect	\$85.00	30.00	\$2,550.00
Landscape Designer	\$66.00	44.00	\$2,904.00
Support	\$42.00	6.00	\$252.00
<b>Total Labor:</b>			<b>\$9,666.00</b>
<b>Direct Costs - Copies, Mileage, Materials, Etc.</b>			<b>\$250.00</b>
<b>Total Final Design:</b>			<b>\$9,916.00</b>

**CONSTRUCTION COORDINATION - Scope of Services**

<b><u>Task</u></b>	<b><u>PR</u></b>	<b><u>SLA</u></b>	<b><u>LA</u></b>	<b><u>LD</u></b>	<b><u>Support</u></b>
1. Prepare Bid Forms, Review Bids, Participate in Pre-Award Meeting.	4.00		4.00	4.00	2.00
2. Supervise Tagging of Major Plant Material Selected by Contractor.	0.00		8.00	0.00	0.00
3. Participate in Two Construction Meetings with Client and Landscape Contractor. Prepare Memoranda.	8.00		0.00	0.00	4.00
4. Make Final Inspection and Prepare Final Inspection Memorandum.	4.00		0.00	0.00	2.00
<b>Total</b>	<b>16.00</b>	<b>0.00</b>	<b>12.00</b>	<b>4.00</b>	<b>8.00</b>

## ESTIMATED COST

<u>Personnel</u>	<u>Hourly Rate</u>	<u>Total Hours</u>	<u>Total Cost</u>
Principal	\$120.00	16.00	\$1,920.00
Senior Landscape Architect	\$100.00	0.00	\$0.00
Landscape Architect	\$85.00	12.00	\$1,020.00
Landscape Designer	\$66.00	4.00	\$264.00
Support	\$42.00	8.00	\$336.00
<b>Total Labor:</b>			<b>\$3,540.00</b>
<b>Direct Costs - Copies, Mileage, Materials, Etc.</b>			<b>\$250.00</b>
<b>Total Construction Coordination:</b>			<b>\$3,790.00</b>
<b>Total Concept Design, Final Design, Construction Coordination:</b>			<b>\$20,146.00</b>

## BASIS OF BILLING

Terms are net thirty (30) days plus 1.5 percent per month on unpaid balances from client.


Services beyond the Scope of Services of this contract, such as additional meetings, final plans for Adams Park, bidding assistance and construction observation will be performed as approved by the client at the above rates.

If this agreement is acceptable to you, please sign and return one (1) copy for our files. This agreement is subject to the terms and conditions attached and incorporated herein. This proposal may be modified or withdrawn unless written authorization to proceed has been received within 30 days.

We thank you for this opportunity to submit this proposal and hope we have a chance to work with you on this and future projects. Please advise if you have any questions or comments.

Sincerely,

GARY R. WEBER ASSOCIATES, INC.



Gary R. Weber, ASLA  
President

ACCEPTANCE AND AUTHORIZATION

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

## **TERMS AND CONDITIONS**

### **CLIENT'S RESPONSIBILITIES**

Client agrees to provide Landscape Architect with all information regarding existing conditions including boundary, easements and restrictions, soils, utilities, existing uses, and topography. Landscape Architect may reasonably rely on the accuracy and completeness of these items. Client agrees to advise Landscape Architect of any known or suspected contaminants at the Project site. Client shall be solely responsible for all subsurface soil conditions. Client will obtain and pay for all necessary permits from authorities having jurisdiction over the project.

### **ESTIMATED SCHEDULE**

Landscape Architect shall render its services as expeditiously as is consistent with professional skill and care. As well as Landscape Architect's receipt of all necessary documents and/or information. During the course of the Project, anticipated and unanticipated events may impact any Project schedule. Client acknowledges that significant changes to the Project or construction schedule or budget, or to the Project's scope may require Additional Services of Landscape Architect.

### **TERMINATION**

Either Client or Landscape Architect may terminate this Agreement upon seven days written notice with or without cause. If terminated, Client agrees to pay Landscape Architect for all Basic and Additional Services rendered and Reimbursable Expenses incurred up to the date of termination. Landscape Architect may suspend the performance of its services if Client fails to pay Landscape Architect in full for services rendered or expenses incurred. Landscape Architect shall have no liability because of such suspension of services or termination due to Client's nonpayment.

### **OWNERSHIP OF DOCUMENTS**

Upon the parties signing this Agreement, Landscape Architect grants Client a nonexclusive license for the Client to use Landscape Architect's documents as described in this Agreement, provided Client performs in accordance with the terms of this Agreement. No other license is implied or granted under this Agreement. All documents of professional services or products prepared by Landscape Architect, including but not limited to, drawings and specifications, are the property of Landscape Architect. These documents shall not be reused on other projects without Landscape Architect's written permission. Landscape Architect retains all rights, including copyrights, in its documents. Client or others cannot use Landscape Architect's documents to complete this Project with others unless Landscape Architect is found to have materially breached this Agreement.

### **MAINTENANCE**

Client acknowledges and agrees that proper Project maintenance is required after the Project is complete. A lack of or improper maintenance may result in damage to property or persons. Client further acknowledges and agrees that, as between the parties to this Agreement, Client is solely responsible for the results of any lack of or improper maintenance.

### **MISCELLANEOUS PROVISIONS**

Notwithstanding of any other term in this Agreement, Landscape Architect shall not control or be responsible for construction means, methods, techniques, schedules, sequences or procedures; or for construction safety or any other related programs; or for another parties' errors or omissions or for another parties' failure to complete their work or services in accordance with Landscape Architect's documents.

Client agrees to indemnify, defend and hold Landscape Architect harmless from and against any and all claims, liabilities, suits, demand, losses, costs and expenses, including, but not limited to, reasonable attorney's fees and all legal expenses and fees incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms or any other legal entities on account of any damages or losses to property or persons, including injury or death, or economic losses, arising out of the Project and/or the performance or non-performance of obligations under this Agreement, except to the extent such damages or losses are found by a court or forum of competent jurisdiction to be solely caused by Landscape Architect's negligent errors or omissions.

Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, including, but not limited to, fee provisions, the prevailing party in such proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorneys' and expert witnesses' fees, which shall be determined by the court or forum in such a proceeding or in a separate action brought for that purpose. For purposes of this provision, "prevailing party" shall include a party that dismisses an action for recovery hereunder in exchange for payment of the sum allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action or proceeding.