

RESOLUTION R-28-04

A RESOLUTION AUTHORIZING THE EXECUTION OF AN
AGREEMENT FOR HISTORICAL PRESERVATION SERVICES
(WHEATON HISTORIC PRESERVATION COUNCIL)

WHEREAS, the Wheaton Historic Preservation Council (WHPC) is an Illinois Not For Profit Corporation whose general purpose is the preservation and recordation of the history of the City of Wheaton; and

WHEREAS, the WHPC has requested City assistance in funding their operations which relate to preserving the history of the City of Wheaton; and

WHEREAS, the City of Wheaton desires to enter into an agreement with the WHPC for certain historical preservation services.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor and City Clerk are authorized to execute, on behalf of the City of Wheaton, an agreement for historical preservation services dated April 19, 2004.

ADOPTED this 19th day of April, 2004.

ATTEST:

Emily M. Connelley
City Clerk

Mayor

Seamus Carr

Ayes:

Roll Call Vote:

Councilwoman Johnson
Councilman Mork
Councilman Mouhelis
Councilwoman Corry
Councilman Johnson
Mayor Carr

Nays:

None

Absent:

Councilman Bolds

Motion Carried Unanimously

AGREEMENT FOR HISTORICAL PRESERVATION SERVICES

WHEREAS, the City of Wheaton is an Illinois Home Rule Municipality exercising its authority in conformance with State Laws; and

WHEREAS, the Wheaton Historic Preservation Council (hereinafter "WHPC"), is an Illinois not-for-profit corporation whose general purpose is the preservation and recordation of, the History of the City of Wheaton and the promotion of awareness of the City's history and the appreciation of the City's heritage among the citizens of Wheaton; and

WHEREAS, the Corporate Authorities of the City of Wheaton, in conformance with its home rule powers, have deemed it necessary and appropriate to allocate temporary funding to the WHPC, strictly subject to those terms, conditions, and covenants as are set forth herein for the purpose set forth herein; and

WHEREAS, in order to ensure that the funds allocated by the City of Wheaton to the WHPC are used in conformance with this Agreement, the City of Wheaton and the WHPC agree that it will be appropriate and necessary that the WHPC provide periodic scheduled reports of its services and the distribution of City funds in support of those services authorized herein; and

WHEREAS, it is the intent of the City of Wheaton and the WHPC that none of the persons employed by the WHPC with use of funds as provided for in this Agreement shall be considered either employees of, or agents of the City of Wheaton; and

WHEREAS, this Agreement is for the fiscal year of May 1, 2004 to April 30, 2005, and shall not be interpreted to constitute any representation by the City of Wheaton or its corporate authorities, that the City will provide any future funding beyond that specifically provided for herein.

NOW THEREFORE, based upon the foregoing recitals, and those other considerations as described herein, which both parties deem adequate consideration to support this Agreement, the City of Wheaton and WHPC agree as follows:

RECITALS:

The foregoing recitals are incorporated into this Agreement as representing the intent of the parties and substantive of covenants and conditions of this Agreement.

SERVICES PROVIDED:

For the consideration set forth herein, and for no other consideration, the Wheaton Historical Preservation Council, commencing on May 1, 2004, and terminating April 30, 2005,
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shall employ a sufficient number of employees to perform the services outlined in the "Purpose of Services" paragraph of this Agreement.

PURPOSE OF SERVICES:

In order to qualify for the payment of the funds described herein, the services provided by the WHPC shall:

Promote awareness in the City of Wheaton's History and an appreciation for the City of Wheaton's heritage; and

Preserve and record the history of the City of Wheaton through means that are appropriate and feasible; and

Establish and maintain the City of Wheaton archives and recommend to the Wheaton City Council the method of administering such archives; and

Provide liaison between the City of Wheaton and groups involved in historic preservation; and

Coordinate and provide administrative support for Historic Commission activities for: Preservation Week, Historical Site Markers, Landmark Research, and conferences, seminars and outside historical consultants.

Perform such ancillary activities as may be needed to accomplish the activities described above.

TERMS OF THE AGREEMENT:

This Agreement shall be considered to be effective from the date of May 1, 2004 and shall continue in effect until April 30, 2005. The Agreement is not renewable and shall not constitute a continuing promise by the City of Wheaton to the WHPC of any future funding, grants, or assistance. This Agreement may also be terminated earlier than April 30, 2005, in accordance with the terms of this Agreement or if there is a breach of the terms and conditions of this Agreement by the WHPC. The pay period between May 1, 2004 and April 30, 2005 shall be referred to herein as the annual pay period.

BOARD APPROVAL:

The WHPC, prior to any payments by the City of Wheaton under this Agreement, shall deliver to the City Manager a properly signed and endorsed resolution by the WHPC Corporate Board approving this Agreement.

INDEMNIFICATION AND HOLD HARMLESS:

The WHPC, on behalf of itself and its employees, hereby agrees, to the greatest extent permitted under Illinois law, to indemnify and hold harmless the City of Wheaton, its elected officials, employees, agents and assigns for any and all costs, demands, actions, causes of actions, damages, injuries, judicial or administrative claims, costs including reasonable attorneys fees, or claims of copyright or trademark infringement, directly or indirectly, related to the negligent or intentional acts or omissions of the WHPC, its employees and/or independent contractors, in the performance or failure to perform in this Agreement.

INSURANCE:

The WHPC shall maintain those insurance coverages set forth in Exhibit A and which is incorporated herein by reference as if fully set forth, subject to the additional conditions set forth herein:

All insurance coverages shall name the City as an additional insured in respect to all coverages; and

Coverage shall be on a per occurrence basis in accordance with the limits and provisions specified in the Exhibits. Claims made policies are unacceptable; and

All insurance shall provide that it will not be canceled or materially altered to reduce the policy limits until the City has received at least thirty (30) days prior written notice of such cancellation or change; and

The WHPC's policy shall be primary with respect to any other valid or collectable insurance that Wheaton may possess, including any self insured retentions that the City may have; and

That any other insurance the City possesses shall be considered excess insurance only and shall not be required to contribute with the WHPCs Insurance.

During the term of this Agreement, the City may require the WHPC to increase insurance coverage in those categories and in those amounts deemed necessary by the City.

PAYMENTS:

The City agrees to pay the WHPC in conformance with the Services Provided and Purpose of Service paragraphs of this Agreement and the following schedules and conditions. All payments shall be made by the City of Wheaton to the WHPC upon submission of written documentation by the WHPC that such payments are then due and owing. Initial documentation, which shall be

submitted with the first request for payment, shall be a written report from the Executive Director of the WHPC to the City Manager establishing: the names of the persons employed by the WHPC; the functions they are performing; and the salary that the WHPC has allocated to that person. The Executive Director's report shall further contain a summary of space utilized for off-site collection work-space and the costs of said space.

With each submittal for payment, the Executive Director shall provide a written report summarizing the services provided since the last payment. The report shall also indicate any changes which have occurred in the information which was part of the initial documentation.

Total payment to the WHPC for the term of this Agreement shall be \$234,714. Payments shall be made in equal increments on a monthly basis.

PROOF OF DISTRIBUTION / AUDIT

The WHPC shall maintain proper financial and work records establishing the distribution of funds paid under this Agreement by the City of Wheaton to WHPC. These records shall clearly show that the sums paid have been distributed as allocated in this Agreement and not for any other purpose. At the termination of this Agreement, the WHPC shall present the City with a report from a certified public accountant certifying that the funds delivered by the City of Wheaton to WHPC pursuant to the terms of this Agreement have been allocated as required by this Agreement. During the term, and at the end of the term, of this Agreement, the City may request for review, and the WHPC shall provide, within five (5) business days, all documents maintained by the WHPC in furtherance of its obligation under this Section.

Within one hundred twenty (120) days of the end of the annual pay period, the WHPC shall further provide the City with a letter of opinion from a certified public accountant setting forth the WHPC's overall revenues and expenditures over the twelve month period of this Agreement.

INDEPENDENT CONTRACTOR STATUS:

Neither the WHPC or any full time employee and/or independent contractors of the WHPC funded by monies provided by the City of Wheaton under this Agreement shall be considered an employee or agent of the City, but shall instead, as to the City, be considered an independent contractor. The City shall not have the authority or power to control the means, method, or manner in which the WHPC or any of the full time employees and/or independent contractors perform their work or services under this Agreement. Furthermore, neither the WHPC nor any of the full time employees and/or independent contractors shall represent themselves as employees or agents of the City of Wheaton. The WHPC shall be obligated to pay and all Federal or State taxes, contributions, insurance payments, unemployment contributions, or similar obligations as may be required by State and Federal Law. Neither the WHPC or any of its employees and/or independent contractors shall be authorized to bind, solicit, negotiate, or perform any work or service on behalf of the City of Wheaton, with it being the intent of this Agreement that the WHPC, and any employees and/or independent contractors of the WHPC are now and for the

entire term of this Agreement are and shall remain as it pertains to the City of Wheaton independent contractors.

EVENTS OF DEFAULT:

Wheaton's obligation to make payment under the term of this Agreement shall terminate upon the occurrence of any of the following events of default:

A breach of any term or condition of this Agreement by the WHPC or the WHPC's employees or independent contractors; or

Failure of the WHPC to timely and lawfully maintain its status as an Illinois not for profit corporation; or

The filing of a voluntary or involuntary petition of bankruptcy for or against the WHPC; or

The misapplication of any funds delivered by the City to the WHPC under this Agreement; or

The failure of the WHPC to substantially perform the work required under this Agreement during any single thirty (30) day period.

WAIVER:

No failure of the City to exercise any power reserved under this Agreement or insist on strict compliance by the WHPC of any of its obligations or conditions, and no custom and practice of the parties in variance with the terms of this Agreement, shall constitute a waiver by the City of its right to demand strict compliance with this Agreement. Waiver by the City of any default, at any time, shall not effect or impair the City's rights with respect to any subsequent default. No delay, waiver for variance, or omission by the City shall effect or impair the City's right, nor shall it constitute a waiver by the City of any rights or the right to declare any subsequent breach or default.

INTERPRETATION:

This Agreement shall be interpreted in accordance with the laws of the State of Illinois.

PARTIAL VALIDITY:

Should any provision of this Agreement be declared invalid by a Court of competent jurisdiction, such declaration shall not affect the remainder of this Agreement or any of its other provisions.

NOTICE:

All notices, demands, requests or other communications under this Agreement shall be in writing and shall be deemed to have been properly served and delivered by hand to the party whose attention it is directed; if to be mailed, postage prepaid to be registered or certified mail, return receipt requested; if to be sent by private carrier, guaranteed next day delivery, addressed as follows or to such other addresses as either party may designate;

If to City of Wheaton:

City of Wheaton
Attn: City Manager
303 West Wesley Street
Wheaton, Illinois 60187

If to WHPC:

Wheaton Historic Preservation Council
P.O. Box 373
Wheaton, Illinois 60189

NON-ASSIGNABILITY:

This Agreement shall not be assigned or transferred by the WHPC.

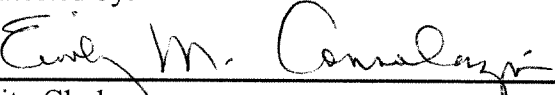
MERGER:

All prior negotiations, agreements or contracts, prior to the execution of the Agreement by the City of Wheaton and the WHPC are merged within this document. Other than the promises, covenants and conditions contained herein, there are no other agreements by and between the City of Wheaton and the WHPC affecting or related to this Agreement. This Agreement may not be modified, changed or otherwise altered except by the mutual written consent of the City of Wheaton and the WHPC.



Mayor, City of Wheaton

Attested by:



City Clerk



Wheaton Historic Preservation Council

**WHEATON HISTORY CENTER
RENEWAL SUMMARY
4/7/2004 - 4/7/2005**

	<u>Renewal</u>	<u>Expiring</u>
Property	\$1,462	\$1,358
General Liability	\$1,892	\$1,159
Outdoor Sign & EDP	\$ 46	\$ 45
	\$2,426	\$2,562
Workers Compensation	\$1,220	\$1,123
Total Annual	\$3,646	\$3,685

Limits of Coverage:

Property:

**Location #1: 606 Main Street
Wheaton IL 60187**

Building Limit	\$309,800	Deductible \$1,000
Personal Property	\$ 21,200	"
Personal Property of Others	\$ 50,000	"
Gazebo	\$ 21,500	"
Tents	\$ 3,400	"
Computer Hardware	\$ 8,000	"
Wooden Sign	\$ 2,000	Deductible \$100

**Location #2: 799 Roosevelt Road Room 6
Glen Ellyn IL 60137**

Personal Property \$ 5,310

**Location #3: 1746 S. Naperville Road
Wheaton IL 60187**

Building	\$130,800
Garage	\$ 14,000
Personal Property	\$ 2,130

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**WHEATON HISTORY CENTER
RENEWAL SUMMARY
(continued)**

Location #4: **330 S. Naperville Road Suite 308
Wheaton IL 60187**

Personal Property **\$160,680**

Workers Compensation:

Professional/Clerical Annual Payroll **\$246,129**

Liability:

Each Occurrence	\$1,000,000
Annual Aggregate	\$2,000,000
Medical Payments to Others	\$ 10,000

Attachment.TXT

May 1, 2003

Wheaton Historic Preservation Council
Attn: Alberta Adamson
P O Box 373
Wheaton, IL 60189

Dear Alberta:

Your Directors and Officers policy, policy number ND00001366, is scheduled to renew on 05/21/2003 with St. Paul Fire & Marine. Following is a summary showing the renewal premium and coverages provided.

	This Year	Last Year
Annual Premium	\$1,340	\$1,213
Liability Limit		\$1,000,000
Deductible Each Claim		\$ 1,000

should the organization want to consider increasing the coverage to \$2,000,000 the annual premium would go to \$1,910.

Please get back to me with any questions you may have, and let me know if you would like to proceed with renewing the coverage for another year. Thanks very much.

Sincerely,

Robert F. Haeger