

RESOLUTION R-24-06

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 May 1, 2006.

ADOPTED this 17th day of April, 2006.

ATTEST:

Emily M. Ponzoluzzi
City Clerk

Ayes:

Nays:

Absent:

[Signature]
Mayor

Roll Call Vote:

- Councilman Sues
- Councilman Bolds
- Councilwoman Corry
- Councilman Johnson
- Mayor Carr
- Councilman Levine
- Councilman Mouhelis

None

None

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, 2006 to April 30, 2007, 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:

1. 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.

2. OBLIGATIONS OF WHPC:

In order to qualify for the payment of the funds described herein, the Wheaton Historical Preservation Council ("WHPC") shall during the term of this Agreement (1) employ a sufficient number of employees to perform the services outlined in Section 3 of this Agreement; (2) provide the reports relating to governance and financial matters, required in Section 4 of this Agreement; and (3) engage in an active and meaningful program to raise additional financial support for WHPC as provided in Section 4 of this Agreement.

3. WHPC SERVICES:

The services provided by the WHPC may include:

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

Preserving and recording the history of the City of Wheaton through means that are appropriate and feasible; and

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

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

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

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

4. REPORTS TO CITY

As a major financial supporter of the WHPC, the reports required under this Section 4 are designed to provide the City with the necessary assurances that proper governance rules and procedures are in place, and to make sure that the WHPC is able to successfully accomplish its mission under the leadership of its Board of Directors. These requirements also reflect the City's expectations that the WHPC will earnestly cultivate significant sources of support other than the City.

4.1 GOVERNANCE MATTERS.

4.1.1 An annual report providing the names and terms of all Board members, the names of the officers of the Board, and a roster of all Board

committee members. Any change in this information is to be reported to the City on a quarterly basis.

4.1.2. Any changes to the By-Laws are to be reported to the City, together with a copy of the change, at the time any change is adopted.

4.1.3 The agenda for all Board meetings is to be delivered to the City at least five (5) days in advance of any Board meeting.

4.2 FINANCIAL MATTERS

4.2.1 Records. WHPC shall maintain proper financial and work records establishing that the funds paid by the City under this Agreement are being spent in furtherance of the services provided in Section 3 above. During the term of this Agreement 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 documentation maintained by WHPC in further of its obligation under this Section.

4.2.2. Budgets and Financial Statements. A copy of the Annual Budget is to be provided to the City when it is approved by the Board of Directors. Quarterly and annual financial statements are to be provided to the City on or before the 15th day following the end of a quarter, except the annual financial statements are due on or before 120 days after the end of the fiscal year. If there are significant differences from budget, explanations need to be provided to the City as to the reasons for the difference, and what plans are in place to deal with any such discrepancies.

4.2.3. Grants. WHPC is to provide the City with quarterly reports as to the grants it is currently seeking and the status of outstanding grant proposals. The specific plans of the WHPC to pursue other grants are also to be submitted with each quarterly report.

4.2.4. Fund Raising Program. The WHPC needs to provide the City with an annual plan as to how it is going to raise funds from its constituencies, together with quarterly reports, on how its fund raising program is meeting its objectives. These reports would include the amount of support received from its membership. THE CITY DOES NOT WANT TO KNOW, AND WILL NOT ACCEPT ANY INFORMATION, ON WHAT INDIVIDUAL MEMBERS ARE CONTRIBUTING. The report will also include amounts of general donations from the public, major business or individual contributions (WITHOUT IDENTIFICATION OF THE CONTRIBUTOR), grants, educational programs, capital campaigns and other significant fund raising activities. If any grants or contributions are restricted, the report needs to state the nature of the restriction.

4.2.5. Auditor's Report. The interim and annual reports from the WHPC's auditor are to be submitted to the City, together with any additional, significant

statements by the auditor that are not included in the auditor's financial statements and reports.

4.2.6. Employee, Compensation and Space Report. An annual report shall be submitted to the City Manager identifying the total compensation of WHPC employees. In addition, a copy of the WHPC's 990 form shall be submitted to the City. The WHPC shall also provide in this report a summary of space utilized for off-site collection work-space and the cost paid for the space.

4.2.7. Additional Reports. The Chairman of the Board shall promptly report to the City any significant financial development that may have a material beneficial or adverse effect on the financial condition of the Wheaton History Center.

5. TERM OF THE AGREEMENT:

This term of this Agreement shall be from May 1, 2006 until April 30, 2007. 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, 2007 in accordance with the terms of this Agreement or if there is a breach of the terms and conditions of this Agreement by WHPC. The pay period between May 1, 2006 and April 30, 2007 shall be referred to herein as the annual pay period.

6. 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 Board approving this Agreement.

7. 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.

8. 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.

9. PAYMENTS:

Total payment to the WHPC for the term of this Agreement shall be \$200,000. Providing that WHPC is in compliance with the terms of this Agreement, all payments shall be made by the City of Wheaton to the WHPC in equal installments on or before the 15th day of each month, with the final payment to be made on April 15, 2007.

10. INDEPENDENT CONTRACTOR STATUS:

Neither the WHPC nor 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.

11. EVENTS OF DEFAULT:

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

- 11.1 The failure of the WHPC to substantially perform its obligations under Sections 3 and 4 of this Agreement.
- 11.2 A breach of any term or condition of this Agreement by the WHPC or the WHPC's employees or independent contractors; or
- 11.3 The misapplication of any funds delivered by the City to the WHPC under this Agreement; or
- 11.4 Failure of the WHPC to timely and lawfully maintain its status as an Illinois not for profit corporation; or

12. 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.

13. INTERPRETATION:

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

14. 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.

15. 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:

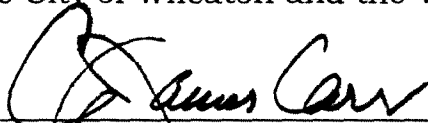
Wheaton Historic Preservation
Council
Attn: President and CEC
P.O. Box 373
Wheaton, Illinois 60189

16. NON-ASSIGNABILITY:

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


17. 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