



**donald c. westphal  
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**AGREEMENT BETWEEN  
CITY OF ROCHESTER HILLS  
AND  
DONALD C. WESTPHAL ASSOCIATES, L.L.C.**

This Agreement, effective as of \_\_\_\_\_, 2004, is between the City of Rochester Hills ("Client"), 1000 Rochester Hills Drive, Rochester Hills, Michigan, 48309, and Donald C. Westphal Associates, L.L.C. (DCWA), Landscape Architecture & Site Planning, 71 N. Livernois, Suite A, Rochester Hills, Michigan 48307 for the following Project: "Consultant to develop Construction Plans for each of the four Gateway Entrance Signs: Level 1 - Horizontal, Level 1 - Vertical, Level 2 and Level 3; and general Site Development & Landscape Plans.

**Article 1 Donald C. Westphal Associates, L.L.C. Basic and Additional Services**

A. Donald C. Westphal Associates, L.L.C. agrees to provide Client the following Basic Services:

1. Construction Documents: DCWA will prepare construction documents required for the construction of the four Gateway Entrance Signs, Level 1 - Horizontal, Level 1 - Vertical, Level 2 and Level 3 as depicted in the Comprehensive Gateways Plan. In addition, four specific plans will be prepared, one for each of the above gateway types, lighting, landscape plans and required specifications. Selection of the location for the site-specific signs will be made by City of Rochester Hills. Possible locations for these four sign types are:
  - a. "Level 1 Gateway - Horizontal" located at Walton Boulevard at the west City Limit line, within the median,
  - b. "Level 1 Gateway - Vertical" located at Rochester Road at Michelson, north of South Boulevard, southeast corner of intersection,
  - c. "Level 2 Gateway" located at Adams Road at Dutton Road, southwest corner of intersection, and
  - d. "Level 3 Gateway" located at the Paint Creek Trail at the northbound corporate boundary with the City of Rochester.

Work may be located within the respective road right-of-ways.

2. Oakland County Road Commission Permit: DCWA will prepare drawings and specifications as required to acquire Oakland County Road Commission permits for construction within the road right-of-way; the Client will provide all applications, signatures and fees as required.

3. Work Products: Work Products will include the following:
    - a. Five sets of Preliminary and Final Construction Documents for the sign and sign structure for review and approval by the Client.
    - b. Six sets of Construction Documents for Client use.
    - c. Digital copies of the plans in AutoCAD format and specs, etc. in Word<sup>E</sup> format.
  4. Staff Contact Person: For the duration of the contract, all written and verbal communications shall be the responsibility of staff person, Kenneth E. Bryant.
- B. Additional Services beyond DCWA's Basic Services may be provided if confirmed in writing. Additional services shall include, but not be limited to, studies and analysis reports by sub-consultants with specialized expertise, presentation models, special graphics, color renderings and/or other specialized services by sub-consultants beyond our expertise.
- C. DCWA agrees to provide its professional services in accordance with generally accepted standards of its profession. DCWA agrees to comply with codes, laws and regulations in effect as of the date of this agreement.

## **Article 2 Client's Responsibilities**

- A. Client agrees to provide DCWA with all information, surveys, reports, and professional recommendations and any other related items requested by DCWA in order to provide its professional services. DCWA may rely on the accuracy and completeness of these items.
- B. Client will obtain and pay for all necessary permits from authorities with jurisdiction over the Project.
- C. Client agrees to provide the items described in Article 2.A and to render decisions in a timely manner so as not to delay the orderly and sequential progress of DCWA's services.

## **Article 3 Estimated Schedule and Project Budget**

- A. DCWA shall render its services as expeditiously as is consistent with professional skill and care, with a projected timeline for delivery of work products to occur on or before 3 months from Notice To Proceed. During the course of the Project, immediate notification to City and mutually agreed events may impact any Project schedule.
- B. As of the date of this Agreement, Landscape Architect's Project Budget is a lump sum fee of \$48,750.00. Client agrees to promptly notify DCWA if Client's schedule changes. Client acknowledges that changes to the Project schedule or to the Project's scope, including changes made to the Project's base plan during DCWA's scope of work, may require Additional Services of DCWA.

## **Article 4 Compensation and Payments**

A. Client agrees to pay DCWA as follows:

1. **Basic Services:** DCWA will provide the above services at a lump sum fee of \$48,750.00. Basic services will be billed as per the following schedule:
  - 45% upon submittal of Preliminary Construction Documents for Client review and approval.
  - 35% upon submittal of Final Construction Documents for Client review and approval.
  - 20% upon submittal of Final Product for Client use.

Work will begin upon receipt of a signed copy of this proposal.

2. **Additional Services:** Additional Services provided beyond DCWA's Basic Services shall be billed at our hourly rates in accordance with the following schedule.

### DCWA Hourly Charges

1. Principal	\$200.00/Hour
2. Landscape Architect I:	\$95.00/Hour
3. Landscape Architect II:	\$75.00/Hour
4. Landscape Technician: (non-registered Landscape Architecture graduate)	\$65.00/Hour
5. Associate Staff	\$35.00/Hour
6. Secretarial	\$35.00/Hour
7. CAD	\$20.00/Hour

- Services required by the Owner beyond regular business hours, 8:00 am to 5:00 pm, shall be billed at 1.5 times the hourly rates above excluding presentations to City Boards and Commissions.

B. Reimbursable Expenses for services in addition to the Basic Services, and as mutually agreed prior to initiation include, but are not limited to: reproduction, postage, and handling of documents; long distance and facsimile charges; authorized travel; and Client requested renderings and models. Such reimbursable expenses shall be at cost.

C. DCWA shall bill Client for Basic and Additional Services and Reimbursable Expenses once a month. All payments are due 30 days upon receipt of invoice. A service charge of 1.5% per month will be charged on all amounts due more than 30 days after the date of invoice.

## **Article 5 Termination**

A. Either Client or DCWA may terminate this Agreement upon seven days written notice without cause.

- B. If terminated, Client agrees to pay DCWA for all Basic and Additional Services rendered and Reimbursable Expenses incurred up to the date of termination with evidence.

**Article 6 Use and Ownership of DCWA's Documents**

A. Provided that Client is not in material breach of this Agreement, all documents and instruments of professional service prepared by DCWA, including, but not limited to, drawings and specifications, shall be considered "work for hire" and shall be the property of Client, which Client may use for any lawful purpose. Client shall have and own all rights, including copyright, in such documents and instruments. Client waives any claims against DCWA for injury, damages, liability or loss that may arise or result from Client's use of the documents and instruments for purposes not reasonably related to the Project.

B. DCWA reserves a non-exclusive license to retain and use copies of the documents and instruments in its promotional materials. DCWA shall not use the documents and instruments for any other purpose without Client's advance consent, which Client shall not unreasonably withhold.

C. Copyright held by City.


**Article 7 Miscellaneous Provisions.**

- A. This Agreement is governed by the law of DCWA's principal place of business.
- B. This Agreement is the entire and integrated agreement between Client and DCWA and supersedes all prior negotiations, statements or agreements, either written or oral. The parties may amend this Agreement only by a written instrument signed by both Client and DCWA.
- C. In the event that any term or provision of this Agreement is found to be unenforceable or invalid for any reason, the remainder of this Agreement shall continue in full force and effect, and the parties agree that any unenforceable or invalid term or provision shall be amended to the minimum extent required to make such term or provision enforceable and valid.
- D. Neither Client nor DCWA shall assign this Agreement without the written consent of the other.
- E. Irrespective of any other term in this Agreement, DCWA 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 DCWA's documents.
- F. To the fullest extent permitted by law, Landscape Architect agrees to defend, pay in behalf of, indemnify and hold harmless the City of Rochester Hills, its elected officials and employees of the City of Rochester Hills, to the extent caused in whole or in part by any negligent act or omission of the Landscape Architect, against any and all claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City of Rochester Hills, its elected officials and employees of the City of Rochester Hills by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this contract.

- G. 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.
- H. Client and DCWA waive consequential damages for any claims, disputes or other matters in question arising out of or relating to this Agreement. DCWA's waiver of consequential damages, however, is contingent upon the Client requiring contractor and its subcontractors to waive all consequential damages against DCWA for claims, disputes or other matters in question arising out of or relating to the Project.
- I. To the extent damages are covered by property insurance during construction, Client and DCWA waive all rights against each other and against the contractors, consultants, agents and employees of the other for such damages. Client or DCWA, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties described in this paragraph.
- J. Client acknowledges and agrees that they will be responsible for details, placement and maintenance of gateway structures, irrigation and landscaping at locations of their choosing.
- K. Nothing in this Agreement shall create a contractual relationship for the benefit of any third party.
- L. If this Agreement is not signed and returned to DCWA within 30 days, the offer to perform the described services may, in DCWA's sole discretion, be withdrawn and be null and void.

Donald C. Westphal Associates, L.L.C.

CLIENT

  
 \_\_\_\_\_  
 Date \_\_\_\_\_

\_\_\_\_\_  
 Title \_\_\_\_\_

Michigan Certificate No. 440  
 Renewal Date July 31, 2004

Dated \_\_\_\_\_