

RESOLUTION R- 39-07

**A RESOLUTION AUTHORIZING EXECUTION OF PROFESSIONAL SERVICES
AGREEMENT FOR A RETAIL CONSULTANT/
CATHY MALONEY**

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

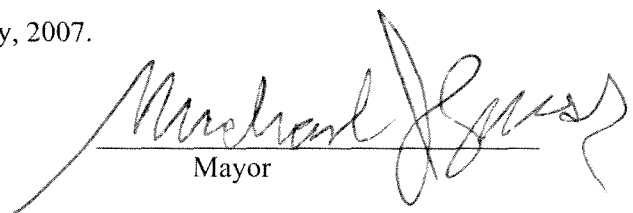
WHEREAS, the subject matter of this resolution pertains to the government and affairs of the City and its residents; and

WHEREAS, the City has determined that it is necessary to obtain the services of a retail consultant to perform retail recruitment activities; and

WHEREAS, the City has determined the proposal provided by Cathy Maloney meets the City's needs for professional services for retail recruitment activities.

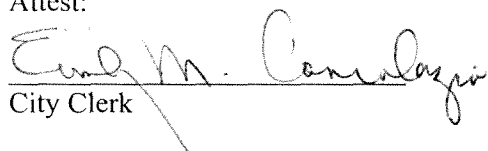
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign and the City Clerk is authorized to attest to an agreement between the City of Wheaton and Cathy Maloney, as attached hereto and made a part thereof.

ADOPTED this 21th day of May, 2007.



Mayor

Attest:



City Clerk

Ayes:

Roll Call Vote:

- Councilwoman Corry
- Councilman Johnson
- Councilman Levine
- Mayor Gresk
- Councilman Mouhelis
- Councilman Prendiville
- Councilman Suess

Nays:

None

Absent:

None

Motion Carried Unanimously

**AGREEMENT BETWEEN THE CITY OF WHEATON, ILLINOIS,
AND CATHY MALONEY – RETAIL CONSULTANT**

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 Cathy Maloney ("Consultant"), 376 Cottage Hill Avenue, Elmhurst, IL 60126

RECITALS

- A. The City desires to enhance its retail recruitment activities in its Downtown; and
- B. The City has determined that it is necessary to obtain the services of a retail consultant to perform retail recruitment activities, as more fully recited in the proposal dated May 7, 2007, from Consultant, a copy of which is attached to, and incorporated in, this contract as Exhibit A; 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 May 7, 2007, 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.

2. *Compensation.* Compensation shall be as provided for in Exhibit A.

3. *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

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- 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.

4. *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 (\$500,000.00) each accident/injury and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) 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 (\$1,000,000.00) 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.

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

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

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

5. *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.

6. *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 contract.

7. *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.

8. *Termination of Contract.* If Consultant fails to perform according to the terms of this contract, the City may terminate this contract 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.

9. *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.

10. *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

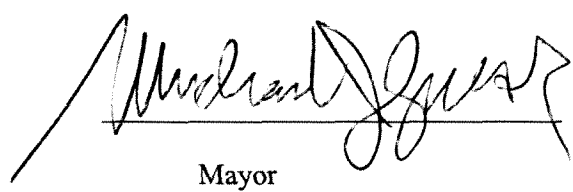
expenses incurred as a result of the action or proceeding, including expert witness and attorney's fees, if so provided in any order of Court.

11. *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 23rd day of May, 2007.

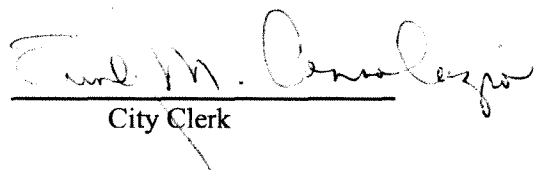
CITY OF WHEATON, an Illinois municipal corporation

By:



Mayor

ATTEST:



City Clerk

Consultant

ATTEST:

May 7, 2007

James P. Kozik, AICP
Director of Planning and Economic Development
City of Wheaton
303 W. Wesley Street
Wheaton, IL 60187

RE: PROPOSAL FOR PROJECT #050107, Retail Consulting

Dear Jim,

I am pleased to submit this proposal to the City of Wheaton for an open ended consulting agreement. Acting as a consultant to the City of Wheaton, my mission is to assist the City of Wheaton and Downtown Wheaton in recruiting and managing leads for retail, restaurant and entertainment venues that will increase the vitality and prosperity of the entire community.

The following tasks have been identified as efforts necessary to accomplish the above mission.

1. Act as the City of Wheaton point person for all retail leads.
2. List all retail leads alphabetically with notes outlining the status of each one to focus on the strongest and assist in educating and managing expectations.
3. Meet with the Downtown Wheaton Association and other groups to understand what local residents are leaving Wheaton to buy and do to determine recruitment needs.
4. Work with existing shop owners who wish to move to a larger or smaller location to keep their business in Wheaton.
5. Create an available property list to be shared with all Wheaton officials and real estate brokers on a regular basis.
6. Follow up with brokers and building owners to encourage retail, attain "throwaway leads" and keep the focus on Wheaton. (Throwaway leads are prospects that contact brokers but do not lease the space. These prospects can be contacted and guided to another Wheaton available site.)
7. Research neighboring communities, periodicals and internet to gather competitive information and contact potential businesses that may want to expand.
8. List new shops and restaurants that open chronologically to track progress.
9. A Monthly Phone/Activity Log will be maintained to keep track of all incoming and outgoing calls and meetings to track all actions chronologically.
10. A Monthly Recruitment Report will be generated to list available properties by area including square footage and broker contact, types of businesses that are "missing" from the area and prospective tenants and leads for the available properties.
11. A Monthly Summary Report will be created to highlight focus activities, progress and recommendations.
12. Monthly review meetings will be conducted to share leads, recruitment ideas and track progress.

I also recommend that the City of Wheaton do the following to assist in our retail recruitment efforts:

1. Create a sign to be placed at available properties encouraging prospective tenants to contact the City of Wheaton/Downtown Wheaton for information and incentives.
2. Implement retention visits to new and select existing retail shops providing Retail Success Tips that will be made available to the City of Wheaton.
3. Clearly define the roles of each organization as it pertains to retail recruitment so we increase communication and avoid duplicate efforts.

This proposed outline should serve as a guideline for Retail Consulting services and can be expanded or altered at any time to suit the needs of the City of Wheaton. The revitalization of a town is an ongoing process that can often be difficult to manage. Business recruitment is best accomplished with a methodical approach carried out by an expert in retail shops and trends. I look forward to contributing to the growth, success and prosperity of the City of Wheaton. Thank you Jim for this opportunity to assist you.

Best regards,

Cathy Maloney, Retail Consultant

CC: Jean'e Garza, Wheaton Downtown Manager

COMPENSATION

Cathy Maloney, Retail Consultant requests compensation for the Project #050107 as follows:

An open-ended agreement to compensate Cathy Maloney at a continuing rate of \$3250.00 per month for consulting services beginning June 1, 2007.

CONTRACT DURATION

The term of this agreement shall be 1 year from the date of acceptance. At the end of 1 year the compensation rate and work scope will be evaluated and if agreed, a new contract will be presented.

PAYMENT TERMS

Consulting activities will be recorded and invoiced monthly and are due for payment within fourteen calendar days. Approved expenses will be reported as needed with invoice and are due for reimbursement within fourteen calendar days.

DISPUTE CLAUSE

There are no other agreements between the parties except those expressly stated herein. Any amendments to this agreement shall be in writing signed by both parties

If this Proposal for Consulting Services from Cathy Maloney is acceptable, please sign and date the appropriate space below and retain (1) copy for your files.

This Proposal shall act as the Project Contract if accepted and signed by both parties. This proposal is subject to review and change if not returned signed within 14 days.

Cathy Maloney
Retail Consultant

James P. Kozik, AICP
Director of Planning and Economic
Development
City of Wheaton
Date _____

Date _____