

RESOLUTION R-23-09

**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

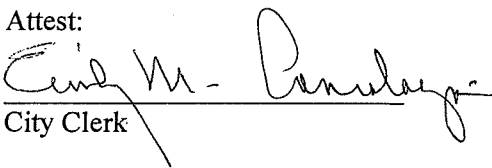
WHEREAS, the City has determined that it is necessary to continue with the services of a retail consultant to perform retail recruitment, retention, and marketing activities; and

WHEREAS, the City has determined the proposal provided by Cathy Maloney meets the City's needs for professional services for retail recruitment, retention, and marketing 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 20th day of April, 2009.

Attest:


City Clerk


Mayor

Roll Call Vote:

Ayes: Councilman Prediville
Councilman Suess
Councilman Johnson
Councilman Levine
Mayor Gresk
Councilman Mouhelis

Nays: None

Absent: Councilwoman Corry

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, retention, and marketing 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, retention, and marketing activities, as more fully recited in the proposal dated April 8, 2009, 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 April 8, 2009, 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
- 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.

5. *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.

6. *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.

7. *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.

8. *Status of Independent Consultant.* Both the City and the Consultant agree that the Consultant will act as an Independent Consultant in the performance of duties under this Agreement. Accordingly, the Independent Consultant shall be responsible for payment all taxes including federal, state, and local taxes arising out of the Consultant's activities in accordance with this Agreement, including by way of illustration but not limitation, federal and state income tax, social security tax, and any other taxes or license fees as may be required under the law. The Consultant further acknowledges under the terms of this Agreement, that it is not an agent, employee, or servant for the City for any purpose, and that it shall not hold itself out as an agent, employee, or servant of the City under any circumstance for any reason. The Consultant is not in any way authorized to make any contract, agreement, or promise on behalf of City, or to create any implied obligation on behalf of the City, and the Consultant specifically agrees that it shall not do so. The City shall have no obligation to provide any compensation or benefits to the Consultant, except those specifically identified in this Agreement. The City shall not have the authority to control the method or manner by which the Consultant complies with the terms of this Agreement.

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.

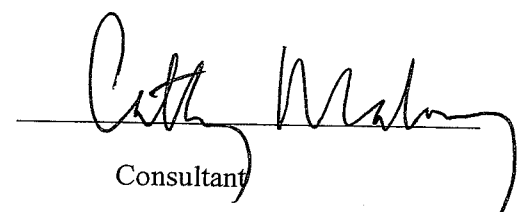
IN WITNESS WHEREOF, the parties have entered into this contract this 20th day of April, 2009.

CITY OF WHEATON, an Illinois municipal corporation

By

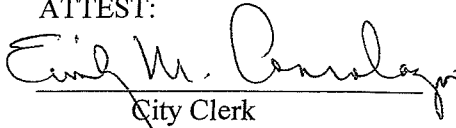


Mayor



Consultant

ATTEST:



City Clerk

ATTEST:
