

RESOLUTION R-56-09

A RESOLUTION AUTHORIZING THE EXECUTION OF A
PROFESSIONAL SERVICES AGREEMENT FOR ALARM MONITORING RADIO
NETWORK

WHEREAS, the City of Wheaton, DuPage County, Illinois, is desirous of engaging the services of a alarm monitoring professional to assist the City with the development and implementation of a municipally owned alarm monitoring radio/wireless network; and

WHEREAS, the City has received and reviewed a proposal from Fire Safety Consultants, Inc. of Elgin, Illinois for alarm monitoring professional services; and

WHEREAS, it is necessary for the City to enter into an agreement with Fire Safety Consultants, Inc. for the purposes of providing assistance to the City with the development and implementation of a municipally owned alarm monitoring radio/wireless network.

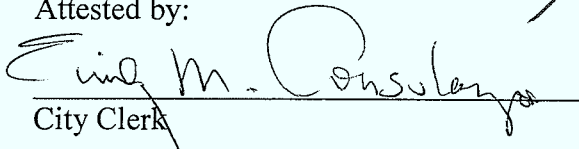
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to execute a professional services agreement between the City of Wheaton and Fire Safety Consultants, Inc. Elgin, Illinois, for development and implementation of a municipally owned alarm monitoring radio/wireless network, and the City Clerk is hereby authorized to attest to the Mayor's signature.

ADOPTED this 8th day of September, 2009.



Mayor

Attested by:



City Clerk

Ayes:

Roll Call Vote

Councilman Scalzo
Councilman Sues
Councilwoman Corry
Councilman Levine
Councilman Mouhelis
Mayor Gresk
Councilman Prendiville

Nays:

None

Absent:

None

Motion Carried Unanimously

**Agreement Between the City of Wheaton, Illinois
and Fire Safety Consultants, Inc.
for Alarm Monitoring Radio Network**

This Agreement is entered into by and between the City of Wheaton, an Illinois municipal corporation ("City"), 303 West Wesley Street, Wheaton, IL 60187, and Fire Safety Consultants, Inc. "Consultant"), 2420 Alft Lane, Elgin, Illinois 60124.

WITNESSETH:

Whereas, the City has determined that it is necessary to obtain the services of a professional alarm monitoring consultant to assist the City with the development and implementation of a municipally owned alarm monitoring radio network; and

Whereas, the Consultant did submit a proposal to the City for the work specified; and

Whereas, the City finds the proposal submitted by the Consultant meeting the needs of the City.

Now, therefore, for in consideration of their mutual promises, terms, covenants, agreements, and conditions recited in this Agreement, the City and the Consultant hereto do hereby agree as follows:

1. *Scope of Services.* The Consultant shall furnish all labor, materials, and equipment to provide the City of Wheaton with development and implementation of a municipally owned alarm monitoring radio network as described in this Agreement and attached Exhibit A. The Consultant represents and warrants that it shall perform the services in a manner consistent with the level of care and skill customarily exercised by other professional Consultants under similar circumstances.

2. *Compensation.* The City shall compensate the Consultant on a monthly basis only after an invoice is received by the City detailing the services performed by hour at a rate of one hundred and twenty-five dollars (\$125.00). The total compensation shall be not exceed one percent (1%) of the Alarm Monitoring Radio Network actual five (5) year purchase and contractual services costs. Said actual costs shall not include any financing costs should the City choose to finance the purchase of the Alarm Monitoring Radio Network.

3. *Additional Services.* The Consultant shall provide only those goods and perform only those services specified in this Agreement and attached Exhibits. In the event the Consultant or the City determines that additional goods and/or services are required to complete the project, such additional goods shall not be provided and/or such additional services shall not be performed unless directed in writing by the City. Terms, frequency, and prices for additional services shall be as mutually agreed upon in writing by the City and the Consultant.

4. *Hold Harmless and Indemnification.* The Consultant shall defend, hold harmless, and indemnify the 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) The Consultant's breach of any term, provision, warranty, standard or requirement of this Agreement including, but not limited to, those provisions of this Agreement pertaining to the Consultant's services; or

- b) The negligence or willful misconduct of the Consultant, its employees, agents, representatives, and subcontractors.

In the event that any claim for indemnification hereunder arises from the negligence or willful misconduct of both the Consultant and the 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.

5. *Insurance.* The 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 the Consultant and, where appropriate, the City against claims and liabilities which may arise out of the services referred to in this Agreement. 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 the 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 the Consultant's owned, non-owned, and leased vehicles which protects the 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) Professional liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per claim covering the Consultant against all sums which the 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 the Consultant or of any person employed by the Consultant or any others for whose actions the 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 the Consultant under this contract.

6. *Compliance with Laws.* The 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 provision of the goods and/or performance of the services required under this Agreement.

7. *Termination of Contract.* If the Consultant fails to perform according to the terms of this Agreement, then the City may terminate this Agreement upon seven (7) days written notice to the Consultant. In the event of a termination, the City shall pay the Consultant for services performed 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 data transmission during regular business hours; or (iii) served by certified or registered mail, return receipt requested, addressed to the address listed in this Agreement with postage prepaid and deposited in the United States mail. Notice served personally and by facsimile data transmission shall be effective upon receipt, and notice served by United States mail shall be effective three (3) business days after mailing.

8. *Discrimination Prohibited.* The 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. The Consultant agrees that it will not deny employment to any person or refuse to enter into any contract for services provided for in this Agreement to be performed on its behalf on the basis of unlawful discrimination as defined in the Illinois Human Rights Act.

9. *Status of Independent Consultant.* Both City and Consultant agree that 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. 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. 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 City, and Consultant specifically agrees that it shall not do so. City shall have no obligation to provide any compensation or benefits to Consultant, except those specifically identified in this Agreement. City shall not have the authority to control the method or manner by which Consultant complies with the terms of this Agreement.

10. *Assignment; Successors and Assigns.* This Agreement may not be assigned by either of the parties hereto without the written consent of all other parties. Upon approval of assignment, this Agreement and the rights, interests and obligations hereunder shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

11. *Recovery of Costs.* In the event the City is required to file any action, whether legal or equitable, to enforce any provision of this Agreement, 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 the Court.

12. *Notification.* All notification under this Agreement shall be made as follows:

If to the Consultant:
Fire Safety Consultants, Inc.
Attn: Warren Olsen
2420 Alft Lane
Elgin, IL 60124

If to the City:
City of Wheaton
Attn: City Clerk
303 W. Wesley Street, Box 727
Wheaton, IL 60189-727

13. *Waiver.* Any failure of either the City or the Consultant to strictly enforce any term, right, or condition of this Agreement shall not be construed as a waiver of such term, right, or condition.

14. *Integration.* The provisions set forth in this Agreement represent the entire agreement between the parties and supersede all prior agreements, contracts, promises, and representations, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement 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.

15. *Non-disclosure.* During the course of the work specified in this Agreement, Consultant may have access to proprietary and confidential information including, but not limited to, methods, processes, formulae, compositions, systems, techniques, computer programs, databases, research projects, resident name and address information, financial data, and other data. Consultant shall not use such information for any purpose other than

described in this Agreement and Exhibits and shall not directly or indirectly disclose such information to any third party without the express written consent of the City.

16. *Severability.* If any provision of this Contract is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance; and in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as part of this agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and legal, valid and enforceable.

17. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to its conflict-of-laws rules.

18. *Validity.* In the event that any provision of this Agreement shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

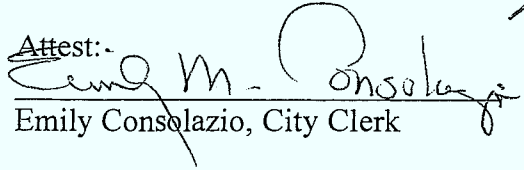
19. *Force Majeure.* No party shall be deemed to be in default or to have breached any provision of this Agreement as result of any delay, failure in performance or interruption of services resulting directly or indirectly from acts of God, acts of civil or military disturbance, or war, which are beyond the control of such non-performing party.

In Witness Whereof, the parties have entered into this Agreement this 8th day of September 2009

City of Wheaton, an Illinois municipal corporation

By 
Michael J. Gresk, Mayor

Attest:-


Emily Consolazio, City Clerk

Fire Safety Consultants, Inc.

By _____
Warren Olsen

Attest

Exhibit A

1. We will conduct an introductory meeting with representatives of the City to thoroughly understand the existing fire alarm connection conditions, and existing and proposed ordinance issues related to fire alarm monitoring within the City.
2. We will conduct an on-site visit(s) to determine space and equipment needs/availability issues related to the locating of headend receiving equipment at its intended location.
3. We will prepare a preliminary time-line for the preparation of the RFP, the issuance of the RFP, the receipt of vendor bids based on the RFP, our review of the bids, and our final report to the City based on our review.
4. We will meet with the equipment manufacturer to discuss the proposed networks to determine the best course of action in developing the networks within the City.
5. We will prepare the bidder performance rules for the RFP process and those which shall be a part of the contract period.
6. We will prepare the technical radio aspects for the systems which will be a part of the RFP.
7. We will not prepare the legal language related to the City's bidding rules and procedures. This is best prepared locally by your City attorney.
8. We will work with your attorney as it relates to required wording for local ordinances related to implementing the radio network.
9. We will attend the City Council meeting when the radio network is discussed and will be available to answer any questions that Council may have as it relates to the networks or the bid submittals.
10. We will work with you and your selected vendor during the Implementation of the networks to assure a successfully transition to radio networks.
11. We will meet with Du-Comm as needed as a part of the design and implementation process.