

RESOLUTION R- 35 -12

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH
THE DOWNTOWN WHEATON ASSOCIATION REGARDING SPECIAL SERVICE AREA
#7 AND APPROVING THE FISCAL YEAR 2012-2013 DOWNTOWN WHEATON
ASSOCIATION BUDGET

WHEREAS, the City of Wheaton, Illinois ("City"), is an Illinois Home Rule Municipality pursuant to the 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

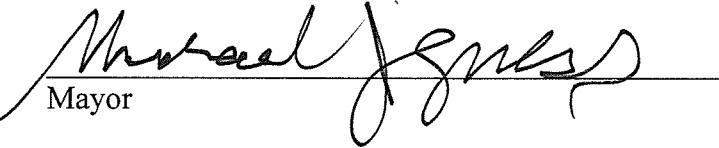
WHEREAS, the subject matter of this Resolution pertains specially to the disposition of funds collected in Special Service Area #7; and

WHEREAS, the City has determined it to be in the best interests of the City and its residents to establish an Agreement with the Downtown Wheaton Association to provide management, maintenance and promotion services to Special Service Area #7; and

WHEREAS, the Downtown Wheaton Association has presented the City with its budget for the fiscal year 2012-2013.

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 the Downtown Wheaton Association dated May 21, 2012, for management, maintenance and promotion services to Special Service Area #7 and approve the Downtown Wheaton Association's budget for fiscal year 2012 – 2013 as attached hereto.

ADOPTED this 21th day of May, 2012.



Michael J. Jones
Mayor

ATTEST:



Sean Bennett
City Clerk

Roll Call Vote

Ayes: Councilman Mouhelis
 Councilman Rutledge
 Mayor Gesk
 Councilwoman Pacino Sanguinetti
 Councilman Scalzo
 Councilman Suess

Nays: Councilwoman Ives

Absent: None

Motion Carried

FIRST AMENDED IMPLEMENTING AGREEMENT

This Agreement is made this 21st day of May, 2012, by and between the CITY OF WHEATON, a municipal corporation existing under the laws of the State of Illinois, having its principal place of business at 303 West Wesley Street, Wheaton, Illinois (hereinafter the "City"), and DOWNTOWN WHEATON ASSOCIATION, a Not-for-Profit corporation organized and existing under the laws of the State of Illinois, having its principal place of business at 129 W. Front Street, Wheaton, Illinois (hereinafter the "Corporation").

WITNESSETH:

WHEREAS, in 2004, the City established Special Service Area Number Six (SSA #6) pursuant to Ordinance No. F-0960, dated November 1, 2004, entitled an "*Ordinance Establishing City of Wheaton Special Service Area Number Six;*" and

WHEREAS, the City, by said Ordinance, imposed an *ad valorem* tax not to exceed ninety-five hundredths of one percent (0.95%) of the assessed value of real property located in SSA #6 in anticipation of and for the purpose of providing management, maintenance, and promotional services in the District; and

WHEREAS, on February 22, 2011, the City and the Corporation entered into an Implementing Agreement whereby the Corporation assumed nonexclusive responsibility for managing, promoting and maintaining the retail environment of the property contained within SSA #6 and the City agreed to contribute SSA #6 funds to the Corporation in the amounts and for the purposes set for in the Implementing Agreement; and

WHEREAS, in 2011, the City undertook consideration of establishment of Special Service Area #7, whose boundaries are generally those of Special Service Area #6, for the purpose of providing continued funding of the activities of the Corporation, as they relate to the

promotion and maintenance of the business environment contained within Special Service Area #7, a map of which District is attached hereto and incorporated herein as Exhibit "A;" and

WHEREAS, following all proceedings required by Illinois law, the City then established Special Service Area #7, pursuant to Ordinance No. F- 1614, dated December 19, 2011, entitled an "*Ordinance Establishing City of Wheaton Special Service Area Number Seven;*" and

WHEREAS, the City, by said Ordinance, imposed an *ad valorem* tax not to exceed forty-five hundredths of one percent (0.45%) of the assessed value of real property located in SSA #7 in anticipation of and for the purpose of providing management, maintenance, and promotional services in the District; and

WHEREAS, the City and the Corporation have engaged in negotiations to continue their working relationship for the benefit of the properties contained within SSA #7, and to extend the SSA #7 funding to the Corporation in the amount of forty-five hundredths of one percent (0.45%) of the assessed value of real property located in SSA #7 for the purposes set forth herein; and

WHEREAS, the parties desire to memorialize their agreement as to the manner of transfer and use of funds derived from the SSA #7 in this First Amended Implementing Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Services: The City recognizes the Corporation as the entity that will provide such services in support of enhancing the business environment within SSA #7. To aid in such purposes, the Corporation may be invited to participate in any planning or economic related activities affecting properties within the SSA #7.

2. Corporation By-Laws: It shall be a material term of this Agreement that the Corporation shall maintain its Not-for-Profit status and corporate purpose as set forth in its organizing documents with the Office of the Illinois Secretary of State. The Corporation's By-Laws, which shall not be amended during the term of this Agreement without the consent of the City Council, are attached hereto and incorporated herein as though fully set forth, as Exhibit "B."

3. City Representative: The City shall appoint or designate to the Corporation a member of the City Council to represent the City as a voting member on the Corporation's Board of Directors pursuant to the Corporation's By-Laws. Additionally, the City shall designate a City staff member to serve as a non-voting member of the Corporation. Both City representatives shall have all of the powers and duties as other voting and non-voting members of the Corporation as set forth in the Corporation By-Laws.

4. Scope of Services: The services to be performed by the City and the Corporation shall be as follows:

a. **The City**

The City shall provide, at no cost other than those included in general or special taxes or as may be presently invoiced to the recipients of such services, such municipal services as are commonly provided from time to time to other commercial areas in the City of Wheaton.

b. **The Corporation**

The Corporation shall provide for any services which, in its reasonable discretion, are deemed necessary for the promotion of and performance of economic development activities to enhance the business environment in SSA #7. Said services shall be itemized in the annual approved budget and may include, but not be limited to: quarterly business meetings/seminars

whose topics shall be for the benefit of the owners of property in SSA #7; dissemination of information regarding City incentive programs (sign, retail and façade grants); assisting in listing information, marketing and leasing of available tenant space in SSA # 7(including business and retention and recruitment activities); with the City's assistance, provide for (as funds are available) permanent physical improvement (*e.g.*, banners, signage, etc.) in SSA #7; and sponsor and promote events commemorating holidays or special programs meant to benefit the properties in SSA #7 in particular, and the City in general. The Corporation shall maintain a website and have a presence via social media. It shall provide information on activities, events, etc. to all property owners in SSA #7.

5. The City's Contribution: For the purpose of permitting the Corporation to provide the services described herein, it shall be the intent of the City to provide to the Corporation the monies derived from taxes collected throughout the life of SSA #7 and the SSA #7 funds captured from Tax Increment Financing Districts #1 and #2 (hereinafter the "Funds") in an amount as determined annually by the City through its Statutory levying process. Said Funds shall be tendered to the Corporation by the City upon receipt of the Funds by the City from the Treasurer of DuPage County. In addition, in aid of the mission of the Corporation as stated in this Agreement, the City shall waive any permit or other City fee required for the conduct of any event (other than for extraordinary police and fire services) sponsored solely by the Corporation for the benefit of the properties within SSA #7, and shall, further, lend aid as deemed necessary and appropriate to further benefit the Corporation and the activities set forth in this Agreement.

6. Fiscal Year: The Corporation shall operate on a fiscal year commencing May 1 and ending April 30 each year.

7. Budget: The Corporation's annual budget shall provide a separate accounting of the use of the Funds (SSA, TIF) and other sources of revenue. No later than January 1st of each year of this Agreement,¹ the Corporation shall provide its approved annual budget to the City for approval by the City Council, prior to expenditure of the Funds. The City shall approve the annual budget no later than March 1, or by that same time, shall alert the Corporation to any objections it may have to the budget such that the Corporation may consider amendment of the budget for City approval.

8. Books and Records: The Corporation shall, for the purpose of verifying the use of the Funds, provide the City with the following documents on a quarterly basis:

- Budget to Actual Report
- Balance Sheet
- Profit/Loss Statement
- Statement of Changes in Equity; and
- Statement of Cash Flows

Additionally, the City shall have the right to inspect and audit the books and records of the Corporation at any reasonable time throughout the term of this Agreement upon forty-eight (48) hours notice to the Corporation.

If, at any time, the City finds that the Corporation has expended Funds in a manner not in keeping with the approved budget, and which has not been previously accounted for through a budget amendment approved by the City, the Corporation shall halt its expenditure of the Funds until it has received notice from the City that it can proceed with budgeted expenditures.

¹ The annual budget for 2012-2013 shall be tendered to the City no later than April 1, 2012.

9. Financial Report: The Corporation shall, no later than ninety (90) days following the close of its fiscal year, provide to the City, in addition to the documents required under Paragraph 8, a financial report prepared by a certified public accountant, which report shall include at least a balance sheet and a statement of operations for the Corporation's fiscal year. A summary of activities or accomplishments aimed at providing management, maintenance and promotion in the District shall be included in the Financial Report.

10. State of Cooperation: The City and Corporation agree, where possible, to cooperate with each other in achieving the purposes set forth herein. Pursuant to this cooperative agreement, the Parties shall develop performance standards by which the Corporation will be annually evaluated. The performance standards will be recited in a written addendum to this agreement, signed by the parties, on or before June 30, 2012.

11. Termination of Agreement: This Agreement shall terminate on the earliest of the following: (a) April 30, 2019; (b) the voluntary or involuntary dissolution of the Corporation; (c) if either party breaches the terms set forth in this Agreement; or (d) Should any order of court invalidate the imposition or payment of taxes imposed or paid to the City from SSA 7 (hereinafter "tax monies") this Agreement shall be void and terminated as of the date of the court order and the City shall have no further obligation to pay any tax monies or other considerations to the Corporation. Tax monies paid by the City to the Corporation prior to any such court order, and not expended by the Corporation shall, upon receipt of the court's order by the Corporation, be held by the Corporation and not expended pending determination of the legal status of those monies.

12. Distribution of Assets: Upon dissolution, or the end term of the termination date of this Agreement, all funds not expended shall be returned to the City.

13. Dissolution Meeting: In the event of the dissolution of the Corporation pursuant to Article IX of the By-Laws, the City shall meet with the Board of Directors of the Corporation for the purpose of discussing the events that will need to occur following the dissolution of the Corporation.

14. Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THE CITY OF WHEATON, a municipal corporation existing under the laws of the State of Illinois.

ATTEST:

By: Michael Jones
Sharon Bennett Flynn
City Clerk

DOWNTOWN WHEATON ASSOCIATION, a Not-for-Profit corporation organized and existing under the laws of the State of Illinois

By: _____

ATTEST:

Secretary

