

RESOLUTION R-2020-70

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE
DOWNTOWN WHEATON ASSOCIATION
(TEMPORARY STORAGE AT COMMUNICATIONS/IT BUILDING)**

WHEREAS, the Downtown Wheaton Association (DWA) is a 501(c)(3) Corporation whose mission is to maximize business opportunities and foster pride in historic Downtown Wheaton; and

WHEREAS, the DWA operates to offer supportive resources, special events, and marketing and promotional initiatives for the Wheaton Downtown District; and

WHEREAS, the DWA's current lease is expiring and desires time to evaluate long-term solutions; and

WHEREAS, the City of Wheaton (City) currently has unused space in the lower level of the City-owned building (Annex Building) located immediately west of City Hall, currently occupied by the City Departments of Information Technology and Communications; and

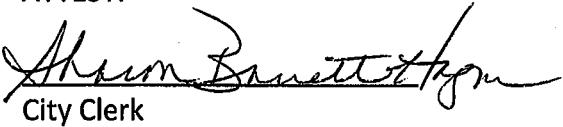
WHEREAS, the DWA has requested the City allow for the storage of certain materials and equipment in the lower level of the Annex Building for a temporary period of time; and

WHEREAS, the City desires to permit the storage of said materials and equipment in the lower level of the Annex building on a temporary basis.

THEREFORE, BE IT AND IT IS HEREBY RESOLVED that the Mayor and City Council of the City of Wheaton, Illinois, that Mayor is authorized to sign and the City Clerk is hereby directed to attest to a Temporary Storage Agreement with the DWA, attached hereto and incorporated herein as Exhibit A.

DATED this 8th day of September 2020.

ATTEST:


Sean Bennett, Jr.
City Clerk

Mayor


Philip J. Sauer

Ayes:

Roll Call Vote:
Councilwoman Robbins
Councilman Rutledge
Councilman Zaruba
Councilman Barbier
Councilwoman Bray-Parker

Councilwoman Fitch
Mayor Suess

Nays:
Absent:

None
None
Motion Carried Unanimously

**TEMPORARY STORAGE AGREEMENT BETWEEN THE CITY OF WHEATON AND THE
DOWNTOWN WHEATON ASSOCIATION**

WHEREAS, the Downtown Wheaton Association (hereinafter referred to as "DWA") has requested space from the City of Wheaton (hereinafter referred to as the "City") to store items owned by DWA; and

WHEREAS, the City currently has space available in the lower level of its Communications/IT Building (hereinafter referred to as "Annex Building") and is willing to allow DWA to use strictly subject to the terms and conditions of this Temporary Storage Agreement.

NOW THEREFORE, based on one dollar (\$1.00) paid in hand by DWA to City, and the terms and conditions of this Agreement, DWA and the City agree as follows:

1. **INCORPORATION OF RECITALS:** The foregoing recitals are incorporated herein as representing the intent of the parties and as substantive covenants and provisions.
2. **AGREEMENT NOT LEASE:** This Agreement is not a lease. It is a temporary storage agreement subject to the City's ability to terminate the Agreement in the sole discretion of the Corporate Authorities. If, for any reason, any court of law interprets this Agreement as a lease it shall have a maximum term of five (5) business days.
3. **WAIVER OF LEASE ASSERTION:** DWA by acceptance of this Agreement, waives any right, claim, action or cause of action to assert that this Agreement constitutes a lease.
4. **TEMPORARY STORAGE GRANTED:** The City hereby grants permission to DWA to temporarily store items owned only by DWA in the area of the lower level of the City's Annex Building designated in Exhibit 1 which is attached hereto and incorporated herein as if fully set forth, (hereinafter referred to as "Temporary Storage Area").
5. **ACCESS:** DWA shall be given one key which operates the interior lock to the Temporary Storage Area and one exterior door key to the Annex Building. The key shall not be duplicated without authority of the City Manager. Use of the Temporary Storage Area by DWA shall be non-exclusive. During the term of this Temporary Storage Agreement, the City retains the right to use any unused portion of the Temporary Storage Area for its own purposes. The City shall maintain full access to the Temporary Storage Area during the term of this Agreement.
6. **MAINTENANCE OF TEMPORARY STORAGE AREA:** DWA shall maintain the areas of the Temporary Storage Area it utilizes in a well ordered and clean condition. DWA shall be exclusively responsible to inventory any and all items placed in the Temporary Storage Area and to secure the temporarily stored items as it deems appropriate, so long as securing the items does not otherwise negatively impact City operations.

7. **CITY NOT BAILEE:** The City shall not be considered a bailee of DWA temporarily stored property. For purposes of this Agreement, DWA covenants and warrants that none of the items it places in the Temporary Storage Area are owned by other persons or entities and that all temporarily stored property is the property of and exclusively owned by DWA.
8. **RELEASE AND WAIVER:** The City shall not be considered a guarantor of security for the DWA temporarily stored items. The City makes no promises, warranties or covenants that it will secure and/or protect the DWA temporary storage items. DWA on behalf of itself, its agents and assigns does hereby fully waive and release the City, its elected officials, employees, agents and assigns from any and all claims, damages, monies, causes of actions, costs, demands, insurance claims, or reimbursements associated with any loss, destruction, theft, casualty, damage, flood, fire, intentional tort, weather condition, act of God, negligent act or omission or other actionable event related to this Agreement or the deposit, removal or storage of the DWA items in the Temporary Storage Area.
9. **INSURANCE:** During the term of this Agreement, the City shall not be obligated to insure any of the DWA items against casualty, damage or loss. During its occupancy of the Temporary Storage Area, DWA shall maintain casualty insurance in an amount equal to the minimum value of its temporarily stored items. DWA's current casualty insurance is as is set forth in the Certificate of Insurance attached hereto and incorporated herein as if fully set forth as Exhibit 2. DWA shall timely increase the limits of the casualty insurance for the full estimated value of the temporarily stored items if their value increases during the DWA storage in the Temporary Storage Area.
10. **ACCESS AND USE:** DWA shall have access to the temporarily stored items in conformance with procedures established by the City Manager. The City Manager may change and modify those procedures as necessary to facilitate DWA access to its temporarily stored items while securing and protecting the City.
11. **INDEMINIFICATION:** DWA, on behalf of itself, agents and assigns, hereby agrees to the greatest extent permitted by Illinois law to defend, indemnify and hold harmless the City, its elected and appointed officials, employees, agents and assigns from any and all claims, demands, actions, causes of action, injuries, death, judgments, settlements and costs (including reasonable attorney's and expert consultant fees), related to the presence of the DWA temporarily stored items in or on the City's property while being brought in, stored in, or removed from the Temporary Storage Area.
12. **TERMINATION:** The Corporate Authorities, by its City Manager, may terminate this Agreement upon fifteen (15) days written notice to DWA. Upon termination, DWA shall have thirty (30) business days to remove the DWA temporarily stored items from the Temporary Storage Area. Any items not removed within the thirty (30) day period may then be removed by the City from the Temporary Storage Area and transferred, disposed of or destroyed in any manner whatsoever deemed appropriate by the City Manager in his sole discretion without any liability whatsoever to DWA. DWA shall reimburse the City for any costs associated with

the City's removal, disposal or destruction of the temporarily stored property from the Temporary Storage Area after the thirty (30) days.

13. **DAMAGE TO CITY PROPERTY:** DWA, on behalf of itself, its agents, volunteers, and assigns, hereby agrees to fully pay the costs of any damage to City property resulting from this Agreement, the placement, removal and storage of temporarily stored items in the Temporary Storage Area or the presence of its employees, agents and volunteers within City property as a result of this Agreement or the temporary stored items.
14. **EMERGENCY CONTACT INFORMATION:** In case of emergency, the following shall be contacted: City - City Manager, 630-260-2011, Police Department Front Desk, 630- 260-2161, and William Schultz, 630-661-6437. Non-emergency contacts shall be as follows: City - City Clerk, 630-260-2012; DWA – Elle Withall, 630-682-0633.
15. **GENERAL:** The descriptive headings of various sections or parts of this Agreement are for convenience only. They shall not affect the meaning or construction or be used interpretation of this Agreement or any of its provisions. This Agreement shall be construed in accordance with the laws of the State of Illinois and subject to the exclusive jurisdiction and venue of the Eighteenth Judicial Circuit, DuPage County, Illinois. Nothing in this Agreement shall be construed against any party on the basis that that party was the drafter. This Agreement supersedes all prior Agreements and understandings, both written and oral, of the parties with respect of the subject matter hereof. It may only be modified or amended with the express written approval of both parties dated subsequent to the date of this Agreement. This Agreement may not be assigned, and no sub-storage agreement may be granted without the express written consent of the City.



Elle Withall, Executive Director
Downtown Wheaton Association

Date: 9/14/2020



Philip J. Suess, Mayor
City of Wheaton

Date: 9/9/20

ATTEST:

ATTEST:

