

RESOLUTION R-02-12

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH WHEATON HISTORIC PRESERVATION COUNCIL (TEMPORARY STORAGE AT COMMUNICATIONS/IT BUILDING)

WHEREAS, the Wheaton Historic Preservation Council (WHPC) is a 501(c)(3) Corporation whose mission is to inspire an appreciation of and preserve the heritage of Wheaton and its connection to national and world history; and

WHEREAS, the WHPC operates a permanent repository for artifacts and historic documents; and

WHEREAS, a portion of the WHPC's artifacts and historic documents are currently being stored at the former Hubble Middle School and rented space in Glen Ellyn with both locations no longer available to store said artifacts and historic documents; and

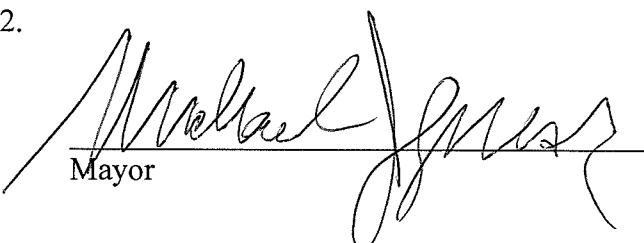
WHEREAS, the City currently has unused space in the lower level of the City owned building located immediately west of City Hall currently occupied by the City Departments of Information Technology and Communications; and

WHEREAS, the WHPC has requested the City allow for the storage of said artifacts and historic documents in the lower level of the Communications/IT Building; and

WHEREAS, the City desires to permit the storage of said artifacts and historic documents in the lower level of the Communications/IT Building on a temporary basis.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to execute a Temporary Storage Agreement with the Wheaton Historic Preservation Council.

ADOPTED this 3rd day of January, 2012.



Michael J. Morris
Mayor

ATTEST:



Aaron Bennett Hagan
City Clerk

Roll Call Vote:

Ayes: Councilman Scalzo
Councilman Suess
Councilwoman Ives

Councilman Mouhelis
Councilman Rutledge
Mayor Gesk
Councilwoman Pacino Sanguinetti

Nays: None

Motion Carried Unanimously

TEMPORARY STORAGE AGREEMENT BETWEEN THE CITY OF WHEATON AND THE WHEATON HISTORIC PRESERVATION COUNCIL

WHEREAS, the Wheaton Historic Preservation Council (hereinafter referred to as "WHPC") has requested space from the City of Wheaton (hereinafter referred to as the "City") to store items owned by WHPC; and

WHEREAS, the City, currently has space available in the lower level of its Communications/IT Building which it is willing to allow WHPC 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 WHPC to City, and the terms and conditions of this Agreement, WHPC 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. **ADDITIONAL CONSIDERATION:** In addition to the consideration described above WHPC shall, if directed by the City Manager, no less than two times per year, display Wheaton historic items in any area owned by the City and designated by the City Manager for a period of not less than 30 days per display period.
3. **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.
4. **WAIVER OF LEASE ASSERTION:** WHPC by acceptance of this Agreement waives any right, claim, action or cause of action to assert that this Agreement constitutes a lease.
5. **TEMPORARY STORAGE GRANTED:** The City hereby grants permission to WHPC to temporarily store items owned only by WHPC in the area of the lower level of the City's Communications/IT Building designated in Exhibit 1 which is attached hereto and incorporated herein as if fully set forth, (hereinafter referred to as "Temporary Storage Area").
6. **ACCESS:** WHPC shall be given one key which operates the interior lock to the Temporary Storage Area and one exterior door key to the Communications/IT Building. Use of the Temporary Storage Area by WHPC 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.
7. **MAINTENANCE OF TEMPORARY STORAGE AREA:** WHPC shall maintain the areas of the Temporary Storage Area it utilizes in a well ordered and clean condition. WHPC 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.
8. **CITY NOT BAILEE:** The City shall not be considered a bailee of WHPC temporarily stored property. For purposes of this Agreement, WHPC 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 WHPC.

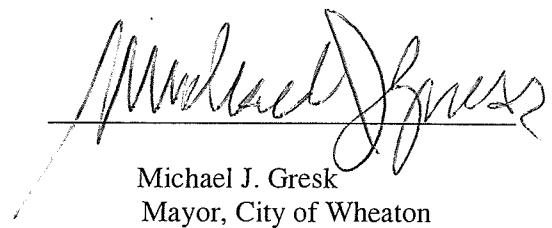
9. **RELEASE AND WAIVER:** The City shall not be considered a guarantor of security for the WHPC temporarily stored items. The City makes no promises, warranties or covenants that it will secure and/or protect the WHPC temporary storage items. WHPC on behalf of itself, its agents and assigns does hereby 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 WHPC items in the Temporary Storage Area.
10. **INSURANCE:** During the term of this Agreement the City shall not be obligated to insure any of the WHPC items against casualty, damage or loss. During its occupancy of the Temporary Storage Area WHPC shall maintain casualty insurance in an amount equal to the minimum value of its temporarily stored items. WHPC'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. WHPC 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 WHPC storage in the Temporary Storage Area.
11. **ACCESS AND USE:** WHPC 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 WHPC access to its temporarily stored items while securing and protecting the City.
12. **INDEMNIFICATION:** WHPC 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 WHPC temporarily stored items in or on the City's property while being brought in, stored in, or removed from the Temporary Storage Area.
13. **TERMINATION:** The Corporate Authorities, by its City Manager, may terminate this Agreement upon fifteen (15) days written notice to WHPC. Upon termination WHPC shall have ninety (90) business days to remove the WHPC temporarily stored items from the Temporary Storage Area. Any items not removed within the ninety (90) 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 WHPC. WHPC 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 ninety (90) days.
14. **DAMAGE TO CITY PROPERTY:** WHPC 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.

15. **EMERGENCY CONTACT INFORMATION:** In case of emergency the following shall be contacted: City – City Manager, 630-260-2011 and Police Department Front Desk, 630-260-2161; WHPC – Center for History, 630-871-6601 and William Schultz, 630-661-6437. Non emergency contacts shall be as follows: City – City Clerk, 630-260-2012; WHPC – Alberta Adamson, 630-665-8366 and William Schultz, 630-661-6437.

16. **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.

Wheaton Historic Preservation Council, by
its authorized representative

Date: _____



Michael J. Gresk
Mayor, City of Wheaton

Date: 1-4-12

EXHIBIT 1

