

RESOLUTION NO. R-23-04

A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT
BETWEEN THE CITY OF WHEATON AND LIGHTHOUSE TECHNOLOGIES AND
MANAGEMENT SOLUTIONS, INC. FOR TECHNOLOGY NEEDS ASSESSMENT

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 will be completing a major construction effort involving the Wheaton Public Library which includes an addition and renovation of existing spaces; and

WHEREAS, the City determined that it is necessary to obtain the services of a technology consultant to provide a review of technology needs for the Wheaton Public Library addition and renovation project; and

WHEREAS, Lighthouse Technologies and Management Solutions, Inc., Consultant, has been previously engaged by the City through its Library Board to provide technology assistance and as a result is most familiar with the current technologies provided for the Wheaton Public Library; and

WHEREAS, the Consultant has the facilities, personnel, resources and expertise to perform the services necessary to develop a technology needs assessment for the Wheaton Public Library.

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 Lighthouse Technologies and Management Services, Inc.

ADOPTED this 19th day of April, 2004.

Mayor



ATTEST:

Emily M. Connolly
City Clerk

Roll Call Vote:

Ayes: Councilman Mouhelis
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilwoman Johnson
Councilman Mork

Nays: None
Absent: Councilman Bolds

Motion Carried Unanimously

Published: April 20, 2004

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**AGREEMENT BETWEEN THE CITY OF WHEATON, ILLINOIS (CITY)
AND LIGHTHOUSE TECHNOLOGIES AND MANAGEMENT
SOLUTIONS, INC. (CONSULTANT) WHEATON PUBLIC
LIBRARY TECHNOLOGY NEEDS ASSESEMENT**

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 Lighthouse Technologies and Management Solutions, Inc. ("Consultant"), an Illinois corporation, 418 West Fifth Avenue, Naperville, Illinois.

RECITALS

Whereas, the City will be completing an addition and renovation to the existing Wheaton Public Library at 225 North Cross Street; and

Whereas, the City determined that it is necessary to obtain the services of a technology consultant to provide a review of technology needs for the Wheaton Public Library addition and renovation project; and

Whereas, Lighthouse Technologies and Management Solutions, Inc., Consultant, has been previously engaged by the City through its Library Board to provide technology assistance and as a result is most familiar with the current technologies provided for the Wheaton Public Library; and

Whereas, the Consultant has the facilities, personnel, resources and expertise to perform the services necessary to develop a technology needs assessment for the Wheaton Public Library.

NOW, THEREFORE, in consideration of the forgoing, and of the mutual covenants, terms and conditions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. *Scope of Services.* Consultant shall perform the services described in the Proposal to City of Wheaton for Wheaton Public Library Technology Consulting Services ("Proposal") dated February 5, 2004 which is attached to and incorporated in this Agreement 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.* The City will pay a fee to the Consultant based upon an hourly rate as specified in the Proposal for work identified in Exhibit A and shall not exceed FOURTEEN THOUSAND EIGHT HUNDRED NINTY-FIVE DOLLARS (\$14,895). This not-to-exceed fee is based upon hours determined by the Consultant to be appropriate and adequate to develop a technology needs assessment for the Wheaton Public Library. Payment will be made for only those services completed by the Consultant upon receipt by the City of a monthly statement describing those completed services in sufficient detail as determined by the City.

3. *Additional Services.* Consultant shall perform only those services specified in this Agreement. In the event Consultant and the City determine that additional services are required to complete the project, such additional services shall not be performed unless directed in writing by the City. Payment for additional services shall be as mutually agreed upon in writing by the Parties.

4. *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 Agreement 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 Agreement 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.

5. *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 Agreement 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 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 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 Consultant's owned, non-owned, and leased vehicles which protects 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) Umbrella or excess liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence bodily injury/property damage combined single unit. The umbrella or excess coverage shall apply in excess of the limits stated in subparagraphs B and C above, and shall either include an endorsement naming the City as an additional insured or provide "following form" coverage for the primary insurance.

6. *Evidence of Insurance.* Consultant shall furnish the City with a certificate of insurance and, upon the request of the City, copies of all insurance policies and endorsements evidencing the coverages stated above. The insurance certificates and policies shall provide that no cancellation or modification of the policies shall occur without at least thirty (30) days prior written notice to the City. Consultant shall not commence any services under this Agreement until evidence of the required insurance is received and approved by the City.

7. *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 Agreement.

8. *Independent Contractor.* The relationship of Consultant to the City shall be that of an independent contractor, and no principal/agent or employer/employee relationship will be created by this Agreement. Consultant is an independent vendor and shall have no authority, express or implied, to act for or bind the City by virtue of anything contained in this Agreement. Nothing contained within this Agreement shall be deemed or construed by the City or Consultant or by any third party to create the relationship of a partnership or a joint venture. Consultant agrees that it, its agents, servants, employees and subcontractors, shall not, in any manner whatsoever, by their actions or deeds commit the City to any obligations irrespective of the nature thereof, and shall not at any time or for any purpose be deemed employees or contractors of the City.

9. *Termination of Contract.* If Consultant fails to perform according to the terms of this Agreement, the City may terminate this Agreement 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.

10. *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.

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

12. *Assignment.* Neither part shall delegate nor assign its duties under this Agreement without the prior written consent of the other party, and each party hereby binds itself to the authorized successors and assigns of the other party in respect to all covenants of this Agreement. This Agreement will inure to the benefit of and shall be binding upon the parties hereto and their authorized successors and assigns.

13. *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.

14. *Notification.* Except for notification requirements specified in Section 9 of this Agreement, all notices under this Agreement shall be in writing and shall be deemed delivered upon the expiration of five (5) days following mailing by certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses:

If to the Consultant: Lighthouse Technology and Management Services
418 West Fifth Avenue
Naperville, Illinois 60563
Attn: Louis Anasinis, President and CEO

If to the City: City of Wheaton
City Clerk
303 West Wesley Street
Wheaton, Illinois 60187

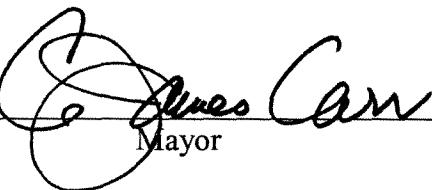
15. *Integration.* The provisions set forth in this contract represent the entire agreement between the parties and supersede all prior agreements, promises, and representations, as it is the intent of the parties to provide for a complete integration within the terms of this contract. This contract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

16. *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.

IN WITNESS WHEREOF, the parties have entered into this Agreement this 19th day of April, 2004.

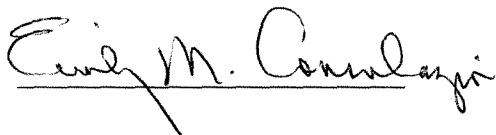
City of Wheaton, an Illinois municipal corporation

By


James Carr

Mayor

ATTEST:


Cindy M. Connolly

Lighthouse Technologies and Management Solutions, Inc.
an Illinois corporation

By

ATTEST:

