

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT FOR CONSULTANT SERVICES (hereinafter referred to as the "Agreement"), made this 20 day of January, 2016 (the "Effective Date"), by and between the Wheaton Park District, an Illinois unit of local government with its principal place of business at 102 E. Wesley Drive, Wheaton, Illinois 60187 (the "Park District") and Vision96, LLC, an Illinois limited liability corporation, with its principal place of business at 9600 W. Bryn Mawr Avenue, 6th Floor, Rosemont, Illinois 60018 (the "Consultant"). The Park District and the Consultant are hereinafter sometimes individually referred to as a "Party" or collectively as "Parties."

RECITALS

WHEREAS, the Park District desires the Consultant to perform certain technology consulting services for the Park District, as detailed in the Consultant's Scope of Services dated January 6, 2016, attached hereto and incorporated herein as **Exhibit A** (the "Scope of Services"); and

WHEREAS, the Park District wishes to retain the Consultant and the Consultant wishes to provide the services to the Park District described hereunder based on the terms and conditions set forth in this Agreement.

WITNESSETH

NOW THEREFORE, in exchange for consideration, the receipt and sufficiency of which is hereby expressly acknowledged by the Parties, the Park District and the Consultant agree as follows:

1. **Consulting Services.** The Park District hereby hires Consultant and Consultant hereby agrees to provide consulting services, upon the terms and conditions set forth in this Agreement, and the Scope of Services (the "Services").

2. **Contract Documents.** The Contract Documents consist of this Agreement between the Park District and the Consultant, the Scope of Services and addenda issued prior to the execution of this Agreement, if any, and any modifications made in writing and endorsed by the Parties after the execution of this Agreement. All of the terms, conditions and specifications contained in the Contract Documents are incorporated herein. In the event of conflict between this Agreement and the Scope of Services, this Agreement shall control.

3. **Term.** This Agreement shall commence on the Effective Date and terminate on December 31, 2016, unless terminated earlier in accordance with Section 10 of this Agreement.

4. Performance of Work. The Consultant agrees to perform faithfully, industriously, and to the best of the Consultant's ability, experience, and talents, in accordance with generally accepted standards of professional skill and care among recognized industry experts engaged in similar services, all of the duties described in the Contract Documents or as otherwise required by the express and implicit terms of this Agreement, to the reasonable satisfaction of the Park District. The Consultant shall perform all of its duties hereunder according to the Park District's requirements and procedures and in compliance with all applicable federal, state and local laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. The Park District shall be the sole judge of whether the Consultant's duties are performed satisfactorily.

5. Payment for Services.

a. The Park District agrees to compensate the Consultant for providing the Services on a time and materials basis, or as otherwise agreed to writing by the Parties in accordance with the Scope of Services. Consultant's costs shall not exceed twenty (20) hours of support per month without prior written consent of the Park District.

b. The Consultant shall invoice the Park District on a monthly basis for all Services provided by the Consultant to the Park District for the preceding month. Payment of said invoices, and any late payment penalties, shall be governed by the applicable provisions of the Local Government Prompt Payment Act (50 ILCS 505 *et seq.*) ("Prompt Payment Act").

c. Prior to final payment to Consultant, the following conditions shall be fulfilled by Consultant:

i. Consultant shall have made, or caused to have been made, all corrections and completion in the Consultant's Services which are required to remedy any defects therein or obtain compliance with this Agreement. Consultant shall, if required by Owner, deliver a certificate to Owner certifying such matters Owner may reasonably require.

ii. Consultant will provide Park District releases and waivers of lien from Consultant and Consultant's consultants and sub-consultants for the performance of the Services.

iii. Consultant shall have delivered to Owner all deliverables required by this Agreement.

d. Any provision of this Agreement to the contrary notwithstanding, the Park District shall not be obligated to make any payment to the Consultant hereunder for any one or more of the following reasons:

i. Consultant is in default of any of its obligations under this Agreement;

ii. Any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement; or

iii. Consultant has failed to make payments promptly to consultants or other third parties used in connection with the services for which Park District has made payment to Consultant; or

iv. For any other reason in accordance with the Prompt Payment Act.

6. Park District Responsibilities. The Park District agrees to provide all materials and other information necessary to or requested by the Consultant reasonably necessary for the Consultant to complete the delivery of the Services by the Consultant in a timely manner.

7. Designated Representatives. The Park District hereby designates Michael Bernard as the Park District's representative ("Park District's Representative") for all matters for the Park District under this Agreement and with respect to the administration of this Agreement. The Park District's Representative shall be available to the Consultant at all reasonable times for consultation with the Consultant. The Consultant shall confirm to the Park District in writing any decision made by the Park District's Representative. The Consultant hereby designates Adam Nirenberg as the Consultant's Representative ("Consultant's Representative") for all matters for the Consultant under this Agreement and with respect to the Services to be performed by the Consultant for the Park District. The Consultant's Representative shall be available to the Park District at all reasonable times for consultation with the Park District's Representative. The Park District may conclusively rely on the decisions made by the Consultant's Representative, including those which modify this Agreement. Either Party may change its Representative under this Agreement by giving notice to the other Party as provided hereunder.

8. Ownership of Instruments of Service. Any and all documents, including but not limited to, any plans, notes, analysis, and any other documents prepared by the Consultant in the performance of its Services under this Agreement ("Instruments of Service") is work done for hire and ownership of such Instruments of Service vests in the Park District. The Park District retains exclusive property rights including all common law, statutory, federal and other reserved rights in the Instruments of Services, including copyrights.

9. Other Consultants. Park District reserves the right to let other contracts for professional services in connection with the Project. Consultant shall cooperate fully with any other consultants retained by Park District and shall properly coordinate the Services with those services provided by other consultants.

10. Termination. This Agreement may be terminated or suspended by the Park District, in whole or in part, for convenience and without cause upon five (5) days written

notice. In the event of such termination, the Consultant will be paid for all approved Services rendered to the date of termination, and upon such payment, all obligations of the Park District to the Consultant under this Agreement shall cease. Furthermore, in the event of such termination, the Consultant shall promptly deliver to the Park District all Instruments of Service generated in the performance of its services under this Agreement up to and including the date of termination.

The Park District shall have the right to terminate this Agreement immediately and without notice upon the Consultant's default of its obligations hereunder or its violation of any federal or state laws, or local regulations or ordinances. Upon termination due to the Consultant's breach of this Agreement, the Consultant shall pay the Park District all reasonable costs incurred by the Park District due to said breach, including the cost of obtaining replacement services. In the event of such termination, payment to the Consultant of any sums earned to the date of such termination shall be in full satisfaction of any and all claims by the Consultant against the Park District under this Agreement, and acceptance of sums paid by the Consultant shall constitute a waiver of any and all claims that may be asserted by the Consultant against the Park District. Furthermore, in the event of such termination, the Consultant shall promptly deliver to the Park District all Instruments of Service generated in the performance of their Services under this Agreement up to and including the date of termination.

11. Insurance. The Consultant shall obtain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance. The Consultant shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 for each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location. CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured Agreement (including the tort liability of another assumed in a business Agreement). The Park District shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the Park District. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

B. Professional Liability Insurance. The Consultant shall maintain professional liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 for each wrongful act arising out of the performance or failure to perform professional services and \$2,000,000 aggregate.

C. Business Auto and Umbrella Liability Insurance. The Consultant shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 for each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos. Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

D. Workers Compensation Insurance. The Consultant shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 for each accident for bodily injury by accident or for each employee for bodily injury by disease. If the Park District has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Agreement, the Consultant waives all rights against the Park District and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Consultant's work.

E. General Insurance Provisions

(1) Evidence of Insurance. Prior to beginning work, the Consultant shall furnish the Park District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. All certificates shall provide for 30 days' written notice to the Park District prior to the cancellation or material change of any insurance referred to therein. Written notice to the Park District shall be by certified mail, return receipt requested. Failure of the Park District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the Park District to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Consultant's obligation to maintain such insurance. The Park District shall have the right, but not the obligation, of prohibiting the Consultant from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the Park District. Failure to maintain the required insurance may result in termination of this Agreement at the Park District's option. The Consultant shall provide certified copies of all insurance policies required above within 10 days of the Park District's written request for said copies.

(2) Acceptability of Insurers. For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Park District has the right to reject insurance written by an insurer it deems unacceptable.

(3) **Cross-Liability Coverage.** If the Consultant's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

(4) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to the Park District. At the option of the Park District, the Consultant may be asked to eliminate such deductibles or self-insured retentions as respects the Park District, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

(5) **Subconsultant.** The Consultant shall cause each subconsultant employed by Consultant to purchase and maintain insurance of the type specified above. When requested by the Park District, Consultant shall furnish copies of certificates of insurance evidencing coverage for each subconsultant.

12. **Indemnification.** To the fullest extent permitted by law, the Consultant, its officers, directors, employees, volunteers and agents shall indemnify and hold harmless the Park District and its officers, officials, employees, volunteers and agents from and against all claims, suits, damages, causes of action, judgment, losses, costs and expenses, including but not limited to reasonable legal fees (attorney's and paralegals' fees and court costs), arising from or in connection with the Services performed by the Consultant, its officers, directors, employees, volunteers and agents under this Agreement, including but not limited to any accident, injury, damage, property loss or theft, except to the extent caused by the negligence or omission of the Park District, or arising from or in any way connected with any act, omission, wrongful act or negligence of the Consultant, its officers, director, employees, volunteers and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to the Park District. The Consultant shall similarly protect, indemnify and hold and save harmless the Park District, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to reasonable legal fees, incurred by reason of the Consultant's breach of any of its obligations under, or the Consultant's default of, any provision of this Agreement.

13. **No Liability.** The Park District shall not be responsible or liable for any injury, damages, loss or costs sustained or incurred by any person including, without limitation the Consultant's employees, or for any damage to, destruction, theft or misappropriation of any property, relating in any way, directly or indirectly, to the Consultant's Services and obligations under this Agreement. The Park District shall not be liable for acts or omissions of the Consultant or any of the Consultant's employees, subcontractor's, agents or other persons purporting to act at the direction or request, on behalf, or with the implied or actual consent, of the Consultant.

14. Independent Contractor. The relationship between the Consultant and the Park District is that of an independent contractor. The Consultant shall supply all personnel, equipment, materials, and supplies at its own expense, except as specifically set forth herein. The Consultant shall not be deemed to be, nor shall it represent itself as, employees, partners, or joint venturers of the Park District. The Consultant is not entitled to workers' compensation benefits or other employee benefits from the Park District and is obligated to directly pay federal and state income tax on money earned under this Agreement.

15. No Third Party Beneficiary. This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities, defenses and/or privileges of the Park District and/or the Consultant, and/or any of their respective officials, officers and/or employees.

16. Laws, Permits, Approvals and Licenses. The Consultant shall comply with all applicable codes, laws, ordinances and regulations of the Park District, the City of Wheaton, DuPage County, the State of Illinois, and the Federal Government. The Consultant shall, at its sole cost and obligation, be responsible for obtaining all permits and licenses required to perform its duties under this Agreement.

17. Choice of Law and Venue. This Agreement is governed by the laws of the State of Illinois. Any suit or action arising under this Agreement shall be commenced in the Circuit Court of DuPage County, Illinois. In any suit or action arising under this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs of litigation.

18. No Waiver. Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all Parties. The failure of claimant to enforce the provisions of this Agreement, or require performance by opponent of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of claimant to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement.

19. Non-Assignment. This Agreement is non-assignable in whole or in part by the Consultant, and any assignment shall be void without prior written consent of the Park District.

20. Entire Agreement. This Agreement contains the entire agreement between the Parties and no statement, promise or inducement made by either Party to the agency of either Party that is not contained in this written Agreement shall be valid or binding.

21. Amendment. No amendment or modification shall be made to this Agreement unless it is in writing and signed by both Parties.

22. Headings. The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Agreement nor in any way affect this Agreement.

23. Notice. All notices, demands, requests, exercises and other communications required or permitted to be given by either Party under this Agreement shall be in writing and shall be deemed given when such notice has been personally delivered, sent by facsimile or deposited in the United States mail, with postage thereon prepaid, addressed to each Party at the following addresses:

If to Consultant: Adam Nirenberg
Vision96, LLC
9600 W. Bryn Mawr Avenue, 6th
Fax:

If to the Park District: Executive Director
Wheaton Park District
102 E. Wesley
Wheaton, Illinois 60187
Fax: (630) 665-5880

24. Severability. The invalidity of any section, paragraph or subparagraph of this Agreement shall not impair the validity of any other section, paragraph or subparagraph. If any provision of this Agreement is determined to be unenforceable, such provision shall be deemed severable and the Agreement may be enforced with such provision severed or as modified by such court.

IN WITNESS WHERE OF the Parties hereto have set their respective hands and seals the day and year first above written.

WHEATON PARK DISTRICT

By: 
President
Board of Park Commissioners

Attest:

By: 
Secretary
Board of Park Commissioners

526918

VISION96, LLC

By: 
Title: President

Attest:

By: _____
Title

Exhibit A
to Agreement For Consultant Services
V96 – Wheaton Park District Work Order 16-01

Work Scope: Vision96, LLC (V96) will support the Wheaton Park District with ongoing executive technology leadership, decision making, vendor management, support of management and daily park district operations regarding technology.

Work Order 16-01 consists of the following support for the Wheaton Park District:

Virtual CIO Services

- Provide thought leadership and expertise regarding technology
- Meet with Wheaton Park District staff to facilitate communication internally and externally regarding technology services and operations at least twice a month.
- Meet on an as needed basis with technology staff and service providers.
- Manage and Monitor technology service providers on an as needed basis.
- Evaluate technology solutions and service providers on an as needed basis.
- Vendor selection and negotiation within the operational guidelines and in support of the Wheaton Park District Executive Staff, Board and policies.
- Communicate, escalate and facilitate technology based actions on an as needed basis

Fee Structure: All work will be completed on a T&M basis. Wheaton Park District has the ability to evaluate if retainer, monthly fee or any aspects of the above specifications need to be changed on an ongoing basis. Larger, longer project work will be outlined in advance with summary and/or detail description in writing including projected T&M scope and price.

Estimated Cost Cap = Vision96 costs will not exceed 20 hours of support per month without the express written consent of Wheaton Park District.

Submitted:

Vision96, LLC

By:

Adam F. Nirenberg
Adam Nirenberg, President, as its agent

3/31/16
Date Signed

Approved:

Wheaton Park District

By:

Jane Hodgkinson
Mike Benard, Executive Director, as its agent

1/20/16
Date Signed

1/22/16

Exhibit A



create. discover. **play.**



VISION96

9600 Bryn Mawr Avenue, Rosemont, Illinois 60018 USA

Date: January 6, 2016

Topic: Description of Vision96 Services

EXECUTIVE SUMMARY

Vision96, LLC is a technology consulting company. We provide thought leadership and professional services in the specific areas that touch upon information technology. These include Executive and Management level activities, Project Management, request for information - request for proposal writing and project running, technology selection and procurement activities. As are most technology firms, we have the ability to help our client's procurement of technology products and services directly or indirectly.

We are excited to continue the ongoing relationship between Vision96 and Wheaton Park District. Accompanied by this Executive Summary is a Work Order outlining ongoing management services VCIO (Virtual) Services. 2015 was an active year helping the park district in several areas. We oversaw successful projects including an IT Staff RFP selection process, IT Staff Transition, Telecommunications Audit, Telecommunications Optimization activities netting \$38,000 in annualized savings, Phone System Selection Project, several technology improvements, as well as telecommunications and technology vendor management activities. Many additional improved outcomes will become apparent for 2016.

While 2015 was active, we are looking forward to continuing our work providing strong improvement and stability activities. With the ongoing effort of our firm the park district is likely to see improved communications within and outside of the user community and their constituents. Vision96 is proud to be employed by Wheaton Park District.

As always, Vision96 is available to discuss further as necessary.

Sincerely,

Adam Nirenberg

Vision96 LLC CLIENT SUPPORT AGREEMENT

Vision96, LLC. ("V96") will provide consulting support to Wheaton Park District ("Client") on a Time and Materials basis. The hourly rates are:

- Principal Consultant - \$150/hour
- Senior Consultant - \$100/hour
- Consultant - \$85/hour
- Associate Consultant - \$70/hour
- Data Input - \$25/hour

1. Personnel; Invoices: As necessary, V96 will provide a blend of personnel to meet task objectives and to minimize the potential cost to Client of any large/complex tasks. V96 will provide invoices on a monthly basis. Payment terms are net 30 days.

2. Travel; Support: V96 will charge, at cost, for any "project associated" travel (including travel, meals, and lodging) to locations outside of the Chicago area.

3. Savings, Credits & Refunds: If V96 identifies any savings, credits and/or refunds not previously expressly identified in writing or obtained by Client shall pay V96 a 50% fee for procurement of each credit, refund and/or identified savings. Savings can constitute but not limited to invoicing or contractual inconsistencies and errors.

4. Exhibits: Additional terms and conditions, if any, are on any Exhibit(s) attached hereto and signed by both parties. If any inconsistency exists between what is contained in this Agreement and what is contained on such Exhibit(s), such Exhibit(s) supersede what is contained in this Agreement.

5. Duration: This Agreement is valid until terminated by either party upon providing written notice to the other party. However, Client will pay V96 for work done prior to such termination.

6. Confidentiality and Cooperation: V96 and Client agree to maintain in strict confidence all information received concerning its business practices. Client shall provide to V96 all information necessary for V96 to perform its work.

7. Miscellaneous: The undersigned persons warrant that this Agreement contains the related party's correct legal name and that the undersigned persons read, understood, agreed to its terms, and have the authority to sign this Agreement on behalf of such parties. This Agreement shall apply to Client's successors and/or assigns. All modifications hereto must be in writing and signed by both parties. Receipt of a facsimile copy of either party's signature shall be treated as an original for all purposes. E-mails that clearly identify the sender shall be treated as original documents signed by hand. Captions are for convenience only. Illinois law—other than for choice of law, which shall not be used to impose the law of any state other than Illinois—governs this Agreement and its interpretation.

Vision96 LLC CLIENT SUPPORT AGREEMENT

Vision96, LLC (V96) is pleased to present this proposal to Wheaton Park District for technology and telecommunications consulting support. The primary objective of this support is to assist Wheaton Park District with technology expense reviews, technology cost reduction, technology and vendor selection.

A. Personnel. Vision96, LLC ("V96") will provide consulting support by various personnel as needed to accomplish agreed upon tasks for Client. Adam Nirenberg (Principal Consultant) is the assigned Project Manager for this support. He may be assisted by another staff member to ensure timely completion of all tasks assigned.

B. Scope of Work.

Specific tasks must be identified in writing using a work (task) order form which includes the work scope and the estimated maximum cost (i.e., cost cap). Before implementation of any specific tasks, V96 will work with Wheaton Park District to determine the complete scope of work. V96 will not proceed with any task until Wheaton Park District provides written approval.

C. Savings Not Guaranteed; Estimates. Although V96 does not guarantee savings, V96 will estimate (but such estimates do not become guarantees) savings when applicable and other benefits to client for all actions recommended. V96 will provide Wheaton Park District with a "cost savings/credits" summary periodically (e.g., quarterly) or on an "as needed" basis.

D. Signatures. For purposes of this Agreement [including Exhibit(s), modifications, work (task) orders, waivers, termination notices, and other documents related to this Agreement], a facsimile signature shall suffice, and facsimiles and e-mails that clearly identify the sender shall be treated as if original documents signed by hand.

E. Entire Agreement; Modifications; Waivers; Etc. All prior and/or contemporaneous agreements, understandings, and/or representations—whether oral and/or written—are merged into this Agreement (along with any attached Exhibit(s) thereto signed by both parties). Such Agreement and such attached, signed Exhibit(s) shall be collectively referred to in this paragraph as "The Contract". If not expressly set forth in The Contract, no course of dealing, usage of trade, and/or course of performance shall be interpreted as contradicting any term of The Contract. Neither The Contract nor any provision thereof may be waived, modified, amended, discharged, and/or terminated except by a written instrument signed by the Party against whom the enforcement of such waiver, modification, amendment, discharge, and/or termination is sought and then only to the extent set forth in such instrument. Unless done in such a signed writing, such waiver, modification, amendment, discharge, and/or termination shall be utterly void. The Contract represents the entire agreement and/or understanding between the parties hereto with respect to the subject matter of The Contract and supersedes all other prior and/or contemporaneous agreements and/or understandings, written and/or verbal, that the parties hereto may have had. No other restrictions, statements, promises, obligations, assurances, representations, warranties, terms, conditions, covenants, and/or undertakings (other than those expressly set forth or referred to in The Contract) exist between the parties that affect The Contract.

Submitted: Vision96, LLC

By:

Adam Nirenberg, President, as its agent

Date Signed

Approved: Wheaton Park District

By:

Mike Benard, as its agent

Date Signed