

RESOLUTION R-26-16

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH
WHEATON BANK & TRUST, INC. FOR BANKING SERVICES**

WHEREAS, the City of Wheaton, Illinois (the "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

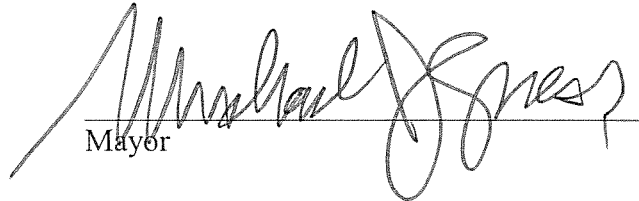
WHEREAS, the City conducted a request for proposal process and received and reviewed four submittals for banking services; and

WHEREAS, it is determined by the City that the proposal received from Wheaton Bank & Trust, Inc. meets the City's needs; and

WHEREAS, it is necessary for the City to enter into an agreement with Wheaton Bank & Trust, Inc. for the purposes of providing banking services to the City.

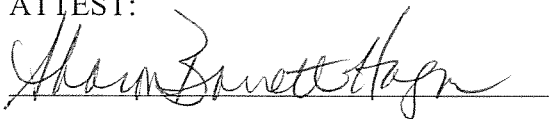
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to execute a services agreement between the City of Wheaton and Wheaton Bank & Trust, Inc. for banking services, and the City Clerk is hereby authorized to attest to the Mayor's signature.

ADOPTED this 6th day of June, 2016



Mayor

ATTEST:



City Clerk

City Clerk

Roll Call Vote

Ayes: Councilman Sues
Councilwoman Fitch
Councilman Prendiville
Councilman Rutledge
Mayor Gresk
Councilman Saline
Councilman Scalzo

Nays: None

Absent: None

Motion Carried Unanimously

This number must appear on
all invoices and documents.
No. C 36870

Agreement Between the City of Wheaton, Illinois
and Wheaton Bank & Trust Company
for Banking Services

Banking Services

This Agreement is entered into by and between the City of Wheaton, an Illinois municipal corporation ("City"), 303 West Wesley Street, Wheaton, IL 60187, and Wheaton Bank & Trust Company, ("Banking Service Provider"), 100 N. Wheaton Avenue, Wheaton, IL 60187.

WITNESSETH:

Whereas, the City has determined that it is strategic to hire a qualified Financial Institution to provide services (hereinafter the "Work") consistent with the attached Exhibit A [Exhibit A is the Request for Proposal] which is incorporated herein and is fully set forth; and

Whereas, the Banking Service Provider has submitted a proposal attached Exhibit B [Exhibit B is the Proposal] for this work, and

Whereas, the City finds the proposal submitted by the Banking Service Provider meets the City's service requirements for the Work.

Now, therefore, in consideration of their mutual promises, terms, covenants, agreements, and conditions recited in this Agreement, the City and the Banking Service Provider hereto do hereby agree as follows:

- 1. Scope of Service: The Recital paragraphs are incorporated herein as substantive terms and conditions of this Agreement and as representing the intent of the Parties. The Banking Service Provider shall furnish all labor, materials, and equipment to provide and perform the Work. The Banking Service Provider represents and warrants that it shall perform the Work in a manner consistent with the level of care and skill customarily exercised by other Banking Service Providers under similar circumstances.*
- 2. Compensation: The City shall compensate the Banking Service Provider according to the terms of the Banking Service Provider's proposal which is attached hereto as Exhibit B.*
- 3. Waivers of Lien: The City reserves the right to require waivers of lien before payment where the City deems it to be in its best interest to do so.*
- 4. Term of Agreement: This Agreement shall become effective upon the latter of the date accepted and signed by the City and the date accepted and signed by the Banking Service Provider. It shall be in effect until the City deems the work complete and acceptable. This contract may be subject for renewal per the terms set forth in Exhibit A, Section 2.III Contract Term.*
- 5. Time is of the Essence: Time is of the essence in the performance of all the terms and conditions of this agreement. Failure to meet stated terms may result in Liquidated Damages.*

6. **Additional Services:** *The Banking Service Provider shall provide only the Work specified in this Agreement and attached Exhibits. In the event the Banking Service Provider or the City determines that additional goods and/or services are required to complete the Work, such additional goods shall not be provided and/or such additional services shall not be performed unless authorized in writing by the City via the attached Change Order Form [Exhibit C will be the Change Order Form.]. Terms, frequency, and prices for additional services shall be confirmed in writing via the Change Order Form by the City and the Banking Service Provider.*
7. **Integration:** *The provisions set forth in this Agreement represent the entire agreement between the parties and supersede all prior agreements, contracts, promises, and representations, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement 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 via change order or amendment. No course of conduct before, or during the performance of this Agreement, shall be deemed to modify, change or amend this Agreement.*
8. **Waiver:** *Any failure of either the City or the Banking Service Provider to strictly enforce any term, right, or condition of this Agreement whether implied or expressed, shall not be construed as a waiver of such term, right, or condition.*
9. **Compliance with Laws:** *The Banking Service Provider 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 provision of the goods and/or performance of the services required under this Agreement.*
10. **Freedom of Information Act:** *The Banking Service Provider shall, within twenty four hours of the City's request, provide any documents in the Banking Service Provider's possession related to the contract which the City is required to disclose to a requester under the Illinois Freedom of Information Act. This provision is a material covenant of this Agreement. Banking Service Provider agrees to not apply any costs or charge any fees to the City regarding the procurement of records required pursuant to a FOIA request. Should Banking Service Provider request that City utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, Banking Service Provider agrees to pay all costs connected therewith (such as reasonable attorney's and witness fees, filing fee, and any other expenses) to defend the denial of the request. The defense shall include, but not be limited to, challenged or appealed denials of FOIA requests to either the Illinois Attorney General or a court of competent jurisdiction. Banking Service Provider agrees to defend, indemnify, and hold harmless City, and agrees to pay all costs connected therewith (such as reasonable attorney's and witness fees, filing fees and any other expenses) to defend any denial of a FOIA request by Banking Service Provider's request to utilize a lawful exemption to City.*
11. **Discrimination Prohibited:** *The Banking Service Provider 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. The Banking Service Provider agrees that it will not deny employment to any person or refuse to enter into any contract for services provided for in this Agreement to be performed on its behalf on the basis of unlawful discrimination as defined in the Illinois Human Rights Act.*
12. **Status of Independent Banking Service Provider:** *Both City and Banking Service Provider agree that Banking Service Provider will act as an Independent Banking Service Provider in the performance of the Work. Accordingly, the Independent Banking Service Provider shall be responsible for payment all taxes including federal, state, and local taxes arising out of the Banking Service Provider's activities in accordance with this agreement, including by way of illustration but not limitation, federal and state income tax, social security tax, and any other taxes or license fees as may be required under the law. Banking Service Provider further acknowledges under the terms of this Agreement, that it is not an agent, employee, or servant for the City for any purpose, and that it shall not hold itself out as an agent, employee, or servant of the City under any circumstance for any reason. Banking Service Provider is not in any way authorized to make any contract, agreement, or promise on behalf of City, or to create any implied obligation on behalf of City, and Banking Service Provider specifically agrees that it shall not do so. City shall have no obligation to provide any compensation or benefits to Banking Service Provider, except those*

specifically identified in this Agreement. City shall not have the authority to control the method or manner by which Banking Service Provider complies with the terms of this Agreement.

13. **Assignment; Successors and Assigns:** *Neither this Agreement, nor any part, rights or interests hereof, may be assigned, to any other person, firm or corporation without the written consent of all other parties. Upon approval of assignment, this Agreement and the rights, interests and obligations hereunder shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.*
14. **Non-disclosure:** *During the course of the Work, the Banking Service Provider may have access to proprietary and confidential information including, but not limited to, methods, processes, formulae, compositions, systems, techniques, computer programs, databases, research projects, resident name and address information, financial data, and other data. The Banking Service Provider shall not use such information for any purpose other than described in this Agreement and Exhibits and shall not directly or indirectly disclose or disseminate such information to any third party without the express written consent of the City.*
15. **Hold Harmless and Indemnification:** *The Banking Service Provider shall defend, hold harmless, and indemnify the City, its directors, officers, employees, agents, and elected officials, in whole or in part 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) *The Banking Service Provider's breach of any term, provision, warranty, standard or requirement of this Agreement including, but not limited to, those provisions of this Agreement pertaining to the Banking Service Provider's services; or*
 - b) *The negligence or willful misconduct of the Banking Service Provider, its employees, agents, representatives, and sub Banking Service Providers.*

In the event that any claim for indemnification hereunder arises from the negligence or willful misconduct of both the Banking Service Provider and the 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.

16. **Patents:** *The successful Banking Service Provider agrees to protect, defend, and save the City harmless against any demand for payment for the use of any patented material process, article, or device that may enter into the manufacture and construction, or copyrighted material that form a part of the Work covered by the contract.*
17. **Termination of Contract:** *If the Banking Service Provider fails to perform according to the terms of this Agreement, then the City may terminate this Agreement upon thirty (30) days written notice to the Banking Service Provider. In the event of a termination, the City shall pay the Banking Service Provider for services performed as of the effective date of termination, less any sums attributable, directly or indirectly, to Banking Service Provider's breach. The written notice required under this paragraph shall be either (i) served personally during regular business hours; (ii) served by facsimile data transmission during regular business hours; ; (iii) by e-mail or (iv) served by certified or registered mail, return receipt requested, addressed to the address listed in this Agreement with postage prepaid and deposited in the United States mail. Notice served personally and by facsimile data transmission shall be effective upon receipt, and notice served by United States mail shall be effective three (3) business days after mailing.*
18. **Cancellation for Unappropriated Funds:** *The obligation of the City for payment to a Banking Service Provider is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.*
19. **Default.** *In case of default by the Banking Service Provider, the City will procure articles or service from other sources and hold the Banking Service Provider responsible for any excess cost incurred as provided for in Article 2*

of the Uniform Commercial Code. The City reserves the right to cancel the whole or any part of the contract if the Banking Service Provider fails to perform any of the provisions in the contract, fails to make delivery within the time stated, becomes insolvent, suspends any of its operations, or if any petition is filed or proceeding commenced by or against the Seller under any State or Federal law relating to bankruptcy arrangement, reorganization, receivership, or assignment for the benefit of creditors. The Banking Service Provider will not be liable to perform if situations arise by reason of strikes, acts of God or the public enemy, acts of the City, fires or floods.

20. **Force Majeure:** No party hereto shall be deemed to be in default or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of services resulting directly or indirectly from acts of God, acts of civil or military disturbance, or war, which are beyond the control of such non-performing party.
21. **Other Entity Use:** The Banking Service Provider may, upon mutual agreement, permit any municipality or other governmental agency to participate in the contract under the same prices and terms and conditions, if agreed to by both the Banking Service Provider and the other municipality or governmental agency.
22. **Notification:** All notification under this Agreement shall be made as follows:

If to the Banking Service Provider:
Wheaton Bank and Trust Company
Attn: Robert Paszczak
100 N. Wheaton Avenue
Wheaton, IL 60187
Fax # (630)690-7715
e-mail rpaszczak@wheatonbank.com

If to the City:
City of Wheaton
Attn: City Clerk
303 W. Wesley Street, Box 727
Wheaton, IL 60187-0727
Fax # (630) 260-2038
e-mail rlehnhardt@wheaton.il.us

23. **Severability:** If any provision of this Contract is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance; and in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as part of this agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and legal, valid and enforceable.
24. **Recovery of Costs:** In the event the City is required to file any action, whether legal or equitable, to enforce any provision of this Agreement, the City 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 the Court.
25. **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. Exclusive jurisdiction for any litigation involving any aspect of this Agreement shall be in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.

In Witness Whereof, the parties have entered into this Agreement this 6th day of June, 2016.

City of Wheaton, an Illinois municipal corporation

By: Michael Jones Date: 6/6/16

Title: MAYOR

Attest:

Sharon Barrett-Hagen
Sharon Barrett-Hagen, City Clerk

Wheaton Bank & Trust Company

By: [Signature] Date: 7/2/16

Title: PRESIDENT & CEO

Attest:

Susan Floett

