

**RESOLUTION R-27-16**

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH  
FOSTER & FOSTER, INC FOR ACTUARIAL 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

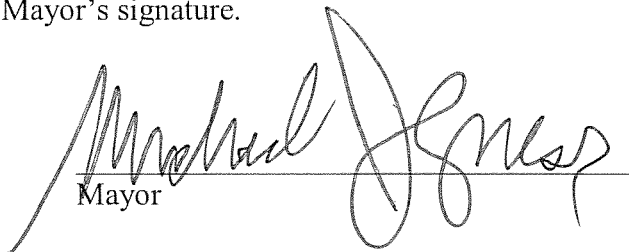
**WHEREAS**, the City conducted a request for proposal process and received and reviewed five submittals for actuarial services; and

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

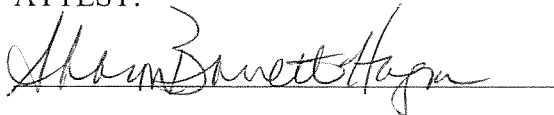
**WHEREAS**, it is necessary for the City to enter into an agreement with Foster & Foster, Inc. for the purposes of providing actuarial services to the City.

**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 professional services agreement between the City of Wheaton and Foster & Foster, Inc. for actuarial services, and the City Clerk is hereby authorized to attest to the Mayor's signature.

ADOPTED this 6<sup>th</sup> 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 36871

Agreement Between the City of Wheaton, Illinois  
Foster & Foster, Inc.  
for Actuarial Services

*Actuarial 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 Foster & Foster, Inc. ("Professional Service Provider"), One Oakbrook Terrace, Suite 720, Oakbrook Terrace, IL 60181.*

WITNESSETH:

*Whereas, the City has determined that it is strategic to hire a qualified actuary 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 Professional 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 Professional 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 Professional 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 Professional Service Provider shall furnish all labor, materials, and equipment to provide and perform the Work. The Professional 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 Professional Service Providers under similar circumstances.*
- 2. Compensation: The City shall compensate the Professional Service Provider according to the terms of the Professional Service Provider's proposal which is attached hereto as Exhibit B.*
- 3. 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 Professional Service Provider. It shall be in effect until the city deems the work complete and acceptable. Renewal options are only available if services have been deemed acceptable by the Project Manager and the Procurement Officer and an agreed upon price can be negotiated.*
- 4. Time is of the Essence: Time is of the essence in the performance of all the terms and conditions of this agreement.*
- 5. Additional Services: The Professional Service Provider shall provide only the Work specified in this Agreement and attached Exhibits. In the event the Professional 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 by the City and the Professional Service Provider.

6. **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.*
7. **Waiver:** *Any failure of either the City or the Professional 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.*
8. **Compliance with Laws:** *The Professional 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.*
9. **Freedom of Information Act:** *The Professional Service Provider shall, within twenty four hours of the City's request, provide any documents in the Professional 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. Professional 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 Professional Service Provider request that City utilize a lawful exemption under FOIA in relation to any FOIA request thereby denying that request, Professional 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. Professional 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 Professional Service Provider's request to utilize a lawful exemption to City.*
10. **Status of Independent Contractor:** *Both City and Professional Service Provider agree that Professional Service Provider will act as an Independent Contractor in the performance of the Work. Accordingly, the Independent Professional Service Provider shall be responsible for payment all taxes including federal, state, and local taxes arising out of the Professional 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. Professional 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. Professional 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 Professional Service Provider specifically agrees that it shall not do so. City shall have no obligation to provide any compensation or benefits to Professional Service Provider, except those specifically identified in this Agreement. City shall not have the authority to control the method or manner by which Professional Service Provider complies with the terms of this Agreement.*
11. **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.*
12. **Non-disclosure:** *During the course of the Work, the Professional 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, financial data, and other data. The Professional 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.

13. Hold Harmless and Indemnification: The Professional 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 Professional 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 Professional Service Provider's services; or
- b) The negligence or willful misconduct of the Professional Service Provider, its employees, agents, representatives, and sub Professional Service Providers.

In the event that any claim for indemnification hereunder arises from the negligence or willful misconduct of both the Professional 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.

14. Patents: The successful Professional Service Provider agrees to protect, defend, and save the City harmless against any demand for payment for the use of any copyrighted material that form a part of the Work covered by the contract.

15. Termination of Contract: If the Professional 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 Professional Service Provider. In the event of a termination, the City shall pay the Professional Service Provider for services performed as of the effective date of termination, less any sums attributable, directly or indirectly, to Professional 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.

16. Cancellation for Unappropriated Funds: The obligation of the City for payment to a Professional 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.

17. Default. In case of default by the Professional Service Provider, the City will procure articles or service from other sources and hold the Professional 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 Professional 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 Professional 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.

18. 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.

19. Other Entity Use: The Professional 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 Professional Service Provider and the other municipality or governmental agency.

20. Notification: All notification under this Agreement shall be made as follows:

If to the Professional Service Provider:

Foster & Foster, Inc.

Attn: Jason L. Franken

One Oakbrook Terrace, Suite 720

Oakbrook Terrace, IL 60181

Fax #: (239) 481-0634

e-mail: [jason.franken@foster-foster.com](mailto:jason.franken@foster-foster.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](mailto:rlehnhardt@wheaton.il.us)

21. 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.

22. 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.

23. 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 6<sup>th</sup> day of June, 2016.

City of Wheaton, an Illinois municipal corporation

By: Michael J. Gries Date: 6/16/16

Title: MAYOR

Attest:

Sharon Barrett-Hagen  
Sharon Barrett-Hagen, City Clerk

Foster & Foster, Inc.

By: Jana Paul Date: 6/14/2016

Title: Principal

Attest: