

RESOLUTION R-05-16

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH MARQUETTE ASSOCIATES, INC. FOR INVESTMENT CONSULTANT 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

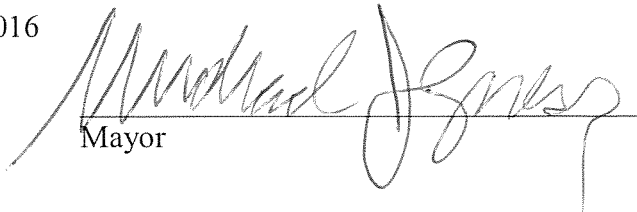
WHEREAS, the City conducted a request for proposal process and received and reviewed eight submittals for investment consultant services; and

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

WHEREAS, it is necessary for the City to enter into an agreement with Marquette Associates, Inc. for the purposes of providing investment consultant services to the City.

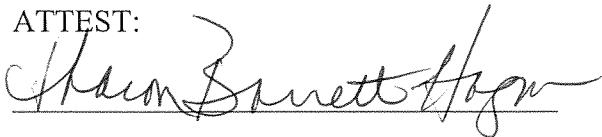
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to execute a professional services agreement between the City of Wheaton and Marquette Associates, Inc., for investment consulting services, and the City Clerk is hereby authorized to attest to the Mayor's signature.

ADOPTED this 19th day of January, 2016



Mayor

ATTEST:



City Clerk

City Clerk

Roll Call Vote

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

Nays: None

Absent: Councilman Rutledge

Motion Carried Unanimously

This number must appear on
all invoices and documents

No. C 36830

**Agreement Between the City of Wheaton, Illinois
and Marquette Associates, Inc.
for Investment Consultant Services**

This Agreement is entered into by and between the City of Wheaton, a Home Rule Unit of Local Government (hereafter referred to as "City"), 303 West Wesley Street, Wheaton, IL 60187, and Marquette Associates, Inc., an Illinois Corporation, 180 N. LaSalle St., Suite 3500, Chicago, IL 60601. (hereafter referred to as "Consultant").

WITNESSETH:

WHEREAS, the City seeks a qualified firm to provide investment consulting services and portfolio performance monitoring services (hereinafter the "Work") for the City's operating and capital funds; and

WHEREAS, the City solicited request for proposals for such services as specified in **Exhibit A**; and

WHEREAS, the Consultant submitted a proposal to the City for such services **Exhibit B**; and

WHEREAS, the City finds that the Consultant is a qualified firm and the proposal submitted meets the City's service requirements for the Work.

WHEREAS, on the 19th day of January, 2016, the City selected the Consultant for the Work specified in this Agreement and Exhibits.

NOW, THEREFORE, in consideration of foregoing recitals and the mutual covenants, promises, conditions hereinafter set forth in this Agreement, the City and the Consultant hereto have agreed and do hereby agree as follows:

1. **Scope of Services.** The Recital paragraphs are incorporated herein as substantive terms and conditions of this Agreement and as representing the intent of the Parties. The Consultant shall furnish all services and materials to provide and perform the Work. The Consultant 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 Consultants under similar circumstances. The Services defined in the request for proposal to be performed by the Consultant includes the following:
 1. Systems Review. The Consultant shall conduct an initial, comprehensive review of the current investment program. The review will include the following:
 - (a) an assessment of the program's current design;
 - (b) a review of the current portfolio structure;
 - (c) an evaluation of the current investment manager lineup; and a written report containing their observations and recommendations for the program, where appropriate.
 2. Update and Development of Investment Policy and Guidelines. The Consultant shall meet with the representatives of the City to update and develop written investment policies and guidelines that will assist the corporate authorities in establishing policies and guidelines to govern future management

of the City's assets. In formulating such policies and guidelines, the Consultant will consider the following:

- (a) Current financial condition of the City and its future plans;
- (b) The City's liabilities, liquidity and distribution needs;
- (c) Level and nature of contributions, if any;
- (d) Desired investment policy and risk profile;
- (e) The risk tolerances and preferences of the City Council; and
- (f) Quantitative asset allocation analysis and portfolio optimization techniques.

3. Selection of Investment Manager(s). The Consultant shall assist the City in selecting an investment manager(s). The Consultant's assistance will consist of:
 - (a) Analyzing investment manager(s) recommended by the City and performing complete due diligence on each such investment manager(s);
 - (b) Recommending new investment manager(s) to the City, as necessary;
 - (c) Discussing and reviewing with the City the qualifications of potential investment manager(s);
 - (d) Interviewing potential investment manager(s) and reviewing with the City the results of such interview(s); and
 - (e) Organizing final presentations by the investment manager(s) and assisting the City in the final selection of an investment manager(s).
 4. Performance Evaluation. On a calendar-quarter basis, the Consultant shall calculate the rates of return for each component of the City's investment program. The Consultant shall prepare quarterly written reports that will include:
 - (a) An analysis and summary of the most recent events in the financial markets;
 - (b) An analysis of the allocation of City's investments across asset classes and/or managers and changes in that allocation; and
 - (c) A review of the investment results of all managers, funds and asset classes in the context of their objectives and benchmarks, along with specific commentary on factors affecting performance.
 5. Meetings. The Consultant shall meet with the City, at a minimum, on a quarterly basis to discuss the investment program.
 6. General Consultation. The Consultant shall accommodate all reasonable requests for information and/or analysis of a general nature.
 7. Information and Statements. The City shall provide or cause to be provided to the Consultant information, including periodic financial statements and periodic written statements of assets and transactions, as the Consultant may reasonably request from time to time in the performance of its Services, and the Consultant may rely on such reports without further inquiry or review unless the information contains obvious errors. The Consultant agrees that it and its officers and employees will treat as confidential any information received from the City except as may be required to be disclosed (i) in connection with performing its Services to be rendered hereunder or (ii) by law or legal process. It is understood and agreed that the Consultant, in the preparation of its reports, does not assume responsibility for the accuracy of any information furnished by the City, the selected investment advisor(s) or any other person, firm or corporation.
2. **Compensation**. The City shall compensate the Consultant according to the terms of the Consultant proposal which is attached hereto as **Exhibit C**.

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 Consultant. It shall be in effect for three (3) years and shall be subject for two (2) possible one year renewals.

4. **Additional Services.** The Consultant shall provide only the Work specified in this Agreement and attached Exhibits. In the event the Consultant 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. Terms, frequency, and prices for additional services shall be as mutually agreed upon in writing by the City and the Consultant.

5. **Hold Harmless and Indemnification.** The Consultant 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 Consultant'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 Consultant's services; or
- b) The negligence or willful misconduct of the Consultant, its employees, agents, representatives, and subcontractors.

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

6. **Insurance.** The Consultant and each of its agents, subcontractors, and consultants hired to perform the Work shall purchase and maintain during the term of this contract insurance coverage which will satisfactorily insure the Consultant and, where appropriate, the City against claims and liabilities which may arise out of the Work. 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) each accident/injury and five hundred thousand dollars (\$500,000) each employee/disease.
- b) Commercial general liability insurance protecting the 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) each occurrence bodily injury/property damage combined single limit and one million dollars (\$1,000,000) 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 on a primary and non contributory basis.
- c) Professional liability insurance with limits of not less than ten million dollars (\$10,000,000) per occurrence covering the Consultant against all sums which the Consultant may become obligated to pay on account of any liability arising out of the performance of the professional services for the City under this contract when caused by any negligence act, error, or omission of the Consultant or

of any person employed by the Consultant or any others for whose actions the Consultant is legally liable. The professional liability insurance shall remain in force for a period for not less than four (4) years after the completion of the services to be performed by the Consultant under this contract.

- d) Umbrella or excess liability insurance coverage of not less than five million dollars (\$5,000,000) per occurrence.
- e) Directors & Officers liability insurance coverage of not less than three million dollars (\$3,000,000) per occurrence.

7. **Compliance with Laws.** The 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 provision of the goods and/or performance of the services required under this Agreement.
8. **Freedom of Information Act:** The Consultant shall, within twenty four (24) hours of the City's request, provide any documents in the Consultant'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.
9. **Termination of Contract.** If the Consultant fails to perform according to the terms of this Agreement, then the City may terminate this Agreement for cause upon fourteen (14) days written notice to the Consultant. Cause shall include but not be limited to: the Consultant 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 Consultant under any State or Federal law relating to bankruptcy arrangement, reorganization, receivership, or assignment for the benefit of creditors. The City may also terminate this Agreement without cause upon thirty (30) days written notice. In the event of a termination, the Consultant shall refund any prepaid fees to the City on a pro-rata basis for services performed as of the effective date of termination. 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; or (iii) 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.
10. **Cancellation for Unappropriated Funds.** The obligation of the City for payment to a Consultant 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.
11. **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.

12. **Status of Independent Consultant.** Both City and Consultant agree that Consultant will act as an Independent Consultant in the performance of the Work. Accordingly, the Independent Consultant shall be responsible for payment all taxes including federal, state, and local taxes arising out of the Consultant'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. Consultant 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. Consultant 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 Consultant specifically agrees that it shall not do so. City shall have no obligation to provide any compensation or benefits to Consultant, except those specifically identified in this Agreement. City shall not have the authority to control the method or manner by which Consultant complies with the terms of this Agreement.

13. **Assignment.** Neither this Agreement, nor any part, rights or interests hereof, may be assigned.

14. **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 reasonable attorney's fees, if so provided in any order of the Court.

15. **Waiver.** Any failure of either the City or the Consultant to strictly enforce any term, right, or condition of this Agreement shall not be construed as a waiver of such term, right, or condition.

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

If to the Consultant:
Marquette Associates, Inc.
Attn: Brian Wrubel
180 N. LaSalle St., Suite 3500
Chicago, IL 60601

If to the City:
City of Wheaton
Attn: City Clerk
303 W. Wesley Street, PO Box 727
Wheaton, IL 60187-0727

17. **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. No course of conduct before, or during the performance of this Agreement, shall be deemed to modify, change or amend this Agreement.

18. **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.

19. *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 _____ day of _____.

City of Wheaton, an Illinois municipal corporation

By: _____ Date: _____

Title: _____

Attest:

Sharon Barrett-Hagen, City Clerk

Marquette Associates, Inc.

By: _____ Date: _____

Title: _____

Attest:

Exhibit C
Schedule of Fees
Period: From February 1, 2016 to February 1, 2019

Marquette Associates, Inc. has agreed to provide the City with consulting services as described in Section 1 Scope of Services of the Investment Consulting Agreement dated January 19, 2016. For purposes of Section 2, Marquette's annual fee for the above-referenced period shall be \$30,000. Marquette will review its fee agreement with the City upon expiration of this Schedule.

Marquette's fees are billed quarterly, in advance, and are payable immediately.

ACKNOWLEDGED:

Marquette Associates, Inc.

By: _____
Brian Wrubel
President/C.E.O.

Date: _____

City of Wheaton

By: _____

Date: _____

Name: _____

Title: _____

