

RESOLUTION R-27-15

A RESOLUTION AUTHORIZING THE EXECUTION OF A
FINANCIAL SERVICES AGREEMENT FOR DOWNTOWN STRATEGIC AND
STREETSCAPE PLAN

WHEREAS, the City of Wheaton, DuPage County, Illinois, is desirous of engaging the services of a professional to assist the City with the review and evaluation of funding tools that are applicable and available to the City with respect to the various projects listed in the Downtown Strategic and Streetscape Plan; and

WHEREAS, the City has received and reviewed a proposal from Ehlers and Associates, Inc., Lisle, Illinois for professional services; and

WHEREAS, it is necessary for the City to enter into an agreement with Ehlers and Associates, Inc. for the purposes of providing assistance to the City with the review and evaluation of funding tools.

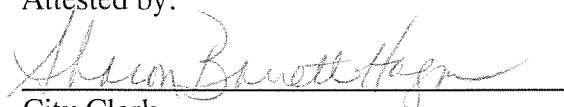
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to execute a professional services agreement between the City of Wheaton and Ehlers and Associates, Inc., Lisle, Illinois, for review and evaluation of funding tools that are applicable and available to the City with respect to the various projects listed in the Downtown Strategic and Streetscape Plan, and the City Clerk is hereby authorized to attest to the Mayor's signature.

ADOPTED this 18th day of May, 2015.



Mayor

Attested by:



City Clerk

Roll Call Vote

Ayes:	Councilman Suess Councilwoman Fitch Councilman Prendiville Councilman Rutledge Mayor Gresk Councilman Saline
Nays:	None
Absent:	Councilman Scalzo

Motion Carried Unanimously

**Agreement Between the City of Wheaton, Illinois
and Ehlers and Associates, Inc.
for Financial 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 Ehlers and Associates, Inc. ("Consultant"), 550 Warrenville Road, Suite 220 Lisle, Illinois 60532

WITNESSETH:

Whereas, the City has determined that it is necessary to seek municipal financial expertise to provide financial services related to the implementation of the Wheaton Downtown Strategic and Streetscape Plan; and

Whereas, the Consultant has previously performed municipal financial services work for the City, and

Whereas, the City finds the Consultant meets the City's service requirements for providing the necessary municipal financial services.

Now, therefore, for in consideration of their mutual promises, terms, covenants, agreements, and conditions recited in this Agreement, the City and the Consultant hereto 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 labor, materials, and equipment to provide municipal financial services related to the implementation of the Wheaton Downtown Strategic and Streetscape Plan. The Consultant will provide an overview of the financial funding tools that are likely to be applicable and available to the City with respect to the various projects listed in the Downtown Strategic and Streetscape Plan including a review and evaluation of existing funding tools and their impact on the surrounding taxing districts as necessary to determine the future viability of those tools, and fiscal impact information to other overlapping taxing bodies related to expansion and/or time extension of TIF districts (hereinafter 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.
- 2. Compensation.** The City shall compensate the Consultant for the Work, as needed and as directed by the City, for the following hourly billing rates:

Ehlers Financial Advisors	\$200.00 per hour
Ehlers Project Analyst/Coordinator	\$125.00 per hour
Ehlers Technical/Clerical	\$75.00 per hour

The Consultant shall invoice the City on a monthly basis identifying the dates covered by the invoice, hours expended at the billing rates identified herein, and a summary of the work performed. The Consultant shall not charge for most regular business expenses, except for messenger and overnight services.

- 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 through December 31, 2015 and shall be subject for renewal if so approved by the City and Consultant.

4. ***Additional Services.*** The Consultant shall provide only the Work specified in this Agreement. 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. 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 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 (\$1,000,000.00) 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 the Consultant's owned, non-owned, and leased vehicles which protects the 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) Professional liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per claim 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.

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 Contractor shall, within twenty four hours of the City's request, provide any documents in the Contractor's possession related to this Agreement 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 upon seven (7) days written notice to the Consultant. In the event of a termination, the City shall pay the Consultant for services performed 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 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, and continuation of the Agreement into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.
11. **Default.** In case of default by the Consultant, the City will procure articles or service from other sources and hold the Consultant 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 Agreement if the Consultant fails to perform any of the provisions in the Agreement, 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 Consultant 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.
12. **Patents:** The Consultant 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 Agreement.
13. **Discrimination Prohibited.** The 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. The Consultant 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.
14. **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.

- 15. 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.
- 16. 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.
- 17. 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.
- 18. 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.
- 19. Notification.** All notification under this Agreement shall be made as follows:
- | | |
|---------------------------------|-------------------------------|
| If to the Consultant: | If to the City: |
| Ehlers and Associates, Inc. | City of Wheaton |
| Attn: Jennifer M. Tammen | Attn: City Clerk |
| 550 Warrenville Road, Suite 220 | 303 W. Wesley Street, Box 727 |
| Lisle, Illinois 60532 | Wheaton, IL 60189-727 |
- 20. 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.
- 21. Non-disclosure.** During the course of the Works, Consultant 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. Consultant 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.

22. **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.
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.
24. **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 18th day of May, 2015.

City of Wheaton, an Illinois municipal corporation

By Michael J. Gresk date 5-18-15
Michael J. Gresk, Mayor

Attest:

Sharon Barrett-Hagen
Sharon Barrett-Hagen, City Clerk

Ehlers and Associates, Inc.

By Jennifer M. Tan date 5.26.15

Attest:

John E. Miller

