

Consulting Services Contract
City of Waukesha – Actuarial & Health Care Solutions, LLC
Post-Employment Benefits Valuation

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to herein as the City; and Actuarial & Health Care Solutions, LLC, 10535 North Ironwood Circle, Mequon, Wisconsin 53092, referred to herein as the Consultant. Together, the City and Consultant are referred to as the Parties.

Recitals

The City has previously entered into a contract with Consultant, for performance of the following services:

Actuarial services for valuation of non-pension post-employment benefits.

That contract will expire soon, or has recently expired, and the City wishes to retain the continued services of Consultant for such work.

The Consultant is willing to perform such services for the City, and to enter into a new contract to do so.

Now, therefore, the City and the Consultant agree and contract as follows:

1. **Scope of Work.** The Consultant shall perform actuarial services as requested by City, which is referred to herein as the Work. Initial actuarial services are for a valuation of other post employment benefits (OPEB), such as health insurance benefits, in accordance with the Governmental Accounting Standards Board Standard 45, Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions (GASB 45) and Actuarial Standards, including the following:
 - a. Provide City with a detailed list of information needed by Consultant to perform the valuation.
 - b. Work with City staff as needed to get the information into a usable format and select assumptions for use in the calculations.
 - c. Perform the calculations necessary to determine the liability for the OPEB (non-pension) benefits.
 - d. Provide two written valuation reports (draft and final) with results to include:
 - i. The Actuarial Present Value (APV) of the OPEB for City.
 - ii. The Actuarial Accrued Liability (AAL) of the OPEB for City.
 - iii. The Unfunded Actuarial Accrued Liability (AAL) of the OPEB for City.
 - iv. The Annual Required Contribution (ARC) of the OPEB for City for both the level dollar and level percentage of payroll amortization methods.
 - v. A 30-year cash flow projection. This projection will include the projected “pay-as-you-go” cost, normal cost, amortization payment, interest cost, and ARC for both the level dollar and level percentage of payroll amortization methods.

- vi. A detailed summary listing the APV, AAL, and Normal Cost by active, retired, employee and dependent. Separate amounts are provided for each benefit available (Medical, Pharmacy, etc.). Separate amounts will also be provided for the Utilities.
 - vii. A list of the assumptions used in the calculations.
 - e. Provide financial statement disclosure information for both the 2015 and 2016 fiscal years.
 - f. Discuss the report with City staff and address conclusions drawn in the reports.
 - g. Work with City auditors, if necessary, to provide them with additional data needed to fulfill GASB requirements, if data is not included in actuarial report.
 - h. The valuation would be performed to comply with the requirements of the GASB 45 standard.
2. **Payment.** The City shall pay to Consultant a total Contract Price of Seven Thousand One Hundred Dollars (\$7100.00), upon completion of the Work. Consultant shall invoice the City, and all invoices shall be payable net 30 days.
 3. **Additional Work.** The Scope of Work in section 1 may be increased, decreased or otherwise amended only by the express, mutual, written agreement of the Parties. If additional work is agreed upon by the Parties, then Consultant shall charge for such work on an hourly basis, at Two Hundred Thirty Dollars (\$230.00) per hour. Consultant shall invoice the City for such work monthly, and all invoices shall be payable net 30 days.
 4. **Personnel.** Richard Marchel, FSA, MAAA, will be the individual primarily responsible to provide actuarial services. Kevin Dolsky, FSA, MAAA and other actuaries will provide ancillary services under this Contract.
 5. **Standard of Work.** Consultant will perform the Work according to generally-accepted industry practices and the highest standards of the professions of the individual employees performing the Work.
 6. **Time.** Consultant shall commence the Work as promptly after execution of this Contract as is possible, and shall complete the Work within 120 days of the execution of this Contract, subject only to delays for circumstances beyond Consultant's control, provided Consultant recommences work promptly in good faith upon the return of normal circumstances.
 7. **Intellectual Capital.** "Intellectual Capital" includes Consultant's methodologies, ideas, know-how, models, tools, skills, knowledge, experience, and any electronic or hard copy representations of the same, but does not include the deliverables described in sections 1.d and 1.e. Consultant retains all rights to Intellectual Capital developed and possessed by Consultant acquired prior to or during the performance of the Work. Such Intellectual Capital will not be deemed "works made for hire" and Consultant will not be restricted in any way with respect to its use, provided such use does not disclose any confidential information of the City. Consultant shall not retain exclusive rights to Intellectual Capital, but will make it available to the City for its own use, provided such use does not include release of Intellectual Capital outside of the City without prior written consent of Consultant, unless the release is required by law.

8. **Ownership of Work Product.** The deliverables described in sections 1.d and 1.e shall, after payment by City of the fee described in section 2, be the sole property of the City, and shall be kept confidential and not disclosed to any third party by the Consultant without the prior written permission of the City.
9. **Confidentiality.** Consultant may receive confidential and proprietary information regarding the City during the course of providing services under this Contract ("Confidential Information"). Consultant will respect the confidential nature of such information and will not disclose it to any third party, unless required by law. Information generally available to the public, independently developed by Consultant, or appropriately received from another source not under obligation of confidentiality shall not be considered Confidential Information. Consultant agrees to use best efforts to keep confidential any proprietary information concerning the City to which Consultant obtains access, and to return any information provided by the City upon request or when it is no longer needed for performance of services hereunder.
10. **Amendments.** This Contract can only be amended by the written, mutual agreement of the Parties. No change to the scope of the Work, or the total amount to be paid to Consultant, shall be effective unless done by the written mutual agreement of the Parties.
11. **Indemnification.** Consultant shall indemnify and hold the City harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind arising out of, or connected in any way with, Consultant's performance of the Work, including court costs and actual attorney fees.
12. **Limitation of Liability.** The Parties agree that it is not within their contemplation that Consultant will be liable to the City for consequential, incidental or punitive damages arising from Consultant's breach of this Contract, and that therefore Consultant shall not be liable to City for such consequential, incidental or punitive damages. This limitation shall not be applicable to breaches of the confidentiality provisions of this Contract, or losses resulting primarily from the gross negligence, willful misconduct, or bad faith of Consultant.
13. **Insurance.** Consultant shall maintain errors and omissions insurance with limits of no less than \$1,000,000.00 per occurrence, at Consultant's sole expense, at all times during the performance of the Work. Policies shall be occurrence, and not claims-made, policies; or, if claims-made, Consultant shall obtain an extended-reporting-period endorsement or tail-coverage policy, to extend the claims reporting period to at least six years after the policy's coverage period expiration. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, Consultant shall deliver a certificate of insurance to City showing that all requirements of this section are met.
14. **Record Keeping.** Consultant shall keep all documents and records generated in the performance of the Work for no less than 7 years after completion of the Work, and shall make them available to the City at the City's request. Consultant acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.
15. **Cooperation by City.** The City shall cooperate with the Consultant in the performance of the Work, and shall respond timely to all reasonable requests for information and access.

16. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
17. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
18. **Assignment Prohibited.** This Contract, and the Consultant's responsibility to perform the Work under this Contract, may not be assigned by the Consultant without the City's written consent.
19. **Notices.** All notices required by this Contract, and all other communications between the Parties, shall be addressed as follows:

 To City: Richard Abbott, Finance Director
 City of Waukesha
 201 Delafield Street
 Waukesha WI 53188

 To Consultant: Kevin M. Dolsky, President
 Actuarial & Health Care Solutions, LLC
 10535 North Ironwood Circle
 Mequon, Wisconsin 53092
20. **Corporate Authorization.** The individuals executing this Contract on behalf of the Consultant warrant and represent that they are duly authorized to bind the Consultant to this Contract. Consultant warrants and represents that the execution of this Contract is not prohibited by the Consultant's articles of incorporation, by-laws, operating agreement, or other internal operating orders, or by any applicable law, regulation or court order. Consultant shall provide proof upon request.
21. **Assistance of Counsel, Voluntary Contract.** The Consultant acknowledges that it has either had the assistance of legal counsel in the negotiation, review and execution of this Contract, or has voluntarily waived the opportunity to do so; that it has read and understood each of this Contract's terms, conditions and provisions, and their effects; and that it has executed this Contract freely and not under conditions of duress.
22. **Adequacy of Consideration.** The Parties acknowledge that the consideration expressed in this Contract is adequate and sufficient to make the obligations contained in this Contract binding upon the Parties.
23. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
24. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without

affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.

25. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.
26. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.
27. **Integration.** This Contract constitutes the entire agreement of the Parties, and any other oral agreements or understandings, not expressed in a written, mutual amendment to this Contract, shall be void.

City of Waukesha

By Shawn N. Reilly, Mayor
Date: _____

Attested by Gina L. Kozlik, City Clerk
Date: _____

To certify that funds are provided for payment:

Richard L. Abbott, Director of Finance
Date: _____

Actuarial & Health Care Solutions, LLC

By (print name) _____
Title: _____
Date: _____

By (print name) _____
Title: _____
Date: _____