

**92-R-15**

**A RESOLUTION**

**Authorizing the City Manager to Sign a Contract  
With Hoffman House Catering for Senior Meal Food Programs**

**WHEREAS**, the City of Evanston has made it a priority to focus on providing for a comfortable and high standard of living for seniors through activities and events; and

**WHEREAS**, the Parks, Recreation and Community Services Department strives to provide activities and opportunities to seniors; and

**WHEREAS**, Age Options, the regional coordinator of federal funds, will reimburse the City through a grant for meals provided to seniors; and

**WHEREAS**, Age Options issued bids to provide meals at all suburban Cook County sites, and the selected caterer is Hoffman House Catering; and

**WHEREAS**, for the period of October 1, 2015 through September 30, 2016, Hoffman House Catering will provide lunch meals to seniors at the Levy Senior Center and Fleetwood-Jourdain Community Center at a cost not-to-exceed \$4.45 per meal;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF  
THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

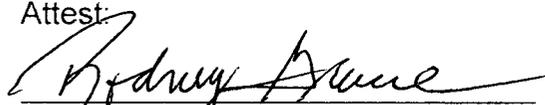
**SECTION 1:** That the foregoing recitals are hereby found as fact and incorporated herein by reference.

**SECTION 2:** That the City Manager is hereby authorized to sign, and the City Clerk hereby authorized to attest, on behalf of the City of Evanston, the contract attached hereto as Exhibit A, incorporated herein by reference.

**SECTION 3:** That this Resolution 92-R-15 shall be in full force and effect from and after its passage and approval in the manner provided by law.

  
Elizabeth B. Tisdahl, Mayor

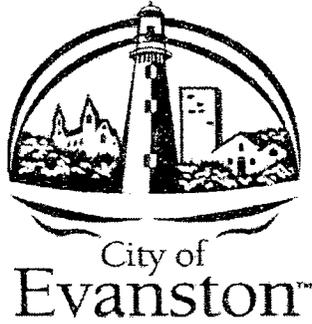
Attest:

  
Rodney Greene, City Clerk

Adopted: October 12, 2015

**EXHIBIT A**

**Contract with Hoffman House Catering**



AGREEMENT

The Parties to this Agreement are the City of Evanston and Vendor. This Agreement, consisting of the signature page and numbered sections listed below and any attachments referenced in this Agreement, constitutes the entire Agreement between the Parties concerning the subject matter of the Agreement, and supersedes all prior proposals, Agreements and understandings between the Parties concerning the subject matter of the Agreement. This Agreement can be signed in multiple counterparts and signature may be electronic or digital upon agreement of the Parties.

- 1. TERM AND TERMINATION
2. DESCRIPTION OF SUPPLIES AND SERVICES
3. PRICING
4. STANDARD BUSINESS TERMS AND CONDITIONS
5. STANDARD CERTIFICATIONS
6. DISCLOSURES AND CONFLICTS OF INTEREST
7. SUPPLEMENTAL PROVISIONS

In consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the terms and conditions set forth herein and have caused this Agreement to be executed by their duly authorized representatives on the dates shown below.

VENDOR CITY OF EVANSTON ("CITY")
(Vendor Name) Hoffman House Catering Group Smigo Management Group Inc. (Procuring Department Name) Parks, Recreation, Community Svices
Signature Official Signature
Printed Name Jim Smigo Printed Name Wally Bobkiewicz
Title Manager / Owner Date City Manager Date
Address 1530 Hubbard Ave Ste D, Batavia, IL 60510 Designee Signature
Printed Name Robert Dorneker
Phone (630) 406-0330 Fax Interim Director Parks, Recreation and Community Services
E-mail jwshhh@cateringglobal.net Address 2100 Ridge, Evanston IL 60201

CITY USE ONLY NOT PART OF CONTRACTUAL PROVISIONS

PBC# Project Title
Contract # Procurement Method (IFB, RFP, Small, etc):
Ref. # Publication Date: Award Code:
Subcontractor Utilization? Yes No Subcontractor Disclosure? Yes No
Funding Source Obligation #

Approval:
Signature Printed Name Date
Phone E-mail

## 1. TERM AND TERMINATION

1.1 **TERM OF THIS AGREEMENT:** This Agreement has an initial term of October 1, 2015 through September 30, 2016. If a start date is not identified, the term shall commence upon the last dated signature of the Parties.

Vendor shall not commence billable work in furtherance of the Agreement prior to final execution of the Agreement.

1.2 **TERMINATION FOR CAUSE:** The City may terminate this Agreement, in whole or in part, immediately upon notice to Vendor if: (a) the City determines that the actions or inactions of Vendor, its agents, employees or subcontractors have caused, or reasonably could cause, jeopardy to health, safety, or property, or (b) Vendor has notified the City that it is unable or unwilling to perform the Agreement.

If Vendor fails to perform to the City's satisfaction any material requirement of this Agreement, is in violation of a material provision of this Agreement, or the City determines that Vendor lacks the financial resources to perform the Agreement, the City shall provide written notice to Vendor to cure the problem identified within the period of time specified in the City's written notice. If not cured by that date, the City may either: (a) immediately terminate the Agreement without additional written notice or (b) enforce the terms and conditions of the Agreement.

For termination due to any of the causes contained in this Section, the City retains its rights to seek any available legal or equitable remedies and damages.

1.3 **TERMINATION FOR CONVENIENCE:** The City may, for its convenience and with 60 days prior written notice to Vendor, terminate this Agreement in whole or in part and without payment of any penalty or incurring any further obligation to Vendor. Vendor shall be entitled to compensation upon submission of invoices and proof of claim for supplies and services provided in compliance with this Agreement up to and including the date of termination.

## 2. **DELIVERY OF PROGRAM MEALS:**

Deliveries will be made to Levy Senior Center located at 300 Dodge Avenue, Evanston, IL, Monday – Friday at 11:00am, no earlier than one-half (1/2) hour prior 10:00am and no later than one-half hour (1/2) after 10:30am (11:00 am).

Deliveries will be made to Fleetwood Jourdain Community Center located at 1655 Foster, Evanston, IL, Wednesdays at 11:30 am, no earlier than one-half (1/2) hour prior 10:30am and no later than one-half hour (1/2) after 11:00am (11:30 noon).

The Agency reserves the right to increase or decrease the number of sites, times and days of deliveries upon ten consecutive days notice to the Contractor.

### 2.1 **CONDITION OF THE FOOD DELIVERED BY VENDOR:**

Milk and/or other food delivered by the Vendor that is found to be spoiled, crushed, or otherwise not fit to be served, will not be passed for payment unless promptly exchanged prior to serving meal by the Vendor (See Attachment A). If the Vendor does not react to the above mentioned notification, milk and/or food supply will be disposed of without responsibility to the Agency. Milk carriers used to deliver cartons of milk should be sufficient size and strength to hold the contents properly without crushing when handled in a normal manner. Milk and juice will be delivered in 8 ounce serving cartons.

At least 50 of meals and no more than 25% of meals shall be of a modified menu diet. All meals will be low sodium and fat controlled. The modified (therapeutic) meals will be appropriate for diabetics.

### 2.2 **OTHER CONDITIONS FOR VENDOR:**

Provide disposables e.g.; napkins; straws; salt, pepper, sugar, substitutes; and other condiments as appropriate to the meal.

Must deliver hot foods at 140 degrees Fahrenheit or higher and cold foods at or below 41 degrees Fahrenheit as required by the Illinois Department on Aging and AgeOptions. All food delivery carriers must maintain the proper temperature for the required time the food is in the carrier. Food delivered by the Vendor that is found to be spoiled, crushed, or otherwise not fit to be served will not be paid for by the City of Evanston unless the Vendor promptly exchanges the food prior to serving time.

Make recipes available upon request to any authorized representative of the Agency, AgeOptions, or the Federal Government.

Arrange with the Site Supervisor a schedule of special menus and shall specify additional costs.

Provide refrigeration or warming units contingent upon necessity.

Be in compliance with all local, state, and federal requirements governing food sanitation.

Vendor will deliver the specified number of daily meals and supplies as ordered by the City of Evanston. The Vendor shall not require the City of Evanston to order a minimum number of meals for any serving day. City of Evanston reserves the right to change the number of meals as late as the day prior to the date of delivery. City of Evanston will not be held financially liable for order changes made within agreed timeframe.

Furnish needed food service training in sanitation, portion control, etc. to the Site Manager and volunteers.

Furnish reports as required to Agency, AgeOptions officials, along with the Illinois Department on Aging, and the USDA Food Distribution Agency. Officials have the right to inspect food production sites, recipes and purchase orders.

Retain records for Audit purposes at least three (3) years.

Comply with Title VI and Title VII of the Civil Rights Act of 1964, in regard to employment practices and persons served.

### **2.3 Vendor Records:**

The signed order receipts will be submitted with the Vendor's monthly billing to the City. Shortages or omissions will be noted by the Site Staff on the order receipts.

The Vendor shall submit invoices at least monthly to the City. The invoices shall indicate the total number of meals delivered and accepted during the period being billed with a backup listing of the Sites, total meals and total days on which deliveries were made during the billing period.

All invoices shall show a summary of service as follows:

- a). The daily number of meals ordered and delivered, as well as the total number of meals and the total cost for the period. A second copy of the invoice should be retained by the Vendor.
- b). Total credits or debits due should be billed from the total bill.
- c). If commodities are used, total credits or debits should be deducted from the total bill from each invoice.

The Vendor shall maintain the following records for the sponsor:

- a) Production records, including quantities and amounts of food used in preparation of each meal and food component of menus;
- b) Standardized recipes and yield from recipes;
- c) Processed product nutritional analysis;
- d) Dates of preparation of meals;
- e) Number of meals and locations where meals were delivered;
- f) Signed delivery slips;
- g) Nutritional content of individual food items and meals as delivered; and
- h) Food and bid specifications

### **2.4 REQUIRED MENU AND PLANNING APPROVAL PROCESS**

**At Least Three Months Before Menu Cycle Starts** – Vendor develops and writes cycle menus

**At Least Two Months Before Menu Cycle Starts** – Vendor meets with nutrition providers, individually or collectively, to review the cycle menu and multi month/planned calendar/roll-out menus, including special menus, holidays and holiday celebration menus

**At Least Six Weeks Before Menu Cycle Starts** – Vendor completes multi month/ planned/rollout menus for review by nutrition providers

**At Least Six to Four Weeks Before Menu Cycle Starts** – Cycle menu submitted to AgeOptions for certification/approval by AgeOptions Dietitian

**At Least Six to Four Weeks Before Menu Cycle Starts** – Multi month/planned/rollout menus with holiday menus and special celebrations submitted to AgeOptions for review by AgeOptions Dietitian

**Within the Four Weeks Before Menu Cycle Starts** – AgeOptions Dietitian evaluates menus and returns to caterer and nutrition provider with comments, suggested revisions or approval

**Within the Four Weeks Before Menu Cycle Starts** – If revisions are required, caterer sends revised menus sent back to AgeOptions Dietitian for certification and approval

**First Day of Menu Cycle** – Menus begin

**Sample Timeline for Required Menu Planning and Approval Process for Vendor Contracts Starting in October**

TASK	DUE DATE	RESPONSIBLE PERSON(S)
Develop and write cycle menus	July 1	Vendor
Vendor meets with nutrition providers, individually or collectively, to review the cycle menu and multi month/planned calendar/roll-out menus. Include special menus, holidays and holiday celebration menus.	By August 1	Vendor and Nutrition Providers
Complete multi month/ planned/rollout menus for review by nutrition providers	By August 15	Vendor
Submit cycle menu for certification/approval by AgeOptions Dietitian	August 15 - September 1 By September 1, at the latest	Vendor
Submit multi month/planned/rollout menus with holiday menus and special celebrations for review by AgeOptions Dietitian	August 15 - September 1 By September 1, at the latest	Vendor
Menus evaluated and returned to caterer and nutrition provider with comments, suggested revisions or approval	As soon as possible after September 1	AgeOptions Dietitian
Revised menus sent back to AgeOptions Dietitian, if revisions are required	Before October 1	Vendor
Menus begin	October 1	Vendor and Nutrition Provider

**2.5 MENU SPECIFICATIONS REQUIREMENTS:**

(See Attachment A)

Each meal provided through the nutrition program must comply with the most recent Dietary Guidelines for Americans, published by the United States Secretary of Health and Human Services and the Secretary of Agriculture; and provide each participant for the category including 65 to 75 year old women a minimum of 33 1/3 percent of the Dietary Reference Intakes (DRI) as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences. Attachment A provides the current Nutrition Standards for menus written under the terms of this agreement.

Each meal shall meet the following minimum requirements:

**EACH meal must provide:**

One (1) Serving lean meat or meat alternate: 3 ounces of edible cooked meat, fish, fowl, eggs or meat alternate

Two (2) Servings vegetables: ½ cup equivalent – may serve an additional vegetable instead of a fruit

One (1) Serving fruit: ½ cup equivalent – may serve an additional fruit instead of a vegetable

Two (2) Servings grain, bread or bread alternate, preferably whole grain: for example, 2 slices of whole grain or enriched bread 1 ounce each or 1 cup cooked pasta or rice

One (1) Serving fat free or low fat milk or milk alternate: 1 cup equivalent

Margarine and dessert are optional and must be counted in the calories, fat and sodium totals, if served in addition to above components

**2.6 MILESTONES AND DELIVERABLES:** Vendor shall not perform services, provide supplies or incur expenses in amount exceeding the amount shown in this Section, unless the City has authorized a higher amount in writing prior to Vendor performing the services, providing the supplies, or incurring the expenses.

Not-to-exceed \$ 37,478

**2.7 VENDOR / STAFF SPECIFICATIONS:**

The Vendor shall be required to submit quarterly inspection reports of the food preparation sites in which all meals for the program are prepared.

**2.8 ASSIGNMENT AND SUBCONTRACTING:**

2.8.1 This Agreement may not be assigned, transferred in whole or in part by Vendor without the prior written consent of the City.

2.8.2 For purposes of this section, subcontractors are those specifically hired to perform all or part of the work covered by the Agreement.

Will subcontractors be utilized?  Yes XXXX No

2.8.3 Vendor shall describe below the names and addresses of all authorized subcontractors to be utilized by Vendor in the performance of this Agreement, together with a description of the work to be performed by the subcontractor and the anticipated amount of money that each subcontractor is expected to receive pursuant to this Agreement. Vendor shall provide a copy of any subcontracts within 20 days of execution of this Agreement for approval by the City. Vendor shall be responsible for the accuracy and quality of any subcontractor's performance.

Subcontractor Name \_\_\_\_\_ Amount to be paid \_\_\_\_\_  
Address \_\_\_\_\_ Description of work \_\_\_\_\_

Subcontractor Name \_\_\_\_\_ Amount to be paid \_\_\_\_\_  
Address \_\_\_\_\_ Description of work \_\_\_\_\_

2.8.4 Vendor shall obtain approval from the City prior to hiring any additional or substitute subcontractors during the term of this Agreement. Vendor shall provide to the City a draft subcontractor agreement for review and approval prior to the execution of the subcontract. Subcontractor agreements shall provide that services to be performed under the subcontracting agreement shall not be sublet, sold, transferred, assigned or otherwise disposed of to another entity or person without the City's prior written consent.

2.8.5 All subcontracts must include the same certifications that Vendor must make as a condition of this Agreement.

**2.9 WHERE SERVICES ARE TO BE PERFORMED:** Unless otherwise specified in this section all services shall be performed in the United States. If Vendor manufactures the supplies or performs the services purchased hereunder in another country in violation of this provision, such action may be deemed by the City as a breach of the Agreement by Vendor. Vendor shall disclose the locations where the services required shall be performed and the known or anticipated value of the services to be performed at each location. If Vendor received additional consideration in the evaluation based on work being performed in the United States, it shall be a breach of contract if Vendor shifts any such work outside the United States.

Location where services will be performed \_\_\_\_\_  
Value of services performed at this location \_\_\_\_\_

Location where services will be performed \_\_\_\_\_  
Value of services performed at this location \_\_\_\_\_

**2.10 SCHEDULE OF WORK:**

Vendor will deliver up to 200 meals per day, Monday through Friday at the Levy Senior Center located at 300 Dodge Avenue, Evanston, IL, and Wednesday at the Fleetwood-Jourdain Community Center located at 1655 Foster Street, Evanston, IL (with the exception of the following nine holidays).

The holidays are as follows:

- Thanksgiving Day and Friday following (November 26 and 27, 2015)
- Christmas Eve (December 24, 2015)
- Christmas Day (December 25, 2015)
- New Years Eve (Decemebr 31, 2015)
- New Year's Day (January 1, 2016)
- Martin Luther King Day (January 18, 2016)
- Memorial Day (May 30, 2016)
- Independence Day (July 4, 2016)
- Labor Day (September 5, 2016)

The Vendor assures the Agency of availability of personnel from the Vendor to staff the operations and provide supervisory staff in the preparation of food. In the event of a vehicle breakdown or other contingencies, the vendor must be able to dispatch replacement trucks to assure delivery of meals that may be stranded en route within one half (½) hour past regular serving time. Should the main preparation plant become inoperative, alternate sources of supply must be available.

**2.11 WARRANTIES FOR SUPPLIES AND SERVICES:**

2.11.1 Vendor warrants that the supplies furnished under this Agreement will: (a) conform to the standards, specifications, drawing, samples or descriptions furnished by the City or furnished by Vendor and agreed to by the City, including but not limited to all specifications attached as exhibits hereto; (b) be merchantable, of good quality and workmanship, and free from defects for a period of twelve months or longer if so specified in writing, and fit and sufficient for the intended use; (c) comply with all federal and City laws, regulations and ordinances pertaining to the manufacturing, packing, labeling, sale and delivery of the supplies; (d) be of good title and be free and clear of all liens and encumbrances and; (e) not infringe any patent, copyright or other intellectual property rights of any third party. Vendor agrees to reimburse the City for any losses, costs, damages or expenses, including without limitations, reasonable attorney's fees and expenses, arising from failure of the supplies to meet such warranties.

2.11.2 Vendor shall insure that all manufacturers' warranties are transferred to the City and shall provide a copy of the warranty. These warranties shall be in addition to all other warranties, express, implied or statutory, and shall survive the City's payment, acceptance, inspection or failure to inspect the supplies.

2.11.3 Vendor warrants that all services will be performed to meet the requirements of the Agreement in an efficient and effective manner by trained and competent personnel. Vendor shall monitor performances of each individual and shall reassign immediately any individual who is not performing in accordance with the Agreement, who is disruptive or not respectful of others in the workplace, or who in any way violates the Agreement or City policies.

**2.12 REPORTING, STATUS AND MONITORING SPECIFICATIONS:**

2.12.1 Vendor shall immediately notify the City of any event that may have a material impact on Vendor's ability to perform the Agreement.

**2.13 Availability of Funds**

The total number of meals provided by the Vendor shall not exceed the total number of meals set forth in the City's budget, subject to adjustments determined by the City and AgeOptions.

AgeOptions has the option to cancel the contract contingent upon funding from the federal and state governments for the program. AgeOptions must receive sufficient funds from the Illinois Department on Aging to meet the total obligations for the period October 1, 2015 to September 30, 2016. In addition, there must not be any administrative, legislative order, judicial order, rule or law which requires a change in this or related decision made by AgeOptions.

The City shall have the option to cancel this contract if the Federal government withdraws funds to support the Congregate Meal Program by giving the Vendor forty-eight hour written notice. It is further understood that, in the event of cancellation of the contract, the City shall be responsible for meals that have already been assembled and delivered in accordance with this contract.

**2.14 Emergencies**

In the event of unforeseen emergency circumstances, the Vendor shall immediately notify the City by telephone of the following; (1) the impossibility of on-time delivery; (2) the circumstance(s) precluding delivery; and (3) a statement of whether or not succeeding deliveries will be affected. No payments will be made for deliveries made later than 40 (forty) minutes after specified meal time.

Emergency circumstances at the site precluding utilization of meals are the concern of the City. The City may cancel orders provided they give the Vendor at least 48 hours notice.

Adjustments for emergency situations affecting the Vendor's ability to deliver meals, or City's ability to utilize meals, for periods longer than 24 hours will be mutually worked out between the Vendor and the City.

**3. PRICING**

3.1 **METHOD AND RATE OF COMPENSATION:** The City will compensate Vendor for the initial term as follows:

- Hourly \_\_\_\_\_
- Monthly \_\_\_\_\_
- Annually \_\_\_\_\_
- Project \_\_\_\_\_
- Item (show unit of measure and rate) \_\_\_\_\_

3.2 **TYPE OF PRICING:** Pricing under this Agreement is

- Firm \$4.09 per congregate meal and \$4.44 per deli bar meal
- Estimated \_\_\_\_\_

3.3 **EXPENSES:** Any expenses that Vendor may charge are shown in this section. The City will not compensate Vendor for expenses related to travel, lodging or meal.

3.4 **DISCOUNT:** \_\_\_\_\_% discount for payment within \_\_\_\_\_ days of receipt of invoice

3.5 **TAX:** Vendor shall not bill for any taxes unless accompanied by proof the City is subject to the tax. If necessary, Vendor may request the applicable City's Illinois tax exemption number and federal tax exemption information.

3.6 **INVOICING:** Vendor shall invoice at the completion of the Agreement unless invoicing is tied in this Agreement to milestones, deliverables, or other invoicing requirements agreed to in this Agreement.

Send invoices via email to [lwilson@cityofevanston.org](mailto:lwilson@cityofevanston.org)

### 3.7 **PAYMENT TERMS AND CONDITIONS:**

3.7.1 By submitting an invoice, Vendor certifies that the supplies or services provided meet all requirements of the Agreement, and the amount billed and expenses incurred are as allowed in the Agreement. Invoices for supplies purchased, services performed and expenses incurred through December 31 of any year must be submitted to the City no later than January 31 of the next subsequent year.

3.7.2 Payments, including late payment charges, will be paid in accordance with all applicable laws and rules of the City of Evanston and the State of Illinois. Remedies provided for therein shall be Vendor's sole remedy for late payments by the City. Payment terms contained on Vendor's invoices shall have no force and effect.

3.7.3 The City will not pay for supplies provided or services rendered, including related expenses, incurred prior to the execution of this Agreement by the Parties even if the effective date of the Agreement is prior to execution.

3.7.4 As a condition of receiving payment Vendor must (i) be in compliance with the Agreement, (ii) pay its employees prevailing wages when required by law (Examples of prevailing wage categories include public works, printing, janitorial, window washing, building and grounds services, site technician services, natural resource services, security guard and food services. Vendor is responsible for contacting the Illinois Dept. of Labor 217-782-6206; <http://www.state.il.us/Department/idol/index.htm> to ensure compliance with prevailing wage requirements), (iii) pay its suppliers and subcontractors according to the terms of their respective contracts, and (iv) provide lien waivers to the City upon request.

3.7.5 The total number of meals provided by the Vendor shall not exceed the total number of meals set forth in the City's budget, subject to adjustments determined by the City and AgeOptions. AgeOptions and the City shall have the option to cancel the contract contingent upon funding from the federal and state governments for the program. AgeOptions must receive sufficient funds from the Illinois Department on Aging to meet the total obligations for the period October 1, 2015 to September 30, 2016. In addition, there must not be any administrative, legislative order, judicial order, rule or law which requires a change in this or related decision made by AgeOptions.

## 4. **STANDARD BUSINESS TERMS AND CONDITIONS**

4.1 **AVAILABILITY OF APPROPRIATION:** This Agreement is contingent upon and subject to the availability of funds. The City, at its sole option, may terminate or suspend this Agreement, in whole or in part, without penalty or further payment being required, if a reduction in funding is necessary or advisable based upon actual or projected budgetary considerations. Vendor will be notified in writing of the failure of appropriation or of a reduction or decrease.

4.2 **AUDIT/RETENTION OF RECORDS:** Vendor and its subcontractors shall maintain books and records relating to the performance of the Agreement or subcontract and necessary to support amounts charged to the City under the Agreement or subcontract. Books and records, including information stored in databases or other computer systems, shall be maintained by Vendor for a period of three years from the later of the date of final payment under the Agreement or completion of the Agreement, and by the subcontractor for a period of three years from the later of final payment under the term or completion of the subcontract. If federal funds are used to pay contract costs, Vendor and its subcontractors must retain its records for five years. Books and records required to be maintained under this section shall be available for review or audit by representatives of the City upon reasonable notice and during normal business hours. Vendor and its subcontractors shall cooperate fully with any such audit and with any investigation conducted by any of these entities. Failure to maintain books and records required by this section shall establish a presumption in favor of the City for the recovery of any funds paid by the City under the Agreement for which adequate books and records are not available to support the purported disbursement. Vendor or subcontractors shall not impose a charge upon the City for audit or examination of Vendor's books and records.

4.3 **TIME IS OF THE ESSENCE:** Time is of the essence with respect to Vendor's performance of this Agreement. Vendor shall continue to perform its obligations while any dispute concerning the Agreement is being resolved, unless otherwise directed by the City.

**4.4 NO WAIVER OF RIGHTS:** Except as specifically waived in writing, failure by a Party to exercise or enforce a right does not waive that Party's right to exercise or enforce that or other rights in the future.

**4.5 FORCE MAJEURE:** Failure by either Party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control and not due to its negligence including acts of nature, acts of terrorism, riots, labor disputes, fire, flood, explosion, and governmental prohibition. The non-declaring Party may cancel the Agreement without penalty if performance does not resume within 30 days of the declaration.

**4.6 CONFIDENTIAL INFORMATION:** Each Party, including its agents and subcontractors, to this Agreement may have or gain access to confidential data or information owned or maintained by the other Party in the course of carrying out its responsibilities under this Agreement. Vendor shall presume all information received from the City or to which it gains access pursuant to this Agreement is confidential. Vendor information, unless clearly marked as confidential and exempt from disclosure under the Illinois Freedom of Information Act ("FOIA") shall be considered public. No confidential data collected, maintained, or used in the course of performance of the Agreement shall be disseminated except as authorized by law and with the written consent of the disclosing Party, either during the period of the Agreement or thereafter. The receiving Party must return any and all data collected, maintained, created or used in the course of the performance of the Agreement, in whatever form it is maintained, promptly at the end of the Agreement, or earlier at the request of the disclosing Party, or notify the disclosing Party in writing of its destruction. The foregoing obligations shall not apply to confidential data or information lawfully in the receiving Party's possession prior to its acquisition from the disclosing Party; received in good faith from a third-party not subject to any confidentiality obligation to the disclosing Party; now is or later becomes publicly known through no breach of confidentiality obligation by the receiving Party; or is independently developed by the receiving Party without the use or benefit of the disclosing Party's confidential information. Upon notification by the City that it has received a Freedom of Information Act request that calls for records within the Vendor's control, the Vendor shall promptly provide all requested records to the City so that the City may comply with the request within the timeframe required by FOIA.

**4.7 USE AND OWNERSHIP:** All work performed or supplies created by Vendor under this Agreement, whether written documents or data, goods or deliverables of any kind, shall be deemed work-for-hire under copyright law and all intellectual property and other laws, and the City is granted sole and exclusive ownership to all such work, unless otherwise agreed in writing. Vendor hereby assigns to the City all right, title, and interest in and to such work including any related intellectual property rights, and/or waives any and all claims that Vendor may have to such work including any so-called "moral rights" in connection with the work. Vendor acknowledges the City may use the work product for any purpose. Confidential data or information contained in such work shall be subject to confidentiality provisions of this Agreement.

**4.8 INDEMNIFICATION AND LIABILITY:** Vendor shall defend, indemnify and hold harmless the City and its officers, elected and appointed officials, agents, and employees from any and all liability, losses, or damages as a result of claims, demands, suits, actions, or proceedings of any kind or nature, including but not limited to costs, and fees, including attorney's fees, judgments or settlements, resulting from or arising out of any negligent or willful act or omission on the part of Vendor or Vendor's subcontractors, employees, agents or subcontractors during the performance of this Agreement. Such indemnification shall not be limited by reason of the enumeration of any insurance coverage herein provided. This provision shall survive completion, expiration, or termination of this Agreement. Nothing contained herein shall be construed as prohibiting the City, or its officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, any claims, actions or suits brought against them. Vendor shall be liable for the costs, fees, and expenses incurred in the defense of any such claims, actions, or suits. Nothing herein shall be construed as a limitation or waiver of defenses available to the City and employees and agents, including but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*

At the City Corporation Counsel's option, Vendor must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Vendor of any of its obligations under this Agreement. Any settlement of any claim or suit related to this Project by Vendor must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.

To the extent permissible by law, Vendor waives any limits to the amount of its obligations to indemnify, defend, or contribute to any sums due under any Losses, including any claim by any employee of Vendor that may be subject to the Illinois Workers Compensation Act, 820 ILCS 305/1 *et seq.* or any other related law or judicial decision, including but not limited to, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other statute. Vendor shall be responsible for any losses and costs to repair or remedy work performed under this Agreement resulting from or arising out of any act or omission, neglect, or misconduct in the performance of its Work or its subcontractors' work. Acceptance of the work by the City will not relieve Vendor of the responsibility for subsequent correction of any such error, omissions and/or negligent acts or of its liability for loss or damage resulting therefrom. All provisions of this Section 4.8 shall survive completion, expiration, or termination of this Agreement.

**4.9 INSURANCE:** Vendor shall, at its own expense, secure and maintain in effect throughout the duration of this contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services and work hereunder by Vendor, its agents, representatives, employees or subcontractors. Vendor acknowledges and agrees that if it fails to comply with all requirements of this Section 4.9, the City may void this Agreement. Vendor must give to the City Certificates of Insurance identifying the City to be an additional insured for the services required pursuant to the Agreement before City staff recommends award of the contract to City Council. Any limitations or modifications on the Certificate of Insurance issued to the City in compliance with this Section that conflict with the provisions of this Section 4.9 shall have no force and effect.

If requested, Vendor shall give the City a certified copy (ies) of the insurance policy (ies) evidencing the amounts set forth in this Section. The policies must be delivered to the City within two (2) weeks of the request. All insurance policies shall be written with insurance companies licensed or authorized to do business in the State of Illinois and having a rating of not less than A-VII according to the A.M. Best Company. Should any of the insurance policies be canceled before the expiration date, the issuing company will mail thirty (30) days written notice to the City. Vendor shall require and verify that all subcontractors maintain insurance meeting all of the requirements stated herein.

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Vendor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses. Vendor shall carry and maintain at its own cost with such companies as are reasonably acceptable to City all necessary liability insurance (which shall include as a minimum the requirements set forth below) during the term of this Agreement, for damages caused or contributed to by Vendor, and insuring Vendor against claims which may arise out of or result from vendor's performance or failure to perform hereunder:

- a) Worker's compensation in statutory limits and employer's liability insurance in the amount of at least five hundred thousand dollars (\$500,000);
- b) Comprehensive general liability coverage which designates the City as an additional insured for not less than one million dollars (\$1,000,000) combined single limit for bodily injury, death and property damage, per occurrence;
- c) Comprehensive automobile liability insurance covering owned, non-owned, and leased vehicles for not less than one million dollars (\$1,000,000) combined single limit for bodily injury, death, or property damage, per occurrence; and
- d) Errors and omissions or professional liability insurance respecting any insurable professional services hereunder in the amount of at least one million dollars (\$1,000,000).

Vendor's certificate of insurance shall contain a provision that the coverage afforded under the policy(s) will not be canceled or reduced without thirty (30) days prior written notice (hand delivered or registered mail) to the City. Vendor shall promptly forward new certificate(s) of insurance evidencing the coverage(s) required herein upon annual renewal of the subject policies.

Vendor understands that the acceptance of Certificates of Insurance, policies, and any other documents by the City in no way releases Vendor and its subcontractors from the requirements set forth herein.

Vendor expressly agrees to waive its rights, benefits and entitlements under the "Other Insurance" clause of its commercial general liability insurance policy as respects the City. In the event Vendor fails to purchase or procure insurance as required above, the parties expressly agree that Vendor shall be in default under this Agreement, and that the City may recover all losses, attorney's fees and costs expended in pursuing a remedy, or reimbursement, at law or in equity, against Vendor.

**4.10 INDEPENDENT CONTRACTOR:** Vendor shall act as an independent contractor and not an agent or employee of, or joint venture with the City. All payments by the City shall be made on that basis.

**4.11 SOLICITATION AND EMPLOYMENT:** Vendor shall not employ any person employed by the City during the term of this Agreement to perform any work under this Agreement. Vendor shall give notice immediately to the City if Vendor solicits or intends to solicit City employees to perform any work under this Agreement.

**4.12 COMPLIANCE WITH THE LAW:** Vendor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders, federal circulars and all license and permit requirements in the performance of this Agreement. Vendor shall be in compliance with applicable tax requirements and shall be current in payment of such taxes. Vendor shall obtain at its own expense, all licenses and permissions necessary for the performance of this Agreement.

**4.13 BACKGROUND CHECK:** Whenever the City deems it reasonably necessary for security reasons, the City may conduct at its expense, criminal and driver history background checks of Vendor's and subcontractors officers, employees or agents. Vendor or subcontractor shall reassign immediately any such individual who, in the opinion of the City, does not pass the background check.

**4.14 APPLICABLE LAW:** This Agreement shall be construed in accordance with and is subject to the laws and rules of the City of Evanston and the State of Illinois. The Department of Human Rights' Equal Opportunity requirements (44 Ill. Adm. Code 750) are incorporated by reference. The City shall not enter into binding arbitration to resolve any contract dispute. The City does not waive tort immunity by entering into this Agreement. In compliance with the Illinois and federal Constitutions, the Illinois Human Rights Act, the U. S. Civil Rights Act, and Section 504 of the federal Rehabilitation Act and other applicable laws and rules, the City does not unlawfully discriminate in employment, contracts, or any other activity.

**4.15 ANTI-TRUST ASSIGNMENT:** If Vendor does not pursue any claim or cause of action it has arising under antitrust laws relating to the subject matter of the Agreement, then upon request of the City's Corporation Counsel, Vendor shall assign to the City rights, title and interest in and to the claim or cause of action.

**4.16 CONTRACTUAL AUTHORITY:** The Department that signs for the City shall be the only City entity responsible for performance and payment under the Agreement. When the City's authorized designee signs in addition to an Department, they do so as approving officer and shall have no liability to Vendor.

**4.17 NOTICES:** Notices and other communications provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by courier (UPS, Federal Express or other similar and reliable carrier), by e-mail, or by fax showing the date and time of successful receipt. Notices shall be sent to the individuals who signed the Agreement using the contact information following the signatures. Each such notice shall be deemed to have been provided at the time it is actually received. By giving notice, either Party may change the contact information.

**4.18 MODIFICATIONS AND SURVIVAL:** Amendments, modifications and waivers must be in writing and signed by authorized representatives of the Parties. Any provision of this Agreement officially declared void, unenforceable, or against public policy, shall be ignored and the remaining provisions shall be interpreted, as far as possible, to give effect to the Parties' intent. All provisions that by their nature would be expected to survive, shall survive termination. In the event of a conflict between the City's and Vendor's terms, conditions and attachments, the City's terms, conditions and attachments shall prevail.

**4.19 PERFORMANCE RECORD / SUSPENSION:** Upon request of the City, Vendor shall meet to discuss performance or provide contract performance updates to help ensure proper performance of the Agreement. The City may consider Vendor's performance under this Agreement and compliance with law and rule to determine whether to continue the Agreement, suspend Vendor from doing future business with the City for a specified period of time, or to determine whether Vendor can be considered responsible on specific future contract opportunities.

**4.20 FREEDOM OF INFORMATION ACT:** This Agreement and all related public records maintained by, provided to or required to be provided to the City are subject to the Illinois Freedom of Information Act notwithstanding any provision to the contrary that may be found in this Agreement.

**4.21 SUCCESSORS AND ASSIGNS:** The City and Vendor each bind themselves and their partners, successors, executors, administrators, and assigns to the other party of the Agreement and to the partners, successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement. Neither the City nor Vendor shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto, nor shall it be construed as giving any right or benefits hereunder to anyone other than the City and Vendor.

**4.22 NON-WAIVER OF RIGHTS:** No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this Agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

**4.23 SEVERABILITY:** Except as otherwise provided herein, the invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the other provisions, and this Agreement shall continue in all respects as if such invalid or unenforceable provision had not been contained herein.

**4.24 COUNTERPARTS:** For convenience, this Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

**4.25 SAVINGS CLAUSE:** If any provision of this Agreement, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of its requiring any steps, actions, or results, the remaining parts or portions of this Agreement shall remain in full force and effect.

## **5. STANDARD CERTIFICATIONS**

Vendor acknowledges and agrees that compliance with this section and each subsection for the term of the Agreement and any renewals is a material requirement and condition of this Agreement. By executing this Agreement, Vendor certifies compliance with this section and each subsection and is under a continuing obligation to remain in compliance and report any non-compliance.

This section, and each subsection, applies to subcontractors used on this Agreement. Vendor shall include these Standard Certifications in any subcontract used in the performance of the Agreement.

If this Agreement extends over multiple fiscal years including the initial term and all renewals, Vendor and its subcontractors shall confirm compliance with this section in the manner and format determined by the City by the date specified by the City and in no event later than January 1 of each year that this Agreement remains in effect.

If the Parties determine that any certification in this section is not applicable to this Agreement, it may be stricken without affecting the remaining subsections.

5.1 As part of each certification, Vendor acknowledges and agrees that should Vendor or its subcontractors provide false information, or fail to be or remain in compliance with the Standard Certification requirements, one or more of the following sanctions will apply:

- the Agreement may be void by operation of law,
- the City may void the Agreement, and
- Vendor and its subcontractors may be subject to one or more of the following: suspension, debarment, denial of payment, civil fine, or criminal penalty.

Identifying a sanction or failing to identify a sanction in relation to any of the specific certifications does not waive imposition of other sanctions or preclude application of sanctions not specifically identified.

5.2 Vendor certifies it and its employees will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this Agreement.

5.3 Vendor certifies it is a properly formed and existing legal entity (30 ILCS 500/1.15.80, 20-43); and as applicable has obtained an assumed name certificate from the appropriate authority, or has registered to conduct business in Illinois and is in good standing with the Illinois Secretary of State.

5.4 Vendor certifies it has not been convicted of bribing or attempting to bribe an officer or employee of the City or any other City, nor has Vendor made an admission of guilt of such conduct that is a matter of record (30 ILCS 500/50-5).

5.5 If Vendor, or any officer, director, partner, or other managerial agent of Vendor, has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, Vendor certifies at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract and acknowledges that the City shall declare the Agreement void if this certification is false (30 ILCS 500/50-10.5).

5.6 Vendor certifies that it and its affiliates are not delinquent in the payment of any debt to the City.

5.7 In accordance with the Steel Products Procurement Act, Vendor certifies steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the head of the procuring Department grants an exception (30 ILCS 565).

5.8 Vendor certifies it has not been convicted of bid rigging or bid rotating or any similar offense (720 ILCS 5/33 E-3, E-4).

5.9 Vendor certifies it complies with the Section 1-12-5 of the City of Evanston Code and the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).

5.10 Vendor certifies that it shall employ only persons duly licensed by the State of Illinois to perform professional services under this Agreement for which applicable Illinois law requires a license, subject to prior approval of the City.

5.11 Vendor certifies that if more favorable terms are granted by Vendor to any similar governmental entity in any state in a contemporaneous agreement let under the same or similar financial terms and circumstances for comparable goods or services, the more favorable terms will be applicable under this Agreement.

## 6.0 DISCLOSURES AND CONFLICTS OF INTEREST

### Section 1: Conflict of Interest Prohibited

Vendor shall not have any public or private interest and shall not acquire directly or indirectly any such interest which conflicts in any manner with its performance under this Agreement.

### Section 2: Debarment/Legal Proceeding Disclosure (*All Vendors must complete this section*).

Vendor must identify any of the following that occurred for it or any of its officers or directors within the previous 10 years:

Debarment from contracting with any governmental entity	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Professional licensure discipline	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Bankruptcies	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Adverse civil judgments and administrative findings	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Criminal felony convictions	Yes <input type="checkbox"/>	No <input type="checkbox"/>

If any of the above is checked yes, please identify with descriptive information the nature of the debarment and legal proceeding. The City reserves the right to request more information, should the information need further clarification.

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7. **SUPPLEMENTAL PROVISIONS**

7.1 **City Supplemental Provisions**

- Definitions
- Required Federal Clauses, Certifications and Assurances
- ARRA Requirements (American Recovery and Reinvestment Act of 2009)
- Public Works Requirements (construction and maintenance of a public work) (820 ILCS 130/4)
- Prevailing Wage (820 ILCS 130/1 et seq.)
- M/W/EBE Subcontracting Requirements
- Other (describe)

7.2 **Vendor Supplemental Provisions**

- \_\_\_\_\_

TAXPAYER IDENTIFICATION NUMBER

I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

- If you are an individual, enter your name and SSN as it appears on your Social Security Card.
- If you are a sole proprietor, enter the owner's name on the name line followed by the name of the business and the owner's SSN or EIN.
- If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's name on the name line and the d/b/a on the business name line and enter the owner's SSN or EIN.
- If the LLC is a corporation or partnership, enter the entity's business name and EIN and for corporations, attach IRS acceptance letter (CP261 or CP277).
- For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.

Name: \_\_\_\_\_

Business Name: \_\_\_\_\_

Taxpayer Identification Number:

Social Security Number \_\_\_\_\_

or

Employer Identification Number \_\_\_\_\_

Legal Status (check one):

- |  |   |
|--|---|
| <input type="checkbox"/> Individual  | <input type="checkbox"/> Governmental   |
| <input type="checkbox"/> Sole Proprietor   | <input type="checkbox"/> Nonresident alien  |
| <input type="checkbox"/> Partnership   | <input type="checkbox"/> ECity or trust   |
| <input type="checkbox"/> Legal Services Corporation  | <input type="checkbox"/> Pharmacy (Non-Corp.)   |
| <input type="checkbox"/> Tax-exempt  | <input type="checkbox"/> Pharmacy/Funeral Home/Cemetery (Corp.)                           |
| <input type="checkbox"/> Corporation providing or billing<br>medical and/or health care services     | <input type="checkbox"/> Limited Liability Company (select applicable tax classification) |
| <input type="checkbox"/> Corporation NOT providing or billing<br>medical and/or health care services | <input type="checkbox"/> D = disregarded entity   |
|  | <input type="checkbox"/> C = corporation  |
|  | <input type="checkbox"/> P = partnership  |

Signature: \_\_\_\_\_

Date: \_\_\_\_\_