

## **PURCHASE OF SERVICE AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF ELGIN, Illinois, a municipal corporation (hereinafter referred to as the "City"), and \_\_\_\_\_, a(n) \_\_\_\_\_ (hereinafter referred to as the "Service Provider").

WHEREAS, the City has determined that it would serve a beneficial public purpose to enter into an agreement with the Service Provider for the Service Provider to provide certain contract services as described in this Agreement; and

WHEREAS, the Service Provider represents that it has the necessary expertise and experience to furnish the Subject Services upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby mutually acknowledged, the parties hereto hereby agree as follows:

1. The Service Provider shall provide all of the services pursuant to the terms and conditions and on the dates and times as described in the document entitled "[insert name of service provider] - Scope of Services for 20\_\_\_\_ Purchase of Service Agreement", attached hereto and made a part hereof as Exhibit A (such services, including the terms, conditions, dates and times, are hereinafter referred to as the "Subject Services"). In the event of any conflict between the provisions of this Agreement and the provisions of Exhibit A, the provisions of this Agreement shall control. The Service Provider represents and warrants that the Service Provider has the skills and knowledge necessary to conduct the Subject Services provided for in Exhibit A and that the Subject Services set forth in Exhibit A are integral parts of this Agreement and may not be modified, amended or altered, except by a signed, written amendment to this Agreement, agreed to and executed by both parties hereto.

2. The Service Provider shall address all inquiries and requests made pursuant to this Agreement to the City Manager of the City or his designee.

3. In connection with any Subject Services to be performed on other than City-owned or controlled properties, the Service Provider warrants and agrees to maintain all facilities and equipment used in the performing of the Subject Services in a clean, sanitary and safe condition and free from defects of every kind whatsoever. Service Provider agrees and warrants that the Service Provider will periodically inspect all of such facilities and equipment for such purposes. Service Provider also warrants that the Service Provider and the Service Provider's facilities and equipment used in the performing of the Subject Services are not now, nor shall be during the term of this Agreement in violation of any health, building, fire or zoning code or regulation or other applicable requirements of law. In connection with the Subject Services on properties owned or controlled by the City, Service Provider agrees and warrants to use, and to cause persons participating in the Subject Services to use, through proper supervision and control, all facilities

with due care, and to report all defects in or damage to any such facilities, and the cause thereof, if known, immediately to the City.

4. The City shall pay the Service Provider for the Subject Services under this Agreement the total amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_). Such payment by the City to the Service Provider shall be made in \_\_\_\_ installments of \_\_\_\_\_ Dollars (\$ \_\_\_\_). The first aforementioned installment payment shall be made within \_\_\_\_ days of the date of this Agreement. The second aforementioned installment payment shall be made on or before \_\_\_\_\_, 20\_\_\_\_. However, the second installment payment shall not be made prior to \_\_\_\_ days after the Service Provider's submission of the budget document and audited financial statement documents referred to in paragraph 6 of this Agreement.

5. The Service Provider shall apply the money to be paid by the City to the Service Provider pursuant to the preceding paragraph hereof solely to operating expenses such as staff salary and benefits, meeting expenses, and expenses associated with the Subject Services to be provided by the Service Provider pursuant to this Agreement.

6. The Service Provider shall complete, maintain and submit to the City Manager of the City, or his designee, any and all records, reports and forms relating to the Subject Services in this Agreement as requested by the City. Without limiting the foregoing, the parties further agree as follows:

- a. The Service Provider shall provide a budget to the City which shall reflect the projected distribution of funds received from the City pursuant to this Agreement during the term of this Agreement. The budget shall be submitted to the Assistant City Manager of the City prior to any payment by the City.
- b. The Service Provider shall provide written performance reports detailing the disbursements of the monies to be paid by the City to the Service Provider pursuant to this Agreement. The reports shall be provided to the City quarterly on March 31, 20\_\_\_\_; June 30, 20\_\_\_\_; September 30, 20\_\_\_\_; and December 31, 20\_\_\_\_.
- c. The City has the right to review all accounting records of the Service Provider related to the use of the monies to be paid by the City to the Service Provider pursuant to this Agreement upon 72 hours advance notice from the City to the Service Provider.
- d. The Service Provider shall have an audit performed on its financial statements for the year ending December 31, 20\_\_\_\_. The audit must be performed by an independent certified public accountant recognized in good standing by the American Institute of Certified Public Accountants and licensed in the State of Illinois. The Service Provider shall provide the City with two copies of the said audited financial statement along with the management letter and any other correspondence related to internal control matters on or before July 15, 20\_\_\_\_. These statements shall be submitted to the City Manager at City Hall, 150 Dexter Court, Elgin, Illinois 60120-5555.

7. In the event this Agreement is terminated, or in the event the Subject Services for which the City funds provided herein are to be applied are discontinued, or the Service Provider ceases its operations prior to December 31, 20\_\_, the Service Provider shall refund to the City on a prorated per diem basis the funds paid hereunder for the portion of the year remaining after any such termination or for the portion of the year the Subject Services were not conducted.

8. The City shall be recognized as a sponsor of the Service Provider and shall receive the benefits of sponsorship consistent with the level of support provided in this Agreement. At a minimum, the City's support shall be acknowledged on all print materials promoting the Service Provider's organization, press releases, radio advertising, web page information and event program(s) through the following mandatory funding identification statement: "Funding for the organization is provided in part through the City of Elgin". Three samples of this acknowledgement shall be provided to the City. A logo provided by the City to the Service Provider shall be used for this purpose.

9. In all printed materials in which a City seal or logo is deemed appropriate, approval by the Public Information Officer of the City is required prior to printing.

10. The term of this Agreement shall commence from the date of the execution hereof and continue through December 31, 20\_\_, unless otherwise terminated as provided for herein.

11. This Agreement shall not be construed so as to create a partnership, joint venture, employment or other agency relationship between the parties hereto. Service Provider understands and agrees that the relationship of the Service Provider to the City arising out of this Agreement shall be that of an independent contractor. It is expressly agreed and understood that the Service Provider and the Service Provider's officers, employees and agents are not employees of the City and are not entitled to any benefits or insurance provided to employees of the City.

12. If the Service Provider violates or breaches any term of this Agreement, such violation or breach shall be deemed to constitute a default, and the City shall have the right to seek administrative, contractual, legal or equitable remedies as may be suitable to the violation or breach; and, in addition, if the Service Provider by reason of any default, fails to within fifteen (15) days after notice thereof by the City to comply with the conditions of the Agreement, the City may terminate this Agreement. If the City violates or breaches any term of this Agreement, such violation or breach shall be deemed to constitute a default, and in the event the City fails to within fifteen (15) days after notice thereof by the Service Provider to comply with the conditions of this Agreement, the Service Provider as its sole and exclusive remedy may terminate this Agreement. Notwithstanding anything to the contrary in this Agreement, with the sole exception of the monies the City has agreed to pay the Service Provider pursuant to Section 4 hereof, no action shall be commenced by the Service Provider, any related persons or entities, and/or any of their successors and/or assigns, against the City for monetary damages. In the event any legal action is brought by the City for the enforcement of any of the obligations of the Service Provider in this Agreement and the City is the prevailing party in such action, the City shall also be entitled to recover from the Service Provider interest at the rate of nine percent (9%) per annum and reasonable attorney's fees. Service Provider hereby further waives any and all claims or rights to interest which it claims

it may otherwise be entitled to pursuant to law, including, but not limited to, the Local Government Prompt Payment Act (50 ILCS 501/1, et seq.), as amended, or the Illinois Interest Act (815 ILCS 205/1, et seq.), as amended. The parties hereto further agree that any action by the Service Provider arising out of this Agreement must be filed within one year of the date the alleged cause of action arose or the same will be time barred. The provisions of this section shall survive any expiration, completion and/or termination of this Agreement.

13. Notwithstanding any other provision hereof, the City may terminate this Agreement at any time upon thirty (30) days prior written notice to the Service Provider. In the event this Agreement is so terminated, the Service Provider shall be paid for services actually performed, and reimbursable expenses actually incurred prior to termination, except that reimbursement shall not in any event exceed the total amount set forth under Section 4 above. Additionally, in the event this Agreement is so terminated, the Service Provider shall immediately cease the expenditure of any funds paid to the Service Provider by the City and shall refund to the City any unearned or unexpended funds.

14. To the fullest extent permitted by law, Service Provider shall indemnify, defend and hold harmless the City, its officers, employees, agents, boards and commissions from and against any and all claims, suits, judgments, costs, attorney's fees, damages or other relief, including but not limited to worker's compensation claims, in any way resulting from or arising out of negligent actions or omissions of the Service Provider in connection herewith, including negligence or omissions or agents of the Service Provider arising out of the performance of this Agreement and/or the Subject Services. In the event of any action against the City, its officers, employees, agents, boards or commissions covered by the foregoing duty to indemnify, defend and hold harmless, such action shall be defended by legal counsel of the City's choosing. The provisions of this section shall survive any expiration, completion and/or termination of this Agreement.

15. The Service Provider shall provide, pay for and maintain in effect, during the term of this Agreement the following types and amounts of insurance:

- a. Comprehensive Liability. A policy of comprehensive general liability insurance with limits of at least \$1,000,000 aggregate for bodily injury and \$1,000,000 aggregate for property damage.

The Service Provider shall deliver to the City a Certificate of Insurance naming the City as additional insured. The policy shall not be modified or terminated without thirty (30) days prior written notice to the City.

The Certificate of Insurance which shall include Contractual obligation assumed by the Service Provider under Section 14 entitled "Indemnification" shall be provided.

This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City. There shall be no endorsement or modification of this insurance to make it excess over other available insurance,

alternatively, if the insurance states that it is excess or prorated, it shall be endorsed to be primary with respect to the City.

- b. Comprehensive Automobile Liability. Comprehensive Automobile Liability Insurance covering all owned, non-owned and hired motor vehicles with limits of not less than \$500,000 per occurrence for damage to property.
- c. Combined Single Limit Policy. The requirements for insurance coverage for the general liability and auto exposures may be met with a combined single limit of \$1,000,000 per occurrence subject to a \$1,000,000 aggregate.
- d. Workers Compensation Insurance. Workers Compensation Insurance in the amounts required under the laws of the State of Illinois.
- e. All said insurance shall be written by, and secured from, companies approved to do business and issue insurance in the State of Illinois and must be rated "A-" or better, in accordance with the latest edition of Best's Insurance Guide, published by AM Best Company, Inc. or its equivalent.

16. No official, director, officer, agent or employee of the City shall be charged personally or held contractually liable under any term or provision of this Agreement or because of their execution, approval or attempted execution of this Agreement.

17. Any assignment, delegation or subcontracting shall be subject to all of the terms, conditions and other provisions of this Agreement and the Service Provider shall remain liable to the City with respect to each and every item, condition and other provision hereof to the same extent that the Service Provider would have been obligated if it had done the work itself and no assignment, delegation or subcontract had been made. Any proposed subcontractor shall require the City's advanced written approval which approval may be withheld at the sole discretion of the City.

18. No person shall be denied or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this Agreement on the grounds of race, color, religion, sex, national origin, age, ancestry, order of protection status, familial status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service. Any violation of this provision shall be considered a violation of a material provision of this Agreement and shall be grounds for cancellation, termination or suspension, in whole or in part, or rescission of this Agreement by the City at the City's sole discretion, without liability against the City.

19. The Service Provider shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, ancestry, order of protection status, familial status, marital status, physical or mental disability, military status, sexual orientation, or unfavorable discharge from military service, unless based upon a bona fide occupational qualification, and this requirement shall apply to, but not be limited to, the following: employment, advertising, hiring, layoff or termination, rates of pay or other forms of compensation

and selection for training, including apprenticeship. The Service Provider shall take affirmative action to comply with the provisions of Elgin Municipal Code Section 5.02.040 and will require any subcontractor to submit to the City a written commitment to comply with these provisions. The Service Provider shall distribute copies of this commitment to all persons who will participate in recruitment, screening, referral and selection job applicants and perspective subcontractors. The Service Provider agrees that the provisions of Section 5.02.040 of the Elgin Municipal Code, 1976, as amended, is hereby incorporated by reference, as if said out verbatim.

20. The terms of this Agreement shall be severable. In the event any of the terms or provisions of this Agreement are deemed to be void or otherwise unenforceable for any reason, the remainder of this Agreement shall remain in full force and effect.

21. This Agreement and its exhibits constitutes the entire Agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written amendment duly executed by the parties. Each party agrees that no representations or warranties shall be binding upon the other party unless expressed in writing herein or in a duly executed amendment hereof.

22. This Agreement shall be deemed to have been made in, and shall be construed in accordance with the laws of the State of Illinois. Venue for the resolution of any disputes or the enforcement of any rights pursuant to this Agreement shall be in the Circuit Court of Kane County, Illinois.

23. The Service Provider certifies hereby that it is not barred from bidding on a public contract as a result of a violation of 720 ILCS 5/33E et seq. or any similar state or federal statute regarding bid rigging.

24. As a condition precedent of this contract, the Service Provider shall have written sexual harassment policies that include, at a minimum, the following information:

- a. the illegality of sexual harassment;
- b. the definition of sexual harassment under state law;
- c. a description of sexual harassment, utilizing examples;
- d. the vendor's internal complaint process including penalties;
- e. the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights, and the Illinois Human Rights Commission;
- f. directions on how to contact the department and commission; and
- g. protection against retaliation as provided by Section 6-101 of the Human Rights Act.

A copy of the policies shall be provided by the Service Provider to the Department of Human Rights upon request (775 ILCS 5/2-105).

25. As a condition precedent of this Agreement, the Service Provider shall have in place a written substance abuse prevention program which meets or exceeds the program requirements in the Substance Abuse Prevention Public Works Act at 820 ILCS 265/1, *et seq.* A copy of such policy shall be provided to the City's Assistant City Manager prior to the entry and execution of this Agreement.

26. Appropriations. The fiscal year of the City is the 12 month period ending December 31. The obligations of the City under any agreement for any fiscal year are subject to and contingent upon the appropriation of funds sufficient to discharge the obligations which accrue in that fiscal year and authorization to spend such funds for the purpose of the Agreement.

If, for any fiscal year the term of the Agreement, sufficient funds for the discharge of the City's obligations under the Agreement are not appropriated and authorized, then the Agreement shall terminate as of the last day of the preceding fiscal year, or when such appropriated and authorized funds are exhausted, whichever is later, without liability to the City for damages, penalties or other charges on account of such termination.

27. Notwithstanding any other provision in this Agreement, it is expressly agreed and understood that in connection with the performance of this Agreement the Service Provider shall comply with all applicable federal, state, city and other requirements of law including, but not limited to, any applicable requirements regarding prevailing wages, minimum wage, workplace safety and legal status of employees. Without limiting the foregoing, the Service Provider hereby certifies, represents and warrants to the City that all of Service Provider's employees and/or agents who will be providing products, and/or services with respect to this Agreement shall be legally authorized to work in the United States. Service Provider shall also, at its expense, secure all permits and licenses, pay all charges and fees and give all notices necessary and incident to the due and lawful prosecution of the work, and/or the products and/or services to be provided pursuant to this Agreement. City shall have the right to audit any records in the possession or control of the Service Provider to determine the Service Provider's compliance with the provisions of this section. In the event the City proceeds with such an audit, the Service Provider shall make available to the City the City's relevant records at no cost to the City. Service Provider shall pay any and all costs associated with any such audit. The provisions of this section shall survive any expiration, completion and/or termination of this Agreement.

28. All notices, reports and documents required under this Agreement shall be in writing and shall be mailed by First Class Mail, postage prepaid, addressed as follows:

**As to the City:**

City of Elgin  
150 Dexter Court  
Elgin, IL 60120-5555  
Attention: City Manager

**As to Service Provider:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**With a copy to:**

City of Elgin  
150 Dexter Court  
Elgin, IL 60120-5555  
Attention: Corporation Counsel

29. This Agreement is and shall be deemed and construed to be a joint and collective work product of the City and the Service Provider and, as such, this Agreement shall not be construed against the other party, as the otherwise purported drafter of same, by any court of competent jurisdiction in order to resolve any inconsistency, ambiguity, vagueness or conflict, if any, of the terms and provisions contained herein.

30. This Agreement shall be binding on the parties hereto and their respective successors and permitted assigns. This Agreement and the obligations herein may not be assigned by the Service Provider without the express written consent of the City which consent may be withheld at the sole discretion of the City.

31. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same agreement. This Agreement may be executed electronically, and any signed copy of this Agreement transmitted by facsimile machine, email, or other electronic means shall be treated in all manners and respects as an original document. The signature of any party on a copy of this Agreement transmitted by facsimile machine, email, or other electronic means shall be considered for these purposes an original signature and shall have the same legal effect as an original signature.

IN WITNESS WHEREOF, the undersigned have entered into executed this Agreement on the date and year first written above.

CITY OF ELGIN:

[SERVICE PROVIDER]

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Name/print: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

**EXHIBIT A**  
**DESCRIPTION OF SERVICES TO BE PROVIDED BY SERVICE PROVIDER**