

89-R-17

A RESOLUTION

**Authorizing the City Manager to Execute an Agreement
With Rose Pest Solutions for Rodent Control Services**

WHEREAS, the City of Evanston provides rodent control services to its citizens; and

WHEREAS, the Health and Human Services Department manages the provision of rodent control services in the City of Evanston; and

WHEREAS, prior to 2012, the City of Evanston provided rodent control services in single family and owner occupied residential housing; and

WHEREAS, the City of Evanston recognized the increased community demand for rodent control services, and in 2012, the City Council directed the Health and Human Services Department to extend the practice of rodent control beyond single family housing and owner occupied rental dwellings to include all residential housing (townhouse, condominiums, and multi-unit apartment buildings); and

WHEREAS, in October 2017, the City of Evanston hired Rose Pest Solutions to provide rodent control services to replace the services of another provider; and

WHEREAS, the contract with Rose Pest Solutions is set to expire on December 31, 2017, and

WHEREAS, the Health and Human Services Department recommends that the City of Evanston enter into a 2-year agreement with Rose Pest Solutions, for

the period of January 1, 2018 through December 31, 2019, to provide rodent control services at a cost not-to-exceed \$74,880.00 per year;

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, into a 2-year agreement with Rose Pest Solutions, for the period of January 1, 2018 through December 31, 2019, to provide rodent control services at a cost not-to-exceed \$74,880.00 per year. This agreement shall be in substantial conformity with the Professional Services Agreement marked as Exhibit 1, attached hereto, and incorporated herein by reference.

SECTION 3: That this Resolution 89-R-17 shall be in full force and effect from and after its passage and approval in the manner provided by law.

Attest:



Devon Reid, City Clerk



Stephen H. Hagerty, Mayor

Adopted: Nov 13, 2017

EXHIBIT 1

Professional Services Agreement with Rose Pest Solutions

CITY OF EVANSTON
The Professional Agreement

The professional agreement shall cover the following:

1.0 INTRODUCTION

The City of Evanston's agreement with the selected pest control company for treatment of rodents from public and private properties shall be through the application of professional and effective pest control methods. Contractor must employ a responsible method of Integrated Pest Management; providing services with the least possible hazards to the people, property and the environment. The Contractor is expected to provide consistent quality service and to immediately begin to reduce rodent populations to safe levels.

The contract term desired is for a period of (2) years.

Prior to the submittal of a proposal, Proposers are advised to carefully examine

- the contract documents
- project scope and work tasks to be accomplished
- specifications
- submittal requirements
- insurance requirements and required documentation

2.0 SCOPE OF SERVICES

The Contractor is to initially provide 50 bait stations per year for the control of rodents throughout the City of Evanston. It is estimated that bait stations will be evenly distributed throughout the City for both private and public properties within the service scope of 7.8 square miles. The service will also include 10 overnight alley rodent abatement treatments per year.

All bait stations are to be maintained, monitored, inspected and serviced/refilled on an at least weekly basis for each location. Detailed documentation of the service provided and location of the bait box shall be located into the 311 database at least 72 hours of the service.

- No poisons of any kind shall be used to control rodents on private property without prior consent of the property owners by signature of a Release of Liability waiver.
- Services are to be provided by properly trained, certified professional rodent control Technicians.
- Contractor's employees are to present a professional appearance. Shall be neat, clean, well groomed, courteous, properly uniformed and conduct themselves in a respectable manner while performing duties.

-
- The Contractor shall be responsible for instructing employees in safety measures considered appropriate. The Contractor shall ensure that personal protection equipment is provided and decontamination/disposal guidelines are in compliance.
 - Contractor's employees must provide proper identification while performing duties that shows affiliation with the Contractor.
 - All materials and rodenticides shall conform to applicable Federal, State, County and local ordinance laws, statutes and regulations.
 - All materials are to be registered with the Environmental Protection Agency.
 - All bait stations must be in good repair and tamper resistant.
 - All proposers must describe their stations in detail on their proposal page. You may use pictures, attachments or brochures if necessary or appropriate.
 - All materials shall be used in accordance with labeling directions.
 - 311 database training will be provided by the City of Evanston. Contractor shall ensure appropriate staff from their organization attends training.

Qualifications / Experience

- 1. City of Evanston - 2100 Ridge Ave, Evanston IL 60201 Carl Caneva 847-859-7831
City Wide Rodent Control 2013-2016**
- 2. Village of Skokie – 5127 Oakton St, Skokie, IL Lillian Lasanta 847-933-8484
Village rodent control program 2015 – 2016**
- 3. Village of Oak Park – 123 Madison St. Oak Park, IL 60302 Lisha Fambro 708-358-5483
Village rodent control program 2014-2015**
- 4. Chicago State University – 9501 S. King Dr, Chicago, IL 60628 Jeff Melton 773-995-2593
All aspect of pest control program for university grounds. 2015-2016**
- 5. Rockford Housing Authority – 223 S. Winnebago, Rockford, IL 61102 Ron Clewer 815-489-8570
All pest control needs for 190 buildings/ locations within the Rockford Housing Authority. 2014 -
2017**

PROPOSED COST TABLE

<u>Item Description</u>	<u>Cost</u>
50 rodent bait boxes/year	\$ 1,250
Weekly visits to investigate requests	\$ 53,440
Fuel	\$ 4,680
Rodenticide	\$ 7,800
10 overnight alley rodent abatement/year	\$ 5,710
Total Yearly Cost	\$ 74,880

Exhibit A

DISCLOSURE OF OWNERSHIP INTERESTS

The City of Evanston Code Section 1-18-1 *et seq.* requires all persons (APPLICANT) seeking to do business with the City to provide the following information with their proposal. Every question must be answered. If the question is not applicable, answer with "NA".

APPLICANT NAME: ROSE PEST SOLUTIONS

APPLICANT ADDRESS: 414 N. FRONTAGE RD AURORA, IL 60093

TELEPHONE NUMBER: 847-441-8300

FAX NUMBER: 847-441-8320

APPLICANT is (Check One)

- Corporation
- Partnership
- Sole Owner
- Association

Other () _____

Please answer the following questions on a separate attached sheet if necessary.

SECTION I - CORPORATION

1a. Names and addresses of all Officers and Directors of Corporation.

ROBERT J. DOLD SR. CEO

JUDY DOLD CHAIRMAN

ROBERT J. DOLD PRESIDENT

1b. (Answer only if corporation has 33 or more shareholders.)

Names and addresses of all those shareholders owning shares equal to or in excess of 3% of the proportionate ownership interest and the percentage of shareholder interest. (Note: Corporations which submit S.E.C. form 10K may substitute that statement for the material required herein.)

- 1c. (Answer only if corporation has fewer than 33 shareholders.)
Names and addresses of all shareholders and percentage of interest of each herein.
(Note: Corporations which submit S.E.C. form 10K may substitute that statement for the material requested herein.)

SECTION 2 - PARTNERSHIP/ASSOCIATION/JOINT VENTURE

- 2a. The name, address, and percentage of interest of each partner whose interests therein, whether limited or general, is equal to or in excess of 3%.

- 2b. Associations: The name and address of all officers, directors, and other members with 3% or greater interest.

SECTION 3 - TRUSTS

- 3a. Trust number and institution.

- 3b. Name and address of trustee or estate administrator.

- 3c. Trust or estate beneficiaries: Name, address, and percentage of interest in total entity.

SECTION 4 - ALL APPLICANTS - ADDITIONAL DISCLOSURE

4a. Specify which, if any, interests disclosed in Section 1, 2, or 3 are being held by an agent or nominee, and give the name and address of principal.

4b. If any interest named in Section 1,2, or 3 is being held by a "holding" corporation or other "holding" entity not an individual, state the names and addresses of all parties holding more than a 3% interest in that "holding" corporation or entity as required in 1(a), 1(b), 1(c), 2(a), and 2(b).

4c. If "constructive control" of any interest named in Sections 1,2, 3, or 4 is held by another party, give name and address of party with constructive control. ("Constructive control" refers to control established through voting trusts, proxies, or special terms of venture or partnership agreements.)

I have not withheld disclosure of any interest known to me. Information provided is accurate and current.

Date 11-6-2017

Robert J Dald
Signature of Person Preparing Statement

ATTEST: William I Hastings Title CEO
Notary Public

Commission Expires: July 2, 2018

(Notary Seal)

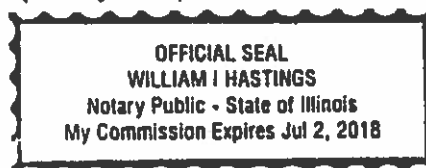


EXHIBIT B

ADDITIONAL INFORMATION SHEET

Proposal Name: CITY WHDZ RODENT CONTROL
Proposal Number #: _____
Company Name: ROSE PEST SOLUTIONS
Contact Name: BILL HASTINGS
Address: 414 FRONTAGE RD NORTHFIELD, ILL 60093
City, State, Zip: _____
Telephone/FAX: # 847-441-8300 / 847-441-8320
E-mail: B. HASTINGS @ ROSE PEST CONTROL . COM

Comments: _____

Exhibit C

CONFLICT OF INTEREST FORM

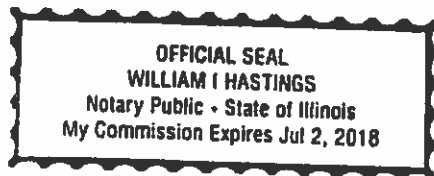
ROBERT J. DOLD, hereby certifies that it has conducted an investigation into whether an actual or potential conflict of interest exists between the bidder, its owners and employees and any official or employee of the City of Evanston.

Proposer further certifies that it has disclosed any such actual or potential conflict of interest and acknowledges if bidder/Proposer has not disclosed any actual or potential conflict of interest, the City of Evanston may disqualify the bid/proposal.

Robert J. Dold

(Name of Bidder/Proposer if the Bidder/Proposer is an Individual)
(Name of Partner if the Bidder/Proposer is a Partnership)
(Name of Officer if the Bidder/Proposer is a Corporation)

The above statements must be subscribed and sworn to before a notary public. Subscribed and Sworn to this 6TH day of NOVEMBER, 2016. 2017



William I. Hastings
Notary Public

Failure to complete and return this form may be considered sufficient reason for rejection of the bid / proposal.

Exhibit D

ACKNOWLEDGEMENT OF UNDERSTANDING

THE SECTION BELOW MUST BE COMPLETED IN FULL AND SIGNED

The undersigned hereby certifies that they have read and understand the contents of this solicitation and attached service agreements, and agree to furnish at the prices shown any or all of the items above, subject to all instructions, conditions, specifications and attachments hereto. Failure to have read all the provisions of this solicitation shall not be cause to alter any resulting contract or to accept any request for additional compensation. By signing this document, the Proposer hereby certifies that they are not barred from bidding on this contract as a result of bid rigging or bid rotating or any similar offense (720 ILCS S/33E-3, 33E-4).

Authorized
Signature:

Robert J. Dold

Company
Name:

ROSS PEST SOLUTIONS

Typed/Printed
Name:

ROBERT J. DOLD

Date:

8 NOVEMBER 2017

Title:

CEO

Telephone
Number:

847-441-8300

Email:

B.HASTINGS@ROSSPESTCONTROL
.com

Fax

Number:

847-441-8320

Exhibit E

ANTI-COLLUSION AFFIDAVIT AND PROPOSER'S CERTIFICATION

ROBERT J. DODD, being first duly sworn,
deposes and says that he is CFO
(Partner, Officer, Owner, Etc.)
of ROSS BEST SOLUTIONS
(Proposer)

The party making the foregoing proposal or bid, that such bid is genuine and not collusive, or sham; that said bidder has not colluded, conspired, connived or agreed, directly or indirectly, with any bidder or person, to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person; to fix the bid price element of said bid, or of that of any other bidder, or to secure any advantage against any other bidder or any person interested in the proposed contract.

The undersigned certifies that he is not barred from bidding on this contract as a result of a conviction for the violation of State laws prohibiting bid-rigging or bid-rotating.

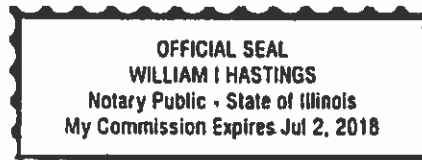
Robert J. Dodd
(Name of Bidder if the Bidder is an Individual)
(Name of Partner if the Bidder is a Partnership)
(Name of Officer if the Bidder is a Corporation)

The above statements must be subscribed a sworn to before a notary public.

Subscribed and Sworn to this 6th day of NOVEMBER, ~~2016~~ 2017

William I. Hastings
Notary Public

Commission Expires: July 2, 2018



Failure to complete and return this form may be considered sufficient reason for rejection of the bid.

EXHIBIT F

CITY OF EVANSTON M/W/EBE POLICY

A City of Evanston goal is to provide contracting and subcontracting opportunities to Minority Business Enterprises, Women Business Enterprises, and Evanston Business Enterprises. The goal of the Minority, Women and Evanston Business Enterprise Program (M/W/EBE) is to assist such businesses with opportunities to grow. To assist such growth, the City's goal is to have general contractors utilize M/W/EBEs to perform no less than 25% of the awarded contract.

Firms bidding on projects with the City must work to meet the 25% goal or request a waiver from participation. It is advised that bidders place advertisements requesting subcontractors and that they email or contact individual firms that would be appropriate to partner in response to the project. For samples of possible advertisements, see the City of Evanston's Business Diversity Section <http://www.cityofevanston.org/business/business-diversity/> (Sample Advertisement). If you request a paper copy of the additional documents, it will be available free of charge from the Purchasing Office, 2100 Ridge Road Suite 4200, Evanston, IL 60201.

If a bidder is unable to meet the required M/W/EBE goal, the Bidder must seek a waiver or modification of the goal on the attached forms. Bidder must include:

1. A narrative describing the Bidder's efforts to secure M/W/EBE participation prior to the bid opening.
2. Documentation of each of the assist agencies that were contacted, the date and individual who was contacted, and the result of the conversation (see form)
3. A letter attesting to instances where the bidder has not received inquiries/proposals from qualified M/W/EBEs
4. Names of owners, addresses, telephone numbers, date and time and method of contact of qualified M/W/EBE who submitted a proposal but were not found acceptable.
5. Names of owners, addresses, telephone numbers, date and time of contact of at least 15 qualified M/W/EBEs the bidder solicited for proposals for work directly related to the Bid prior to the bid opening (copies must be attached).

If a bidder is selected with a Subcontractor listed to meet the M/W/EBE goal, a "monthly utilization report" will be due to the City prior to each payment being issued to the Contractor. This report will include documentation of the name of the firm hired, the type of work that firm performed, etc. Should the M/W/EBE not be paid according to the schedule proposed in this document, the City reserves the right to cancel the contract. Examples of this monthly form can be found on the City's website: <http://www.cityofevanston.org/business/business-diversity/> (M/WEBE Monthly Utilization Report).

Exhibit G

M/W/EBE PARTICIPATION COMPLIANCE FORM

I do hereby certify that

_____ (Name of firm) intends to participate as a Subcontractor or General Contractor on the project referenced above.

This firm is a (check only one):

- _____ Minority Business Enterprise (MBE), a firm that is at least 51% managed and controlled by a minority, certified by a certifying agency within Illinois.
- _____ Women's Business Enterprise (WBE), a firm that is at least 51% managed and controlled by a woman, certified by a certifying agency within Illinois.
- _____ Evanston Based Enterprise (EBE), a firm located in Evanston for a minimum of one year and which performs a "commercially useful function".

Total proposed price of response \$ _____

Amount to be performed by a M/W/EBE \$ _____

Percentage of work to be performed by a M/W/EBE _____ %

Information on the M/W/EBE Utilized:

Name _____

Address _____

Phone Number _____

Signature of firm attesting to participation _____

Title and Date _____

Please attach

1. Proper certification documentation if applying as a M/W/BE and check the appropriate box below. This M/W/BE will be applying with documentation from:
 - Cook County
 - City of Chicago
 - State certification
 - Federal certification

2. Attach business license if applying as an EBE

Exhibit H

M/W/EBE PARTICIPATION WAIVER REQUEST

I am OWNER of ROSE PEST SOLUTIONS, and I have authority to
(Title) (Name of Firm)

execute this certification on behalf of the firm. I ROBERT J. DOLD do
(Name)

hereby certify that this firm seeks to waive all or part of this M/W/EBE participation goal for the following reason(s):

(CHECK ALL THAT APPLY. SPECIFIC SUPPORTING DOCUMENTATION MUST BE ATTACHED.)

1. No M/W/EBEs responded to our invitation to bid.

2. An insufficient number of firms responded to our invitation to bid.

For #1 & 2, please provide a narrative describing the outreach efforts from your firm and proof of contacting at least 15 qualified M/W/EBEs prior to the bid opening. Also, please attach the accompanying form with notes regarding contacting the Assist Agencies.

X

3. No subcontracting opportunities exist.

Please provide a written explanation of why subcontracting is not feasible.

4. M/W/EBE participation is impracticable.

Please provide a written explanation of why M/W/EBE participation is impracticable.

Therefore, we request to waive 100% of the 25% utilization goal for a revised goal of 0%.

Signature: _____

Robert J. Dold
(Signature)

Date: _____

11-6-17

M/W/EBE Participation Wavier explanation

Rose Pest Solutions

No subcontracting opportunities exist.

Because of the nature of our business and the communication required to service no subcontracting opportunities exist.

EXHIBIT I

Construction Contractors' Assistance Organizations ("Assist Agencies") Form

AGENCY	DATE CONTACTED	CONTACT PERSON	RESULT OF CONVERSATION
Association of Asian Construction Enterprises (AAE) 5500 Touhy Ave., Unit K Skokie, IL 60077 Phone: 847/5259693 Perry Nakachii, President			
Black Contractors United (BCU) 400 W. 76th Street Chicago, IL 60620 Phone: 773/483-4000 Fax: 773/483-4150 Email: bcunewera@ameritech.net			
Chicago Minority Business Development Council 105 West Adams Street Chicago, Illinois 60603 Phone: 312-755-8880 Fax: 312-755-8890 Email: info@chicagomsdc.org Shelia Hill, President			
Federation of Women Contractors 5650 S. Archer Avenue Chicago, Illinois 60638 Phone: 312/360-1122 Fax: 312/360-0239 Email: FWCChicago@aol.com Contact Person: Beth Doria Maureen Jung, President			
Hispanic American Construction Industry (HACIA) 901 W. Jackson, Suite 205 Chicago, IL 60607 Phone: 312/666-5910 Fax: 312/666-5692 Email: info@haciaworks.org			
Women's Business Development Center 8 S. Michigan Ave, Suite 400 Chicago, Illinois 60603 Phone: 312-853-3477 Fax: 312-853-0145 Email: wbdc@wbdc.org Carol Dougal, Director			

Exhibit J

Professional Services Agreement Acknowledgement Page

The City has attached its standard professional services agreement as an exhibit to this RFP. Identify all exceptions to the agreement that would prevent your firm from executing it. The City shall not consider or negotiate regarding exceptions submitted at any time after the submission of the Proposer's response. Please check one of the following statements:

 I have read the professional services agreement and plan on executing the agreement without any exceptions.

 X My firm cannot execute the City's standard professional service agreement unless the exceptions noted below or in the attached sample professional services agreement are made.

*****Please be aware that submitting exceptions to the contract may impact the likelihood of your firm being selected to perform this work.**

List exceptions in the area below:

PARAGRAPH I - ADDITIONAL COST OF INSURANCE
AMOUNT TO BE ADDED TO THE YEARLY ESTIMATE

Authorized
Signature:

Robert J. Dodd

Company
Name:

ROSE TEST SOLUTIONS

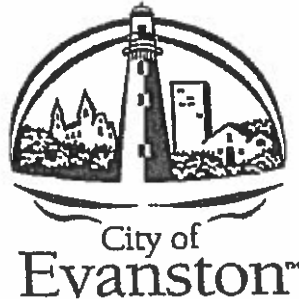
Typed/Printed
Name and Title:

ROBERT J. DODD

Date:

11-6-17

Exhibit J



**CITY OF EVANSTON
PROFESSIONAL SERVICES AGREEMENT**

The parties referenced herein desire to enter into an agreement for professional services for

City-Wide Rodent Control Program

THIS AGREEMENT (hereinafter referred to as the "Agreement") entered into this ___ day of _____, 20___, between the City of Evanston, an Illinois municipal corporation with offices located at 2100 Ridge Avenue, Evanston Illinois 60201 (hereinafter referred to as the "City"), and *[Insert Professional Service Provider's name here]*, with offices located at *[Insert address here]*, (hereinafter referred to as the "Consultant"). Compensation for all basic Services ("the Services") provided by the Consultant pursuant to the terms of this Agreement shall not exceed \$*[Insert fee here]*.

I. COMMENCEMENT DATE

Consultant shall commence the Services on _____ or no later than three (3) DAYS AFTER City executes and delivers this Agreement to Consultant.

II. COMPLETION DATE

Consultant shall complete the Services by _____. If this Agreement provides for renewals after an initial term, no renewal shall begin until agreed to in writing by both parties prior to the completion date of this Agreement.

III. PAYMENTS

City shall pay Consultant those fees as provided here: Payment shall be made upon the completion of each task for a project, as set forth in Exhibit A – Project Milestones and Deliverables. Any expenses in addition to those set forth here must be specifically approved by the City in writing in advance.

IV. DESCRIPTION OF SERVICES

Consultant shall perform the services (the "Services") set forth here: Services are those as defined in Exhibit A, the City's Request for Proposal/Qualifications No. # (Exhibit B) and Consultant's Response to the Proposal (Exhibit C). Services may include, if any, other documented discussions and agreements regarding scope of work and cost (Exhibit D).

V. GENERAL PROVISIONS

A. **Services.** Consultant shall perform the Services in a professional and workmanlike manner. All Services performed and documentation (regardless of format) provided by Consultant shall be in accordance with the standards of reasonable care and skill of the profession, free from errors or omissions, ambiguities, coordination problems, and other defects. Consultant shall take into account any and all applicable plans and/or specifications furnished by City, or by others at City's direction or request, to Consultant during the term of this Agreement. All materials, buildings, structures, or equipment designed or selected by Consultant shall be workable and fit for the intended use thereof, and will comply with all applicable governmental requirements. Consultant shall require its employees to observe the working hours, rules, security regulations and holiday schedules of City while working and to perform its Services in a manner which does not unreasonably interfere with the City's business and operations, or the business and operations of other tenants and occupants in the City which may be affected by the work relative to this Agreement. Consultant shall take all necessary precautions to assure the safety of its employees who are engaged in the performance of the Services, all equipment and supplies used in connection therewith, and all property of City or other parties that may be affected in connection therewith. If requested by City, Consultant shall promptly replace any employee or agent performing the Services if, in the opinion of the City, the performance of the employee or agent is unsatisfactory.

Consultant is responsible for conforming its final work product to generally accepted professional standards for all work performed pursuant to this Agreement. Consultant is an independent Consultant and is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to, Worker's Compensation Insurance. Nothing in this Agreement accords any third-party beneficiary rights whatsoever to any non-party to this Agreement that any non-party may seek to enforce. Consultant

acknowledges and agrees that should Consultant or its subconsultants provide false information, or fail to be or remain in compliance with this Agreement, the City may void this Agreement. The Consultant warrants and states that it has read the Contract Documents, and agrees to be bound thereby, including all performance guarantees as respects Consultant's work and all indemnity and insurance requirements.

The Consultant shall obtain prior approval from the City prior to subcontracting with any entity or person to perform any of the work required under this Agreement. If the Consultant subcontracts any of the services to be performed under this Agreement, the subconsultant agreement shall provide that the services to be performed under any such agreement shall not be sublet, sold, transferred, assigned or otherwise disposed of to another entity or person without the City's prior written consent. The Consultant shall be responsible for the accuracy and quality of any subconsultant's work.

All subconsultant agreements shall include verbatim or by reference the provisions in this Agreement binding upon Consultant as to all Services provided by this Agreement, such that it is binding upon each and every subconsultant that does work or provides Services under this Agreement.

The Consultant shall cooperate fully with the City, other City contractors, other municipalities and local government officials, public utility companies, and others, as may be directed by the City. This shall include attendance at meetings, discussions and hearings as requested by the City. This cooperation shall extend to any investigation, hearings or meetings convened or instituted by OSHA relative to this Project, as necessary. Consultant shall cooperate with the City in scheduling and performing its Work to avoid conflict, delay in or interference with the work of others, if any, at the Project.

Except as otherwise provided herein, the nature and scope of Services specified in this Agreement may only be modified by a writing approved by both parties. This Agreement may be modified or amended from time to time provided, however, that no such amendment or modification shall be effective unless reduced to writing and duly authorized and signed by the authorized representatives of the parties.

B. Representation and Warranties. Consultant represents and warrants that: (1) Consultant possesses and will keep in force all required licenses to perform the Services, (2) the employees of Consultant performing the Services are fully qualified, licensed as required, and skilled to perform the Services.

C. Termination. City may, at any time, with or without cause, terminate this Agreement upon seven (7) days written notice to Consultant. If the City terminates this agreement, the City will make payment to Consultant for Services performed prior to termination. Payments made by the City pursuant to this

Agreement are subject to sufficient appropriations made by the City of Evanston City Council. In the event of termination resulting from non-appropriation or insufficient appropriation by the City Council, the City's obligations hereunder shall cease and there shall be no penalty or further payment required. In the event of an emergency or threat to the life, safety or welfare of the citizens of the City, the City shall have the right terminate this Agreement without prior written notice. Within thirty (30) days of termination of this Agreement, the Consultant shall turn over to the City any documents, drafts, and materials, including but not limited to, outstanding work product, data, studies, test results, source documents, AutoCad Version 2007, PDF, ArtView, Word, Excel spreadsheets, technical specifications and calculations, and any other such items specifically identified by the City related to the Services herein.

D. Independent Consultant. Consultant's status shall be that of an independent Consultant and not that of a servant, agent, or employee of City. Consultant shall not hold Consultant out, nor claim to be acting, as a servant, agent or employee of City. Consultant is not authorized to, and shall not, make or undertake any agreement, understanding, waiver or representation on behalf of City. Consultant shall at its own expense comply with all applicable workers compensation, unemployment insurance, employer's liability, tax withholding, minimum wage and hour, and other federal, state, county and municipal laws, ordinances, rules, regulations and orders. Consultant agrees to abide by the Occupational Safety & Health Act of 1970 (OSHA), and as the same may be amended from time to time, applicable state and municipal safety and health laws and all regulations pursuant thereto.

E. Conflict of Interest. Consultant represents and warrants that no prior or present services provided by Consultant to third parties conflict with the interests of City in respect to the Services being provided hereunder except as shall have been expressly disclosed in writing by Consultant to City and consented to in writing to City.

F. Ownership of Documents and Other Materials. All originals, duplicates and negatives of all plans, drawings, reports, photographs, charts, programs, models, specimens, specifications, AutoCad Version 2007, Excel spreadsheets, PDF, and other documents or materials required to be furnished by Consultant hereunder, including drafts and reproduction copies thereof, shall be and remain the exclusive property of City, and City shall have the unlimited right to publish and use all or any part of the same without payment of any additional royalty, charge, or other compensation to Consultant. Upon the termination of this Agreement, or upon request of City, during any stage of the Services, Consultant shall promptly deliver all such materials to City. Consultant shall not publish, transfer, license or, except in connection with carrying out obligations under this Agreement, use or reuse all or any part of such reports and other documents, including working pages, without the prior written approval of City, provided,

however, that Consultant may retain copies of the same for Consultant's own general reference.

G. Payment. Invoices for payment shall be submitted by Consultant to City at the address set forth above, together with reasonable supporting documentation, City may require such additional supporting documentation as City reasonably deems necessary or desirable. Payment shall be made in accordance with the Illinois Local Government Prompt Payment Act, after City's receipt of an invoice and all such supporting documentation.

H. Right to Audit. Consultant shall for a period of three years following performance of the Services, keep and make available for the inspection, examination and audit by City or City's authorized employees, agents or representatives, at all reasonable time, all records respecting the services and expenses incurred by Consultant, including without limitation, all book, accounts, memoranda, receipts, ledgers, canceled checks, and any other documents indicating, documenting, verifying or substantiating the cost and appropriateness of any and all expenses. If any invoice submitted by Consultant is found to have been overstated, Consultant shall provide City an immediate refund of the overpayment together with interest at the highest rate permitted by applicable law, and shall reimburse all of City's expenses for and in connection with the audit respecting such invoice.

I. Indemnity. Consultant 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 the Consultant or Consultant'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. The Consultant 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, Consultant 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 Consultant of any of its obligations under this Agreement. Any settlement of any claim or suit related to this Agreement by Consultant 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, Consultant 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 Consultant 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.

Consultant 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 subConsultants' work. Acceptance of the work by the City will not relieve the Consultant 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 shall survive completion, expiration, or termination of this Agreement.

J. Insurance. Consultant 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 Consultant, and insuring Consultant against claims which may arise out of or result from Consultant's performance or failure to perform the Services hereunder: (1) worker's compensation in statutory limits and employer's liability insurance in the amount of at least \$500,000, (2) comprehensive general liability coverage, and designating City as additional insured for not less than \$3,000,000 combined single limit for bodily injury, death and property damage, per occurrence, (3) comprehensive automobile liability insurance covering owned, non-owned and leased vehicles for not less than \$1,000,000 combined single limit for bodily injury, death or property damage, per occurrence, and (4) errors and omissions or professional liability insurance respecting any insurable professional services hereunder in the amount of at least \$1,000,000. Consultant shall give to the City certificates of insurance for all Services done pursuant to this Agreement before Consultant performs any Services, and, if requested by City, certified copies of the policies of insurance evidencing the coverage and amounts set forth in this Section. The City may also require Consultant to provide copies of the Additional Insured Endorsement to said policy(ies) which name the City as an Additional Insured for all of Consultant's Services and work under this Agreement. Any limitations or modification on the certificate of insurance issued to the City in

compliance with this Section that conflict with the provisions of this Section shall have no force and effect. Consultant'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 City. Consultant understands that the acceptance of certificates, policies and any other documents by the City in no way releases the Consultant and its subcontractors from the requirements set forth herein. Consultant 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 Consultant fails to purchase or procure insurance as required above, the parties expressly agree that Consultant 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 Consultant.

Consultant acknowledges and agrees that if it fails to comply with all requirements of this Section, that the City may void this Agreement.

K. Confidentiality. In connection with this Agreement, City may provide Consultant with information to enable Consultant to render the Services hereunder, or Consultant may develop confidential information for City. Consultant agrees (i) to treat, and to obligate Consultant's employees to treat, as secret and confidential all such information whether or not identified by City as confidential, (ii) not to disclose any such information or make available any reports, recommendations and /or conclusions which Consultant may make for City to any person, firm or corporation or use the same in any manner whatsoever without first obtaining City's written approval, and (iii) not to disclose to City any information obtained by Consultant on a confidential basis from any third party unless Consultant shall have first received written permission from such third party to disclose such information.

Pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/7(2), records in the possession of others whom the City has contracted with to perform a governmental function are covered by the Act and subject to disclosure within limited statutory timeframes (five (5) working days with a possible five (5) working day extension). Upon notification from the City that it has received a Freedom of Information Act request that calls for records within the Consultant's control, the Consultant shall promptly provide all requested records to the City so that the City may comply with the request within the required timeframe. The City and the Consultant shall cooperate to determine what records are subject to such a request and whether or not any exemptions to the disclosure of such records, or part thereof, is applicable. Vendor shall indemnify and defend the City from and against all claims arising from the City's exceptions to disclosing certain records which Vendor may designate as proprietary or confidential. Compliance by the City with an opinion or a directive from the Illinois Public Access Counselor or the

Attorney General under FOIA, or with a decision or order of Court with jurisdiction over the City, shall not be a violation of this Section.

L. Use of City's Name or Picture of Property. Consultant shall not in the course of performance of this Agreement or thereafter use or permit the use of City's name nor the name of any affiliate of City, nor any picture of or reference to its Services in any advertising, promotional or other materials prepared by or on behalf of Consultant, nor disclose or transmit the same to any other party.

M. No Assignments or Subcontracts. Consultant shall not assign or subcontract all or any part or its rights or obligations hereunder without City's express prior written approval. Any attempt to do so without the City's prior consent shall, at City's option, be null and void and of no force or effect whatsoever. Consultant shall not employ, contract with, or use the services of any other architect, interior designer, engineer, consultant, special contractor, or other third party in connection with the performance of the Services without the prior written consent of City.

N. Compliance with Applicable Statutes, Ordinances and Regulations. In performing the Services, Consultant shall comply with all applicable federal, state, county, and municipal statutes, ordinances and regulations, at Consultant's sole cost and expense, except to the extent expressly provided to the contrary herein. Whenever the City deems it reasonably necessary for security reasons, the City may conduct at its own expense, criminal and driver history background checks of Consultant's officers, employees, subcontractors, or agents. Consultant shall immediately reassign any such individual who in the opinion of the City does not pass the background check.

O. Liens and Encumbrances. Consultant, for itself, and on behalf of all subcontractors, suppliers, materialmen and others claiming by, through or under Consultant, hereby waives and releases any and all statutory or common law mechanics' materialmens' or other such lien claims, or rights to place a lien upon City property or any improvements thereon in connection with any Services performed under or in connection with this Agreement. Consultant further agrees, as and to the extent of payment made hereunder, to execute a sworn affidavit respecting the payment and lien releases of all subcontractors, suppliers and materialmen, and a release of lien respecting the Services at such time or times and in such form as may be reasonably requested by City. Consultant shall protect City from all liens for labor performed, material supplied or used by Consultant and/or any other person in connection with the Services undertaken by consultant hereunder, and shall not at any time suffer or permit any lien or attachment or encumbrance to be imposed by any subConsultant, supplier or materialmen, or other person, firm or corporation, upon City property or any improvements thereon, by reason or any claim or demand against Consultant or otherwise in connection with the Services.

P. Notices. Every notice or other communication to be given by either party to the other with respect to this Agreement, shall be in writing and shall not be effective for any purpose unless the same shall be served personally or by United States certified or registered mail, postage prepaid, addressed if to City as follows: City of Evanston, 2100 Ridge Avenue, Evanston, Illinois 60201, Attention: Purchasing Division and to Consultant at the address first above set forth, or at such other address or addresses as City or Consultant may from time to time designate by notice given as above provided.

Q. Attorney's Fees. In the event that the City commences any action, suit, or other proceeding to remedy, prevent, or obtain relief from a breach of this Agreement by Consultant, or arising out of a breach of this Agreement by Consultant, the City shall recover from the Consultant as part of the judgment against Consultant, its attorneys' fees and costs incurred in each and every such action, suit, or other proceeding.

R. Waiver. Any failure or delay by City to enforce the provisions of this Agreement shall in no way constitute a waiver by City of any contractual right hereunder, unless such waiver is in writing and signed by City.

S. Severability. In the event that any provision of this Agreement should be held void, or unenforceable, the remaining portions hereof shall remain in full force and effect.

T. Choice of Law. The rights and duties arising under this Agreement shall be governed by the laws of the State of Illinois. Venue for any action arising out or due to this Agreement shall be in Cook County, Illinois. The City shall not enter into binding arbitration to resolve any dispute under this Agreement. The City does not waive tort immunity by entering into this Agreement.

U. Time. Consultant agrees all time limits provided in this Agreement and any Addenda or Exhibits hereto are of essence to this Agreement. Consultant shall continue to perform its obligations while any dispute concerning the Agreement is being resolved, unless otherwise directed by the City.

V. Survival. Except as expressly provided to the contrary herein, all provisions of this Agreement shall survive all performances hereunder including the termination of the Consultant.

VI. EQUAL EMPLOYMENT OPPORTUNITY

In the event of the Consultant's noncompliance with any provision of Section 1-12-5 of the Evanston City Code, the Illinois Human Rights Act or any other applicable law, the Consultant may be declared nonresponsible and therefore ineligible for future contracts or subcontracts with the City, and the contract may

be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.

During the performance of the contract, the Consultant agrees as follows:

A. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, or age or physical or mental disabilities that do not impair ability to work, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization. Consultant shall comply with all requirements of City of Evanston Code Section 1-12-5.

B. That, in all solicitations or advertisements for employees placed by it on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, or disability.

VII. SEXUAL HARASSMENT POLICY

The Consultant certifies pursuant to the Illinois Human Rights Act (775 ILCS 5/2-105 *et. seq.*), that it has a written sexual harassment policy that includes, 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 Consultant's internal complaint process including penalties;
- E. Legal recourse, investigation and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission, and directions on how to contact both; and
- F. Protection against retaliation as provided to the Department of Human Rights.

VIII. CONSULTANT CERTIFICATIONS

A. Consultant acknowledges and agrees that should Consultant or its subconsultant provide false information, or fail to be or remain in compliance with the Agreement, the City may void this Agreement.

B. Consultant certifies that 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. Section 1201 et seq.) and applicable rules in performance under this Agreement.

C. If Consultant, or any officer, director, partner, or other managerial agent of Consultant, 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, Consultant certifies at least five years have passed since the date of the conviction.

D. Consultant certifies that it has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any State in the U.S., nor made any admission of guilt of such conduct that is a matter of record. (720 ILCS 5/33 E-3, E-4).

E. In accordance with the Steel Products Procurement Act, Consultant certifies steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the U.S. unless the City grants an exemption.

F. Consultant certifies that it is properly formed and existing legal entity, 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.

G. If more favorable terms are granted by Consultant to any similar governmental entity in any state in a contemporaneous agreement let under the same or similar financial terms and circumstances for comparable supplies or services, the more favorable terms shall be applicable under this Agreement.

H. Consultant certifies that it is not delinquent in the payment of any fees, fines, damages, or debts to the City of Evanston.

IX. INTEGRATION

This Agreement, together with Exhibits A, B, C, and D sets forth all the covenants, conditions and promises between the parties with regard to the subject matter set forth herein. There are no covenants, promises, agreements, conditions or understandings between the parties, either oral or written, other than those contained in this Agreement. This Agreement has been negotiated and entered into by each party with the opportunity to consult with its counsel regarding the terms therein. No portion of the Agreement shall be construed against a party due to the fact that one party drafted that particular portion as the rule of *contra proferentem* shall not apply.

In the event of any inconsistency between this Agreement, and any Exhibits, this Agreement shall control over the Exhibits. In no event shall any proposal or

contract form submitted by Consultant be part of this Agreement unless agreed to in a writing signed by both parties and attached and referred to herein as an Addendum, and in such event, only the portions of such proposal or contract form consistent with this Agreement and Exhibits hereto shall be part hereof.

IN WITNESS WHEREOF, the parties hereto have each approved and executed this Agreement on the day, month and year first above written.

CONSULTANT:

**CITY OF EVANSTON
2100 RIDGE AVENUE
EVANSTON, IL 60201**

By _____

By: _____

Its: _____

Its: City Manager _____

FEIN Number: _____

Date: _____

Date: _____

EXHIBIT A – Project Milestones and Deliverables

This EXHIBIT A to that certain Consulting Agreement dated _____ between the City of Evanston, 2100 Ridge Avenue, Evanston, Illinois, 60201("City") and _____ ("Consultant") sets forth the Commencement and Completion Date, Services, Fees, and Reimbursable Expenses as follows:

I. **COMMENCEMENT DATE:** _____

II. **COMPLETION DATE:** _____

III. **FEES:**

IV. **SERVICES/SCOPE OF WORK:**

As defined in RFP/Q # _____ (Exhibit B) and Consultants Response to Proposal

(Exhibit C)

Dated: _____