

FOUNTAINDALE PUBLIC LIBRARY DISTRICT
CONTRACT FOR THE SALE OF GOODS AND SERVICES

This contract for the Sale of Goods and Services (“Contract”), made this ___ day of _____, 2015 (the “Effective Date”), by and between the Fountaindale Public Library District (the “District”), with its principal place of business at 300 West Briarcliff, Bolingbrook, Illinois and _____, an Illinois corporation (the “Vendor”), with its principal place of business at _____, collectively referred to as the “Parties” or individually as “Party.”

WITNESSETH

That the District and Vendor, for the consideration hereinafter named, agree as follows:

1. Services

The Vendor shall provide all the following supplies, material and equipment:

[insert description of the goods being purchased] (the “Goods”),

as indicated in the plans and specifications in the Contract Documents as defined in Paragraph 2 of this Contract.

2. Contract Documents

The Contract Documents consist of this Contract between the District and the Vendor and the RFP Notice, and Request for Proposals dated _____, 2015 (the “RFP Documents”), attached to and incorporated as part of this Agreement as **Exhibit A**, the Vendor’s Proposal, dated ____, attached to and incorporated as part of this Agreement as **Exhibit B**, the Vendor Compliance and Certification, attached to and incorporated as part of this Agreement as **Exhibit C**, any addenda issued prior to the execution of this Contract and any modifications issued after the execution of this Contract. Modifications to this Contract must be made in writing and signed by both Parties. All of the terms, conditions and specifications contained in the Bid Documents are incorporated herein.

3. Contract Sum and Payment

The District shall pay the Vendor _____ and 00/100 Dollars (\$ _____ .00), subject to additions and deductions as provided in the Contract Documents for the proper performance of the Contract (the “Contract Sum”). Payment of the Contract Sum shall be made in full after receipt of the Goods and Services, in accordance with the Local Government Prompt Payment Act (50 ILCS 505/1 *et seq.*), and only upon inspection and acceptance of the Goods and Services by the District.

4. Term

This Contract shall begin upon the Effective Date (_____) and terminate upon completion of any and all applicable warranty periods, unless terminated earlier as provided herein.

5. Delivery

Vendor shall deliver the Goods and Services according to the Delivery Schedule set forth in the Specifications and Delivery Schedule in the Bid Documents. Vendor will arrange for delivery of Goods and Services through a carrier chosen by Vendor, the costs of which shall be F.O.B. Bolingbrook, Illinois.

6. Title and Risk of Loss

Title to, and the risk of loss, injury or destruction from any casualty to the Goods and Services, regardless of cause, will be the responsibility of the Vendor until the Goods and Services have been received, inspected and accepted by the District.

7. Acceptance and Rejection

The District will have the right to inspect the Goods and Services upon receipt and to reject the nonconforming or damaged Goods and Services within ten (10) business days after delivery. The District will give notice to Vendor of any rejection of the Goods and Services or claim for damages on account of condition, quality or grade of the Goods and Services.

Neither inspection nor acceptance by the District shall act as District's acceptance of any defects or deficiencies in the Goods and Services or the failure of the Goods and Services to conform to the requirements of the Contract Documents and shall not act as a waiver of any rights District has with respect to such defects, deficiencies or failure, including rights under any warranty.

8. Performance of the Contract

Vendor agrees to perform all work and services in a good and workmanlike manner. Vendor shall not interfere in any way with and shall cooperate fully with other vendors procured by the District.

Vendor, upon the Effective Date, shall immediately place orders for materials and otherwise commence performance of this Contract, unless otherwise directed by the District. No claim for extras shall be allowed unless such claim is first submitted in writing to the District and approved in writing by an authorized agent of the District.

9. Termination

The District may terminate this Contract as follows:

- a. The District may, at any time, terminate the Contract in whole or in part for the convenience of the District and without cause. Termination by the District under this Paragraph 9 shall be by a notice of termination delivered to the Vendor specifying the extent of the termination and the effective date of said termination. Upon receipt of a notice of termination, the Vendor shall immediately, in accordance with instructions from the District: (1) cease operation as specified in the notice; (2) place no further orders; (3) enter into no further subcontracts for materials, labors, services or facilities except as necessary to complete continued portions of the Contract; (4) terminate all subcontracts and orders to the extent they relate to the work and services terminated; (5) proceed to complete the performance of work and services not terminated; and (6) take actions that may be necessary or that the District may direct, for the protection and preservation of the terminated work and services. In the event of termination for convenience by the District, the Vendor shall recover payment for approved work properly performed by Vendor before the effective date of termination. Vendor shall not be entitled to damages resulting from termination for convenience under this Paragraph.
- b. If Vendor fails to provide the Goods and Services as required in the Contract Documents, or otherwise breaches or defaults under any provision of this Contract and does not remedy such failure, breach or default within three (3) business days after demand from the District to take corrective action, or in the event of repeated or multiple failures or defaults by Vendor, the District may terminate this Contract and enter into an agreement with another vendor or vendors to provide the Goods and Services. In such event, District shall not be liable to Vendor for all or any portion of the Contract Sum. Vendor shall be liable to the District and shall pay the District promptly upon demand the increased cost to the District of obtaining the Goods and Services from the substitute vendor(s), including, without limitation, the cost of labor and materials associated with the preparation of bid documents, advertising and attorney's fees.
- c. If Vendor is adjudged as bankrupt, or if Vendor makes a general assignment for the benefit of Vendor's creditors, or if a receiver is appointed on account of Vendor's insolvency, or if any provision of the bankruptcy law is invoked by or against Vendor, then notwithstanding any other rights or remedies granted the District, the District may, without prejudice to any other right or remedy, (i) immediately terminate the retention of Vendor and/or (ii) finish or cause to be finished the Vendor's services required under this Contract by whatever method and by whichever persons the District deems expedient. In such case, Vendor shall not be entitled to receive any payment until the work and/or services are completed. If the unpaid balance of the Contract Sum exceeds: (1) the expenses of completing the work and/or services, including compensation for additional managerial and administrative services, plus (2) the

District's losses and damages because of Vendor's default (collectively "District Expenses and Damages"), such excess shall be paid to Vendor. If the District Expenses and Damages exceed such unpaid balance, Vendor shall pay the difference to the District promptly on demand and the District may resort to any other rights or remedies the District may have by law or under this Contract.

10. Correction of Deficiencies

If the Vendor defaults or neglects to provide the Goods and Services in accordance with the Contract Documents and fails, within a three (3) business day period after receipt of written notice from the District, to commence to cure said default, the District may, without prejudice to other remedies, correct said deficiencies. In such case, the District shall deduct from payments then or thereafter due the Vendor the cost of correcting such deficiencies, including compensation to the District for any and all expenses related thereto. If the amount deducted by the District exceed the payments then or thereafter due the Vendor, the Vendor shall pay the difference to the District.

The rights and remedies of District stated in this Contract shall be in addition to and not in limitation of, any other rights of the District granted in the Contract Documents or at law or in equity.

11. Tax Exemption

The District is exempt for the Illinois Retailer's Occupational Tax, the Illinois Use Tax and the Federal Excise Tax as an exempt entity under the Internal Revenue Code. The District's tax exemption identification number is _____.

12. Vendor's Representations

The Vendor hereby specifically acknowledges and declares, and the execution of this Contract by the Vendor is a representation of the Vendor that the Contract Documents are full and complete, are sufficient to have enabled the Vendor to determine the cost of the Goods and Services and that the Contract Documents are sufficient to enable it to supply and deliver the Goods and Services outlined therein, in accordance with applicable laws and regulations, and otherwise to fulfill all its obligations hereunder, including, but not limited to, Vendor's obligation to supply the Goods and Services for an amount not in excess of the Contract Sum on or before the delivery date established in the Contract.

The Vendor shall carefully study and compare the Contract Documents with each other and with information furnished by District and shall immediately to the District errors, inconsistencies or omissions discovered. The Vendor shall not be liable to the District for damage resulting from errors, inconsistencies or omissions in the Contract Documents that could not have been discovered by a reasonably prudent and experienced Vendor in advance. If the Vendor performs any activity involving an error, inconsistency or omission in the Contract Documents that Vendor recognized or reasonably should have recognized and of which Vendor

failed to notify the District, the Vendor shall assume complete responsibility for such performance and shall bear the full amount of the attributable costs for correction of the same.

Vendor further represents that it has full right, title and authority to transfer the Goods and Services to the District and that such transfer, upon delivery to the District, shall not be subject to the right or interest of any third party whatsoever.

13. Warranties

The Vendor warrants to the District that the materials and equipment furnished under the Contract will be of the best quality and new, that the Goods and Services will be free from defects and deficiencies, and that the Goods and Services will conform to the requirements of the Contract Documents. Goods and Services not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Vendor's warranty excludes remedy for damage or defect caused by District's abuse, modifications not executed by the Vendor, improper or insufficient maintenance by the District, improper operation or normal wear and tear under normal usage.

Liability or refusal of the subcontractor or Vendor responsible for the defective materials, equipment or goods to correct the same shall not excuse the Vendor from performing under the warranty. If required by the District, the Vendor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

All warranties shall include labor and materials and shall be signed by the manufacturer or subcontractor as the case may be, countersigned by the Vendor and delivered to the District upon delivery of the Goods and Services. Any warranties issued in Vendor's name shall be assigned to the District. Except as otherwise provided in this Agreement, all warranties shall become effective on the date of delivery to the District, and shall run for a twelve (12) month period, unless a longer period is provided for in the Contract Documents or by law. Where warranties overlap, the more stringent requirement shall govern. Vendor shall repair and replace, as determined by the District, any defects or deficiencies at no charge to the District during any warranty period.

Vendor shall correct any portion of the Goods and Services that are defective, and replace defective or nonconforming materials, even though such deficiency, defect or nonconformity may be discovered more than one year after delivery and acceptance of the Goods and Services by the District, if the correction is of a latent defect and arises from poor workmanship or improper materials or is required to be made to workmanship or materials covered by Vendor or Subcontractors contrary to the District's request or to requirements specifically expressed in the Contract Documents and was therefore not visible for inspection by the District at the time the Goods and Services were delivered. Final acceptance shall occur only after the Goods and Services have been delivered, inspected and accepted by the District.

No warranty herein shall be deemed waived upon District's inspection and acceptance of delivery of the Goods and Services.

14. Insurance

A. Commercial General and Umbrella Liability Insurance

Vendor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The District, its trustees, officers, employees and agents shall be named as additional insureds on all insurance policies.

B. Business Auto and Umbrella Liability Insurance

Vendor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

C. Workers Compensation Insurance

Vendor shall maintain workers compensation and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Vendor waives all rights against the District and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Vendor's activities.

D. General Insurance Provisions

1. Evidence of Insurance

Vendor shall furnish the District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to the District prior to the cancellation or material change of any insurance referred to therein. Written notice to the District shall be by certified mail, return receipt requested.

Failure of the District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the District to identify a deficiency from evidence that is provided shall not be construed as waiver of Vendor's obligation to maintain such insurance.

The District shall have the right, but not the obligation, of prohibiting Vendor from entering the premises until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by District.

Failure to maintain the required insurance may result in termination of this Contract at the District's option.

Vendor shall provide certified copies of all insurance policies required above within 10 days of the District's written request for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the District has the right to reject insurance written by an insurer it deems unacceptable.

3. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the District. At the option of the District, the Vendor may be asked to eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

4. Subcontractors

Vendor shall cause each subcontractor employed by Vendor to purchase and maintain insurance of the type specified above. When requested by the District,

Vendor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

15. Indemnification

To the fullest extent permitted by law, Vendor shall indemnify and hold harmless the District and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of, incidental to, resulting from or in connection with Vendor's performance of its obligations under the Contract Documents, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, and (ii) is caused in whole or in part by any negligent or wrongful act or omission of the Vendor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Vendor shall similarly protect, indemnify and hold and save harmless the District, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Vendor's breach of any of its obligations under, or Vendor's default of, any provision of the Contract.

16. Extension of Time

Extension of time provided for the supply and delivery of the Goods and Services shall be the Vendor's sole remedy for delay unless the same shall have been caused by acts constituting intentional interference by District with Vendor's obligations hereunder and where to the extent that such acts of the District continue after Vendor's written notice to the District of such interference. The District's exercise of any of its rights under the Contract, regardless of the extent or number of changes, or the District's exercise of any of its remedies of suspension of any work or services, or requirement of correction or re-execution of any defective Goods and Services, shall not under any circumstances be construed as intentional interference with Vendor's obligations under this Contract.

17. Independent Contractor

Vendor acknowledges that it is an independent contractor; it alone retains control of the manner of conducting its activities in furtherance of this Contract. Vendor, as well as any persons or agents it may employ, are not employees of the District, and neither this Contract nor the administration thereof shall operate to render or deem either Party hereto the agent or employee of the other.

18. No Third Party Beneficiary

This Contract is entered into solely for the benefit of the contracting parties, and nothing in this Contract is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Contract or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities and/or privileges of the District and/or the Vendor, and/or any of their respective officials, officers and/or employees.

19. Assignment

This Contract is non-assignable in whole or part by the Vendor, and any assignment shall be void without prior written consent of the District.

20. Waiver

Waiver of any of the terms of this Contract shall not be valid unless in writing and signed by the Parties. The failure of the District to enforce the provisions of this Contract or require performance by Vendor of any of the provisions shall not be construed as a waiver of such provisions or affect the right of the District to thereafter enforce the provisions of this Contract. Waiver of any breach of this Contract shall not be held to be a waiver of any other or subsequent breach of contract.

21. Time

Time is of the essence for all matters concerning this Contract.

22. Compliance with Laws; Permits.

All materials, supplies and equipment provided under this Contract must comply with all federal, state, county and local laws, ordinances, rules, regulations and orders that in any manner affect the production, sale, transportation and handling of the product or service contained herein. Vendor shall be responsible for obtaining all permits and license required to perform its obligations under this Contract. Lack of knowledge on the part of the Vendor will in no way be cause for release of this obligation. The District reserves the right to terminate any contract and pursue any other legal remedies deemed necessary if it becomes aware of violation of any laws on the part of the Vendor.

23. Governing Law; Venue

This Contract and the other Contract Documents shall be governed by and construed in accordance with the laws of the State of Illinois. Venue shall be proper in the Circuit Court of Will County.

24. Entire Agreement; No Amendment

This Contract contains the entire agreement between the Parties, and no statement, promise or inducement made by either Party to the agency of the other Party that is not contained in this written Contract shall be valid or binding. No amendment or modification shall be made to this Contract unless it is in writing and signed by both Parties.

25. Headings

The headings for each paragraph of this Contract are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Contract nor in any way affect this Contract.

26. Severability

If any provision of this Contract is declared invalid or unenforceable, the remainder of this Contract shall continue in full force and effect, to the extent not affected by the invalid or unenforceable provision.

27. Notice

Any notice required to be given by this Contract shall be deemed sufficient if made in writing and is sent by certified mail, return receipt requested, or by personal service, to the persons and addresses indicated below or to such other addresses as any party hereto shall notify the other party of in writing pursuant to the provisions of this subsection:

FOR THE DISTRICT:

Fountaindale Public Library District
300 West Briarcliff
Bolingbrook, Illinois
Attn: Executive Director

FOR THE VENDOR:

28. No Waiver of Tort Immunity

Nothing contained in this Contract shall constitute a waiver by the District of any right, privilege or defense available to it under statutory or common law, including but not limited to the Illinois Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq., as amended.

IN WITNESS WHEREOF the Parties hereto have set their respective hands and seals and year first above written.

Fountaindale Public Library District

By:

Paul Mills
Executive Director

VENDOR

By:

Its:
