

## **PROGRAM GUIDE PRINTING SERVICES AGREEMENT**

**THIS AGREEMENT** (the "Agreement") is entered into this 22nd day August 2016 (the "Effective Date") between the Wheaton Park District, an Illinois unit of local government, with its main offices located at 102 East Wesley Street, Illinois, 60187 (hereinafter referred to as the "Park District") and The Strathmore Company, an Illinois corporation, with its principal place of business located at 2000 Gary Lane, Geneva, Illinois 60134 (hereinafter referred to as "Vendor") (collectively referred to as the "Parties").

In exchange for good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged, the Parties hereby agree as follows:

### **1. Printing Services.**

The Park District hereby hires Vendor, and Vendor hereby agrees to provide all services described in the Wheaton Park District's Invitation for Bid, Program Guide 2017 Printing Services, dated July 7, 2016 (hereinafter referred to as the "Services"), upon the terms and conditions set forth in the Contract Documents (hereinafter defined).

### **2. Contract Documents.**

The Contract Documents consist of this Agreement between the Park District and Vendor, the Wheaton Park District's Invitation for Bid, Program Guide Printing Services, dated July 7, 2016, and all the documents contained therein, and Vendor's Proposal dated July 21, 2016 (collectively the "Bid Documents"), any addenda issued prior to the execution of this Agreement and any modifications made in writing and endorsed by the Parties after the execution of this Agreement. All of the terms, conditions and specifications contained in the Bid Documents are incorporated herein. In the event of a conflict or inconsistency between the Contract Documents, the terms and conditions of this Agreement shall govern.

### **3. Term.**

The term of this Agreement shall be for one (1) year, commencing on the Effective Date and expiring on September 1, 2017 unless terminated earlier pursuant to the terms of this Agreement (the "Term").

### **4. Performance.**

Vendor agrees to perform in a good and workmanlike manner and to the best of Vendor's ability, experience, and talents, in accordance with generally-accepted delivery practices in the Greater Chicago area, all of the duties that are described in the Bid Documents or as otherwise required by the express and implicit terms of this Agreement, to the satisfaction of the Park District. Vendor's duties may be specified and modified from time to time by the Park District in writing.

The Park District reserves the right to evaluate Vendor's performance of the Services, its employees and agents and, in the event such Services or performance are not in conformity with the requirements of this Agreement, as determined by the Park District, the Park District shall have the option to terminate this Agreement in accordance with Section 10 of this Agreement. Should the Park District reasonably determine that the performance of an employee or contractor of Vendor is inadequate or that said employee's or contractor's continued presence is in any way inconsistent with the policies and practices of the Park District, Vendor shall remove or reassign said employee or contractor immediately upon receipt of notice from the Park District.

**5. Liquidated Damages.**

Time is of the essence to the Contract. Should the successful Printer breach its obligations to make its required delivery of the Program Guides in any quarter during the Term of this Contract in accordance with the schedule provided in the Specifications ("Quarterly Program Guide Delivery Requirements"), or within such extended time as may be authorized by the Park District, Printer shall be liable and shall pay to the Park District, not as a penalty but as a liquidated damages, \$750.00 for each day that elapses after the scheduled quarterly delivery date set forth in the Specifications (or such authorized extension thereof) ("Quarterly Liquidated Damages"). The Parties agree that quantifying the losses arising from Printer's delay in its quarterly delivery of the Program Guides as specified above is inherently difficult to calculate as the delay may impact the Park District's reputation, require the Park District to provide longer registration periods for its programs and provide more staff or staff time to accommodate the same, and may adversely affect the levels of participation in Park District programs. The Parties further stipulate that the agreed upon Quarterly Liquidated Damages is a fair and reasonable measure of the damages that will be borne by the Park District due to the delayed quarterly delivery of the Program Guides. The liquidated damage amount specified will accrue and be assessed until final delivery of the respective Program Guide is made in the given quarter. The Park District will deduct these liquidated damages from any monies due or to become due to the Printer from the Park District. The Parties agree that the Quarterly Liquidated Damages is only for Printer's breach of its obligation to comply with the Quarterly Program Guide Delivery Requirements (or such authorized extension thereof) and is not a measure of damages for any other material breach by Printer of its obligations under the Contract.

**6. Contract Sum.**

The Park District agrees to pay Vendor for the proper and timely performance of the Services in strict accordance with the Agreement as set forth in Contractor's Proposal as follows:

- a. Wheaton Park District Program Guides (Winter, Spring, Summer and Fall)
  - i. Guides up to 64 pages: \$10,005 (price per season)
  - ii. Guides up to 84 pages: \$18,005 (price per season)

Includes freight to Wheaton Park District Offices  
and delivery company.

(the "Contract Sum")

Author's alterations shall be an additional charge and not part of the Contract Sum. Vendor shall charge the Park District \$85.00/hour for any author alterations. Additionally, the Park District may elect certain optional cost savings as set forth in Schedule A of Vendor's Proposal.

**7. Payment.**

Payment shall be made by the Park District to the Vendor upon the Park District's receipt of a seasonal invoice itemizing the Services properly performed, as determined by the Park District, for the period covered by the invoice. Payments of all invoices, and any late payment penalties, shall be governed by the Local Government Prompt Payment Act (5 ILCS 505/1 et seq.).

**8. Changes or Alterations of Services**

The Park District reserves the right to alter the specifications contained in the Bid Documents by adding to or deducting from the original number of deliveries as bid without invalidating this Agreement. All such work shall be executed under the original conditions of the original Contract Documents, except for a required extension in time caused by such change or alteration.

All changes or alterations shall be made ONLY when ordered in writing by the Park District, showing all claims for changes in the Contract Sum.

Unless otherwise stated in the Contract Documents, the value of any change shall be determined, in the Park District's sole discretion, by one or more of the following methods: (i) by an approved lump sum; or (ii) by unit prices denoted in the Contract Documents or subsequently agreed upon in writing by the Park District.

**9. Insurance.**

Vendor will procure and maintain during the Term of this Agreement the insurance coverages provided in **Exhibit A**, attached to and incorporated as part of this Agreement by reference.

**10. Indemnification.**

Vendor shall indemnify and hold harmless the Park District, its officers, officials, employees, volunteers and agents in accordance with **Exhibit A**.

## 11. Termination.

The Park District may terminate this Agreement as follows:

- A. The Park District may, at any time, terminate the Agreement in whole or in part for the Park District's convenience and without cause. Termination by the Park District under this section shall be by a notice of termination delivered to the Vendor specifying the extent of the termination and the effective date. Upon receipt of a notice of termination, the Vendor shall immediately, in accordance with instructions from the Park 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 Services; (4) terminate all subcontracts and orders to the extent they relate to the Services terminated; (5) proceed to complete the performance of Services not terminated; and, (6) take actions that may be necessary or that the Park District may direct, for the protection and preservation of the terminated Services. The Vendor shall recover payment for approved and properly performed Services completed prior to the effective date of termination. Vendor shall not be entitled to damages or lost profits resulting from termination for convenience under this Section.
- B. If Vendor fails to provide the Services as required in the Contract Documents, or otherwise breaches or defaults under any provision of this Agreement and does not remedy such failure, breach or default within three (3) business days after demand from the Park District to take corrective action, or in the event of repeated or multiple failures or defaults by Vendor, the Park District may terminate this Agreement and enter into an agreement with another Vendor or Vendors to provide the Services. In such event, Park District shall not be liable to Vendor for all or any portion of the Contract Sum, except for the amount attributable to Services properly performed prior to termination of the Agreement. Vendor shall be liable to the Park District and shall pay the Park District promptly upon demand the increased cost to the Park District of obtaining 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 Park District, the Park 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 Agreement by whatever method and by whichever persons the Park 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 Services, including compensation for additional managerial and administrative services, plus (2) the Park

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

Upon termination of this Agreement for any reason, the rights and obligations of the Parties shall cease automatically except for the rights and obligations of the Parties accruing but unsatisfied prior to termination.

**12. No Liability.**

The Park District is not responsible or liable for any injury, damages, loss or costs sustained or incurred by any person including, without limitation Vendor's employees, or for any damage to, destruction, theft or misappropriation of any property, relating in any way, directly or indirectly, to Vendor's Services and obligations under this Agreement. The Park District is not liable for acts or omissions of Vendor or any of Vendor's employees, contractor's, agents or other persons purporting to act at the direction or request, on behalf, or with the implied or actual consent, of Vendor.

**13. Records.**

All books, records, reports, accounts, contracts, orders, drafts, documents, files, memoranda, reports, computer programs, and any other information or writings relating in any manner to the Park District's business or patrons, whether prepared by Vendor or otherwise coming into the possession of Vendor, are and shall remain the exclusive property of the Park District and shall be returned immediately to the Park District upon termination of this Agreement or upon the request of the Park District at any time.

**14. Independent Contractor.**

The relationship between Vendor and the Park District is that of an independent contractor. Vendor shall supply all personnel, equipment, materials, and supplies at their own expense. Vendor shall not be deemed to be, nor shall it represent itself as, employees, partners, or joint ventures of the Park District. Vendor is not entitled to workers' compensation benefits or other employee benefits from the Park District and is obligated to directly pay federal and state income tax on money earned under this Agreement.

**15. No Third Party Beneficiary.**

This Agreement is entered into solely for the benefit of the Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and entity who is not a party to this Agreement 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 defenses of the Park District and/or Vendor, and/or any of their respective officials, officers and/or employees.

**16. Compliance with Laws; Licenses and Permits.**

Vendor shall comply with all applicable local, state and federal codes, laws, ordinances, policies, procedures and regulations, including, but not limited to age, minimum wage, workers compensation, sales tax, and equal employment, as applicable. Vendor shall, at its sole cost and obligation, be responsible for obtaining all licenses and permits required to perform its duties under this Agreement.

**17. Equal Opportunity Policies.**

Vendor shall conform to all federal and state laws on equal opportunity and fair employment, and to all rules and regulations now or hereafter issued pursuant thereto, including but not limited to the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.* (2006)).

**18. No Waiver.**

The failure of Park District to suspend or terminate Vendor's Services shall not be construed as the Park District's consent to any breach by Vendor and shall not constitute a waiver of any right which Park District may have by virtue of Vendor's actions. The waiver by the Park District of any breach or default under any provisions of this Agreement shall not be deemed to constitute a waiver of such provision for any subsequent breach or default of the same or any other provision.

**19. Assignment.**

This Agreement is not assignable in whole or in part by Vendor, and any such assignment shall be void without prior written consent of the Park District. Vendor shall not subcontract any of the Services it is required to perform hereunder without the prior written consent of the Park District.

**20. Notice**

All notices required or permitted to be given under this Agreement shall be deemed given when such notice is hand delivered; or when such notice is sent by facsimile transmission provided such transmission together with fax machine generated confirmation of such transmission is also sent on the transmission date to the other Party by United States mail, with postage therewith prepaid; or when such notice is deposited in the United States mail, with postage thereon prepaid, addressed to the other party at the following addresses:

**If to the Park District:**

Wheaton Park District  
102 East Wesley Street  
Wheaton, IL 60187  
Attn: Executive Director

**If to Vendor:**

The Strathmore Company  
2000 Gary Lane  
Geneva, IL 60134  
Attn: Jack C. Tinney

**21. Severability; Choice of Law.**

If any part of this Agreement is declared to be invalid by a court of competent jurisdiction, it shall be severable, and the rest of the Parties' obligations under this Agreement shall survive. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited. The Circuit Court of DuPage County, Illinois shall have jurisdiction over any disputes arising under this Agreement, and each of the Parties hereto hereby consents to such court's exercise of jurisdiction.

**22. Entire Agreement; Modifications and Amendments.**

This Agreement contains the entire understanding of the Parties and supersedes all previous verbal and written Agreements. There are no other agreements, representations, or covenants other than those set forth herein. No modification or amendment to this Agreement shall be effective unless in writing and signed by both Parties.

**23. Headings.**

The headings for each paragraph of this Agreement 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 Agreement nor in any way affect this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

**The Strathmore Company**

**Wheaton Park District**

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

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