

CITY OF NILES TERMS AND CONDITIONS

SECTION 1: DEFAULT

The failure of any party to perform any of its obligations under this agreement may allow the nonbreaching party to declare the agreement in default.

SECTION 2: INSURANCE/BOND

A. Insurance.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to the City, during the entire term of this Agreement, including any extension of this Agreement, the following policies of insurance:

1. Commercial General Liability Insurance.

A policy of commercial general liability insurance written on a per occurrence basis with a combined single limit of at least \$1,000,000 bodily injury and property damage including coverages for contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations.

2. Workers' Compensation Insurance.

The Contractor shall maintain a policy of workers' compensation insurance in such amount as will fully comply with the laws of Ohio and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

3. Business Automobile Insurance.

A policy of business automobile liability insurance written on a per occurrence basis with a single limit liability in the amount of not less than \$100,000 bodily injury and property damage. Such policy shall include coverage for owned, nonowned, leased and hired cars.

The Contractor agrees that the provisions of this paragraph shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible. If the Contractor subcontracts any portion of the work in compliance with this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to this paragraph.

B. Indemnification.

The Contractor agrees to indemnify the City, its officers, officials, agents and employees against, and will hold and save them and each of them harmless from any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (collectively, "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities of the Contractor, its agents, employees, subcontractors, or invitees, provided for in this Agreement, or arising from the negligent acts or omissions of the Contractor under this Agreement, or arising from the Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, whether or not there is concurrent passive or active negligence on the part of the City, its officers, officials, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City, its officers, agents or employees, who are directly responsible to the City, and in connection with the same:

1. The Contractor will defend any action or actions filed in connection with any of such claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection with such claims or liabilities.

2. The Contractor will promptly pay any judgment rendered against the City, its officers, officials, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of the Contractor under this Agreement; and the Contractor agrees to save and hold the City, its officers, officials, agents, and employees harmless from such claims and liabilities;

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3. If the City, its officers, officials, agents or employees is made a party to any action or proceeding filed or prosecuted against the Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of the Contractor under this Agreement, then the Contractor agrees to pay to the City, its officers, officials, agents or employees, any and all costs and expenses incurred by the City, its officers, officials, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

C. Bond.

The Contractor shall provide the City a bond in the minimum amount of \$100,000 to protect the City against loss caused by dishonest acts of the Contractor's employees. The bond shall be unconditional and remain in force during the entire term of this Agreement and shall survive the termination of this Agreement.

SECTION 3: CITY OFFICERS AND EMPLOYEES

No officer, official or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

SECTION 4: CONFLICT OF INTEREST

No officer, official or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which effects his or her financial interest or the financial interest of any corporation, limited liability company, partnership or association in which he or she is interested, directly or indirectly, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

SECTION 5: INTERPRETATION

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

SECTION 6: ENTIRE AGREEMENT/AMENDMENT

It is understood that there are no oral agreements between the parties affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

SECTION 7: PURCHASE ORDER ACCEPTANCE

Parties agree in the acceptance of the City of Niles Purchase Order to fulfill products, services, supplies, and equipment. The Purchase Order is a legally binding document that will be accepted by vendor for fulfillment of products, services, supplies, and equipment.

SECTION 8: INVOICING THE CITY OF NILES

Parties agree that when vendor has fulfilled such products, services, supplies, and/or equipment, that the vendor shall then invoice the city for payment. Payment will be sent to vendor within 30 days of receipt of invoicing.

SECTION 9: SEVERABILITY

If part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement, which are declared now to be severable and shall be interpreted to carry out the intent of the parties under this Agreement unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

SECTION 10: NO WAIVER

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary

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the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

SECTION 11: ATTORNEYS FEES

If City is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the City, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees, whether or not the matter proceeds to judgment.

SECTION 12: CORPORATE AUTHORITY

The persons executing this Agreement on behalf of the parties to this Agreement warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of such party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

SECTION 13: GOVERNING LAW; VENUE

This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of Ohio. This contract is subject to all federal, state, and local laws including but not limited to Niles Codified Ordinance 169.01 effective May 7, 2025.

SECTION 14: ASSIGNS AND SUBCONTRACTORS

The Contractor shall not contract with any entity to perform in whole or in part the work or services required under this Agreement without the written approval of the City. Neither this Agreement nor any interest in this Agreement may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of the City. Any such prohibited assignment or transfer shall be void.

SECTION 15: INDEPENDENT CONTRACTOR

Neither the City nor any of its officials or employees shall have any control over the manner, mode or means by which the Contractor, its agents or employees, perform the services required by this Agreement, except as otherwise set forth. The Contractor shall perform all services required in this Agreement as an independent contractor of the City and shall remain under only such obligations as are consistent with that role. The Contractor shall not at any time or in any manner represent that it, or any of its agents or employees, are agents or employees of the City.

SECTION 16: COUNTERPARTS

This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be the same agreement.

SECTION 17: SUCCESSORS AND ASSIGNS. This Agreement is binding on and inures to the benefit of the Parties and their respective successors and permitted assigns.