

## **CITY OF NAPERVILLE: SERVICES TERMS AND CONDITIONS**

**THE FOLLOWING TERMS AND CONDITIONS APPLY TO ALL PURCHASES OF SERVICES BY OR ON BEHALF OF THE CITY OF NAPERVILLE UNLESS SPECIFICALLY PROVIDED OTHERWISE ON THE PURCHASE ORDER.**

**TAX EXEMPTION:** The City of Naperville is tax exempt, ID # **E9997-4398-07**.

### **ACCEPTANCE OF CONTRACT:**

This order is the City's offer to purchase the goods and/or services described on the purchase order from the Vendor. The City's placement of this order is expressly conditioned upon Vendor's acceptance of all the terms and conditions of purchase contained on or attached to the purchase order. The Vendor's delivery of the goods and/or services shall be deemed acceptance of the City's terms and conditions.

### **AMENDMENTS AND MODIFICATIONS:**

No modifications to this Purchase Order or the applicable Terms and Conditions shall be binding upon the City unless in writing and signed by the City's authorized agent. All specifications, drawings, and data submitted to the Vendor with this order are hereby incorporated and made a part hereof.

The nature and scope of services specified in this Contract may only be modified by written amendment to this Contract, approved by both parties. This Contract may be modified or amended from time to time provided, however, that no such amendment or modifications shall be effective unless reduced to writing and duly authorized and signed by the authorized representatives of the parties.

### **PATENTS AND COPYRIGHTS:**

If an article sold and delivered to the City hereunder shall be protected by any applicable patent or copyright, the Vendor agrees to indemnify and save harmless the City, from and against any and all suits, claims, judgments, and costs instituted or recovered against it by any person whomsoever on account of the use or sale of such articles by the City in violation or right under such patent or copyright.

### **NON-WAIVER OF RIGHTS:**

No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this Contract shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

### **COMPLIANCE WITH LAWS:**

The Vendor certifies that in performing this Contract they will comply with all applicable provisions of the federal, state and local laws, regulations, rules and orders.

### **LAWS GOVERNING:**

This Contract shall be governed by and construed according to the laws of the State of Illinois except that sections 2 through 8 of the Local Government Prompt Payment Act (50 ILCS 505/2-8) shall not be applicable. Venue for any action related to this Contract shall be in the Circuit Court for the 18<sup>th</sup> Judicial Circuit, DuPage County, Illinois.

### **PAYMENT TERMS:**

The City of Naperville's payment terms are net 30. The payment date will be calculated based on the invoice receipt date or delivery date, whichever is later. All payments shall be made with electronic payment transfer.

### **PAYMENT:**

All invoices shall be addressed to the Bill To Address, as indicated on the first page of this Purchase Order and must include Purchase Order number, Vendor's name and phone number, and clearly list quantities, item descriptions and units of measure.

### **WARRANTY:**

The Vendor warrants to the City that all goods and services furnished hereunder will conform in all respects to the terms of this order, including any drawings, specifications or standards incorporated herein, and/or defects

in materials, workmanship, and free from such defects in design. In addition, Vendor warrants the goods and services are suitable for and will perform in accordance with the purposes for which they were intended.

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**SERVICES OF THE VENDOR:**

The Vendor shall:

1. Perform professional services as described on the purchase order, which is part of this Contract.
2. Not have any public or private interest and shall not acquire directly or indirectly any such interest which conflicts in any manner with the performance of its services under this Contract.
3. Employ only persons duly licensed by the State of Illinois to perform the professional services required under this Contract for which applicable Illinois law requires a license, subject to prior approval of the City.

**TERMINATION:**

This Contract may be terminated at any time upon thirty (30) days written notice by either party. In addition, the City shall have the right to terminate this Contract upon 30 days written notice for any reason. Mailing of such notice shall be equivalent to personal notice and shall be deemed to have been given at the time of mailing.

**INSURANCE:**

At the Vendor's expense, the Vendor shall procure and maintain in effect throughout the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Vendor, its agents, representatives, employees or subcontractors.

The Vendor must furnish Certificates of Insurance to the City before staff recommends award of the Contract to City Council. If requested, the Vendor will give the City a copy of the insurance policies. The policies must be delivered to the City within two weeks of the request. All insurance policies shall be written with insurance companies licensed to do business in the State of Illinois and having a rating of not less than A:VII according to the A.M. Best Company. Should any of the insurance policies be canceled before the expiration date, the issuing company will mail 30 days written notice to the City. The Vendor shall require and verify that all subcontractors maintain insurance meeting all of the requirements stated herein.

Any self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Vendor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law. If the Vendor maintains higher limits than the minimums shown below, the City shall be entitled to coverage for higher limits maintained by the Vendor.

1. **Commercial General Liability:**

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability Occurrence Form CG 00 01 and include Premise/Operations, Products/Completed Operations, Independent Contractors, Contractual and Personal Injury/Advertising Injury.

Limits:

General Aggregate	\$2,000,000
Products/Completed Operations	\$2,000,000
Each Occurrence	\$2,000,000
Personal Injury	\$2,000,000

2. **Automobile Liability:**

Coverage shall be at least as broad as Insurance Services Office Form CA 00 01 to include all Owned, Hired, Non-owned vehicles.

Limits:

Combined Single Limit Per Accident	\$2,000,000
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3. **Workers' Compensation:**

Coverage shall be in accordance with the provisions of the laws of the State of Illinois.

**4. Employers' Liability:**

Limits:

Each Accident	\$1,000,000
Each Employee Bodily Injury by Disease	\$1,000,000
Policy Limit Bodily Injury by Disease	\$1,000,000

**5. Errors & Omissions Liability/Professional Liability:**

Errors & Omissions Liability insurance appropriate to the Vendor's profession. Architects and engineers coverage is to be endorsed to include contractual liability.

Limits:

Per Occurrence	\$2,000,000
Annual Aggregate	\$2,000,000

If Errors & Omissions coverage is written on a claims-made form:

- a. The retroactive date must be shown, and must be before the date of the contract or the beginning of contract work.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of contract work.
- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Vendor must purchase extended reporting period coverage for a minimum of three (3) years after completion of contract work.

**6. Other Insurance Provisions:**

The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

- a. The City, its officers, officials, employees and volunteers are to be covered as insured's with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Vendor; and with respect to liability arising out of work or operations performed by or on behalf of the Vendor including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage shall be provided in the form of an Additional Insured endorsement to the Vendor's insurance policy, or as a separate owner's policy.
- b. For any claims related to the performance of the Vendor's work, Vendor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Vendor's insurance and shall not contribute with it.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Vendor, its employees, agents and subcontractors.

The Vendor understands that the acceptance of Certificates of Insurance, policies and any other documents by the City in no way releases the Vendor from the requirements set forth herein.

**INDEMNIFICATION:**

Vendor shall indemnify and hold harmless and defend the City, its officers, employees, and agents from any and all claims, suits, actions, costs, regulatory fines and liability and fees, including attorney fees, because of any negligent act or omission, or misconduct of the Vendor, its employees and agents, or its subcontractor(s) connected with the performance of this Contract. Except as to professional liability, such indemnification shall not be limited by reason of the enumeration of any insurance coverage herein provided.

Nothing contained herein shall be constructed as prohibiting the City, 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. Vendor shall be liable for the costs, fees, and expense incurred in the defense of any such claims, actions, or suits.

Vendor shall be responsible for any and all damages to property or persons and for any losses or costs to repair or remedy construction as a result of any negligent act or omission, or misconduct in the performance of its work and its subcontractors' work and shall indemnify and hold harmless the City, its officers, agents and employees

from all suits, claims, actions or damages of any nature whatsoever resulting therefrom unless such loss, damage, injury or loss results from or arises out of the error, omission and/or negligent acts of the City or its officers, employees or agents. Acceptance of the work will not relieve the Vendor 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. Except as to professional liability, these indemnities shall not be limited by the listing of any insurance coverage.

Vendor shall not be responsible for any delay in the performance or progress of the Project, or liable for any costs or damages sustained by the City resulting from such delay, caused by any errors, omissions and/or negligent acts of the City or their agents, or by changes ordered in the work, or as a result of any federal, state or regulatory authority, or riot or civil commotion, or by any other cause beyond the Vendor's control. In the event of such delay, the Vendor will proceed with due diligence to alleviate the delay and continue the performance of its obligations under this Contract.

Vendor shall not be responsible for any damages that may occur as a result of any modifications made to the plans of the Vendor by others without the Vendor's knowledge, or for damages that may occur because of the improper or negligent acts of others.

**DRAWINGS AND DOCUMENTS:**

Any drawings, survey data, reports, studies, specifications, estimates, maps, computations, and other documents required to be prepared by Vendor for the Project shall be the property of the City.

The Vendor and its subcontractor(s) shall maintain for a minimum of three (3) years after the completion of the Contract, adequate books, records and supporting documents to verify the amounts, recipients and uses of all disbursements of funds passing in conjunction with the Contract. The Contract and all books, records and supporting documents related to the Contract shall be available for review and audit by the City and the federal funding entity, if applicable, and the Vendor agrees to cooperate fully with any audit conducted by the City and to provide full access to all materials. Failure to maintain the books, records and supporting documents required by this paragraph shall establish a presumption in favor of the City for recovery of any funds paid by the City under the Contract for which adequate books, records and supporting documentation are not available to support their purported disbursement.

**SUCCESSORS AND ASSIGNS:**

The City and Vendor each bind themselves and their partners, successors, executors, administrators and assigns to the other party of the Contract and to the partners, successors, executors administrators and assigns of such other party in respect to all covenants of this Contract. Except as above, neither the City nor the Vendor shall assign, sublet or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body that may be a party hereto, nor shall it be construed as giving any right or benefits hereunder to anyone other than the City and the Vendor.

**FORCE MAJEURE:**

Neither the Vendor nor the City shall be responsible for any delay caused by any contingency beyond their control, including, but not limited to, war or insurrection, fires, natural calamities, riots or demands or requirements of governmental agencies other than the City.

**STANDARD OF CARE:**

Vendor shall perform all of the provisions of this Contract with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under the same or similar circumstances. The City shall base its determination of the Vendor's fulfillment of the scope of the work in accordance with accepted professional consulting standards.

Vendor shall be responsible for the accuracy of its professional services under this Contract and shall promptly make revisions or corrections resulting from its errors, omissions, or negligent acts without additional compensation. The City's acceptance of any of Vendor's professional services shall not relieve Vendor of its responsibility to subsequently correct any such errors or omissions.

Vendor shall respond to the City's notice of any errors and/or omissions within 24 hours of written confirmation by the Vendor of the City's notice. Such confirmation may be in the form of a facsimile confirmation receipt by the City, or by actual hand delivery of written notice by the City to the Vendor. Vendor shall be required to visit the Project site if directed by the City.

**SAVINGS CLAUSE:**

If any provision of this Contract, or the application of such provision, shall be rendered or declared invalid by a court of competent jurisdiction, or by reason of its requiring any steps, actions or results, the remaining parts or portions of this Contract shall remain in full force and effect.

**ENTIRE AGREEMENT:**

This Contract sets forth all the covenants, conditions and promises between the parties. There are no covenants, promises, agreements, conditions or understandings between the parties, either oral or written, other than those contained in this Contract.

**NOTICE:**

Notice shall be delivered as follows: if to the City to the Chief Procurement Officer, City of Naperville, 400 S. Eagle Street, Naperville, IL 60540. If to the Vendor to the "Vendor" address on the Purchase Order unless otherwise agreed in writing.

**NON-DISCRIMINATION:**

The Vendor shall comply with the Illinois Human Rights Act, 775 ILCS 5/1 - 101 et seq. (2000), as amended and any rules and regulations promulgated in accordance therewith, including, but not limited to the Equal Employment Opportunity Clause, 5 Ill. Admin. Code § 750 Appendix A. The Vendor shall also comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq. (2000), as amended.

It shall also be an unlawful employment practice for the Vendor (1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to their compensation, or the terms, conditions, or privileges of their employment, because of such individual's race, color, religion, sex, age, handicap or national origin; or (2) to limit, segregate, or classify their employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect their status as an employee, because of such individual's race, color, religion, sex, age, handicap or national origin. Vendor shall comply with The Civil Rights Act of 1964, 42 U.S.C. sec. 2000 et seq. (2000), as amended.

**NON-APPROPRIATIONS CLAUSE:**

The terms of any contract resulting from the solicitation and any Purchase Order issued for multiple years under the contract are contingent upon sufficient appropriations being approved by the City Council. Notwithstanding any language to the contrary in the solicitation, purchase order, or any other contract document, the City may terminate its obligations under the contract if sufficient appropriations are not approved by the City Council to pay amounts due for multiple year contracts. The City's decision as to whether sufficient appropriations are available shall be accepted by the Vendor and shall be final and binding.