



Board of Public Works and Safety

Agenda Item

Cover Sheet

MEETING DATE: July 23, 2024

- Consent Agenda Item
- New Item for Discussion
- Previously Discussed Item
- Miscellaneous

ITEM #: 7

INITIATED BY: Deputy Chief Murry Dixon

- Information Attached
- Bring Paperwork from Previous Meeting
- Verbal
- No Paperwork at Time of Packets



TO: BOARD OF PUBLIC WORKS AND SAFETY
FROM: DEPUTY CHIEF MURRY DIXON
SUBJECT: AGREEMENT WITH AMS MECHANICAL SERVICES
DATE: JULY 23, 2024

Attached you will find information regarding an agreement between the Noblesville Fire Department and AMS Mechanical Services for the modification of ductwork for the Plymovent exhaust evacuation system at Station 77.

Thank you.



NOBLESVILLE FIRE DEPARTMENT

DEFEND FROM HARM | COMBAT SUFFERING | SERVE SELFLESSLY

317.776.6336 | 135 South 9th Street | Noblesville, IN 46060 | www.CityofNoblesville.org

SERVICES AGREEMENT

This Services Agreement (hereinafter referred to as "Agreement"), entered into by and between the City of Noblesville, Indiana, a municipal corporation (hereinafter referred to as "City") and AMS Mechanical Services (hereinafter referred to as "Contractor"), and its successors and assigns, is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

SECTION I. INTERPRETATION AND INTENT

- 1.1 The "Agreement", as referred to herein, shall mean this Agreement executed by City and Contractor, and shall include this Services Agreement and the Exhibit A attached hereto, and any written supplemental agreement or modification entered into between City and Contractor, in writing, after the date of this Agreement.
- 1.2 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between City and Contractor. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by City or Contractor which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both City and Contractor.
- 1.3 In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Contractor or other rights or obligations of City or Contractor the document or provision thereof expressing the greater quantity, quality or scope of service or imposing the greater obligation upon Contractor and affording the greater right or remedy to City, shall govern.
- 1.4 Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against City solely by virtue of City or City's representatives having drafted all or any portion of this Agreement.
- 1.5 This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.

SECTION II. DUTIES OF CONTRACTOR

- 2.1 Contractor shall provide services as specified in Exhibit A, attached hereto and incorporated into this Agreement.

SECTION III. TERM

- 3.1 The term of this Agreement shall begin upon execution and terminate September 30, 2024, ("Termination Date") unless terminated earlier in accordance with this Agreement.

SECTION IV. COMPENSATION

- 4.1 Contractor proposes to furnish all labor, materials and supplies in accordance with the conditions of this Agreement necessary to complete the work as defined in Exhibit A. Compensation shall not exceed Two thousand seven hundred sixty-eight dollars and sixty-four cents (\$ 2768.64).
- 4.2 Funding for a multi-year agreement is not guaranteed. All of the City's obligations under this Agreement shall be subject to annual appropriation and shall not constitute a general obligation or indebtedness of the City.

SECTION V. GENERAL PROVISIONS

- 5.1 Independent Contractor. The parties agree that Contractor is an independent contractor as that term is commonly used and is not an employee of the City. As such, Contractor is solely responsible for all taxes and none shall be withheld from the sums paid to Contractor. Contractor acknowledges that it is not insured in any manner by City for any loss of any kind whatsoever. Contractor has no authority, express or implied, to bind or obligate City in any way.
- 5.2 Subcontracting.
Approval required. The parties agree that Contractor shall not subcontract, assign or delegate any portion of this Agreement or the services to be performed hereunder without prior written approval of City. In the event that City approves of any such subcontracting, assignment or delegation, Contractor shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. City shall have no obligation whatsoever toward such persons. Contractor shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Contractor of any responsibility for performing under this Agreement.
- 5.3 Necessary Documentation. N/A
- 5.4 Records; Audit. Contractor shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Agreement. Contractor shall make such materials available at its offices at all reasonable times during the Agreement period copies thereof, if requested, shall be furnished at no cost to City.
- 5.5 Ownership.
5.5.1 "Works" means works of authorship fixed in any tangible medium of expression by Contractor or its officers, employees, agents or subcontractors in the course of performing the services under this Agreement, including, but not limited to, computer programs, electronic art, computer generated art, notes, specifications, drawings, flow charts, memoranda, correspondence, records, notebooks, documentation, reports and charts, regardless of the medium in which they are fixed, and all copies thereof.

5.5.2 All Works made or created by Contractor, either solely or jointly with City, in the course of Contractor's performance of services under this Agreement shall be deemed to be works for hire and are and shall be the exclusive property of City. At City's request, Contractor will execute all documents reasonably required to confirm or perfect ownership of such Works and any corresponding copyright rights in and to such Works in City. Without the prior written consent of City, Contractor shall not use, copy or prepare derivative works of the Works; or any parts of them, other than as related to the performance of this Agreement. During the performance of this Agreement, Contractor shall be responsible for loss or damage to the Works while they are in Contractor's possession or control. Any loss or damage shall be restored at Contractor's expense. City shall have free and unlimited access to the Works at all times and, upon demand, shall have the right to claim and take possession of the Works and all copies. Notwithstanding the foregoing, Contractor shall be entitled to retain a set of its work papers for archival purposes only, in accordance with applicable professional standards.

5.6 Insurance.

Minimum Insurance Requirements. Prior to commencing Work, the Contractor shall purchase and maintain from insurance companies lawfully authorized to do business in Indiana policies of insurance acceptable to the City, which afford the coverages set forth below. Insurance shall be written for not less than limits of liability specified or required by law, whichever coverage is greater, and shall include coverage for Contractor's indemnification obligations contained in this Agreement. Certificates of Insurance acceptable to the City shall be given to the City prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. Each policy must be endorsed to provide that the policy will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the City; provided however that such policies may be cancelled with only ten (10) days' prior notice for non-payment of premium. The required coverages and limits which Contractor is required to obtain are as follows:

A. Commercial General Liability

Limits of Liability:	\$2,000,000 General Aggregate
	\$2,000,000 Products & Completed Ops.
	\$1,000,000 Bodily Injury / Prop. Damage
	\$1,000,000 Personal / Advertising Injury
	\$1,000,000 Each Occurrence

B. Auto Liability

Limits of Liability:	\$500,000 Per Accident
Coverage Details	All owned, non-owned, & hired vehicles

C. Workers Compensation and Employer's Liability

As required by Indiana law.

D. Professional/Errors & Omissions Liability

Limits of Liability	\$1,000,000 Each Occurrence
	\$2,000,000 Aggregate

All coverage provided above shall be endorsed to include the City as an additional insured except for the Worker's Compensation / Employer's Liability and Professional/Errors & Omissions policy.

5.7 Termination for Cause or Convenience.

- 5.7.1 If Contractor becomes insolvent, or if it refuses or fails to perform the work and services provided by this Agreement, or if it refuses to perform disputed work or services as directed pending resolution of such dispute, or if it fails to make payments to subcontractors employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this Agreement, then City may, without prejudice to any other right or remedy, terminate this Agreement in whole or in part, in writing, provided that Contractor shall be given (1) not less than ten (10) calendar days written notice of City's intent to terminate, and (2) an opportunity for consultation with City prior to termination. In determining the amount of final payment to be made to Contractor upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by City to be incurred by reason of Contractor's default.
- 5.7.2 This Agreement may be terminated in whole or in part in writing by City for City's convenience; provided that Contractor is given (1) not less than ten (10) calendar days written notice of intent to terminate and (2) an opportunity for consultation with City prior to termination. If City terminates for convenience, Contractor's compensation shall be equitably adjusted.
- 5.7.3 Upon receipt of notice of termination for default or for City's convenience, Contractor shall (1) promptly discontinue all services affected, unless the termination notice directs otherwise, and (2) deliver or otherwise make available to City all Works and such other information, materials or documents as may have been accumulated by Contractor in performing this Agreement, whether completed or in process.
- 5.7.4 If, after termination for Contractor's default, it is determined that Contractor was not in default, the termination shall be deemed to have been made for the convenience of City. In such event, adjustment of the price provided for in this Agreement shall be made as provided in Section 5.7.1 and the recovery of such price adjustment shall be Contractor's sole remedy and recovery.

- 5.8 Termination for Failure of Funding. Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by City are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then City shall have the right to terminate this Agreement without penalty by giving written notice documenting the lack of funding, in which instance this Agreement shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. City agrees that it will make its best efforts to obtain sufficient funds, including but not limited to, requesting in its budget for each fiscal period during the term hereof sufficient funds to meet its obligations hereunder in full.
- 5.9 Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City and its board, agents and employees of any of them (“Indemnitees”) from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees and court costs and other expenses, arising out of or resulting from any negligent acts, errors, or omissions of the Work. The Contractor’s indemnification under this Section shall survive both final payment and the termination of this Agreement.
- 5.10 Notice. Any notice required to be sent under this Agreement shall be sent by internationally recognized overnight courier, certified mail, or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party):

To Contractor:

AMS Mechanical Services
Attn: J.D. Murkle
1230 Brookville Way
Indianapolis, IN 46239

To City:

City of Noblesville
Attn: Fire Department
16 S. 10th Street
Noblesville, IN 46060

Courtesy Copy:

City Attorney
16 S. 10th Street
Noblesville, IN 46060

- 5.11 Disputes. Contractor shall carry on all work required under this Agreement and maintain the schedule for services during all disputes or disagreements with City. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as Contractor and City may otherwise agree in writing. Should Contractor fail to continue to perform its responsibilities as regards all non-disputed work without delay, any additional costs incurred by City or Contractor as a result of such failure to proceed shall be borne by Contractor, and Contractor shall make no claim against the City for such costs. City may withhold payments on disputed items pending resolution of the dispute.
- 5.12 Non-discrimination. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin.

The Contractor will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

5.13 Conflict of Interest.

5.13.1 Contractor certifies and warrants to City that neither it nor any of its officers, agents, employees, or subcontractors who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with City.

5.13.2 For purposes of compliance with IC 36-1-21, Contractor certifies and warrants to City that Contractor, or a person who wholly or partially owns Contractor, is not a relative, as that term is defined by IC 36-1-21-3, of an elected official of Noblesville, Indiana.

5.14 Non-contingent Fees. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty City shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

5.15 Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of fire, explosion, power blackout, natural disaster, strike, embargo, labor disputes, war, terrorism, acts of God, acts or decrees of governmental bodies or other causes beyond such party's reasonable control (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall immediately be suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds sixty (60) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

5.16 Applicable Laws: Forum.

5.16.1 Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included in this Agreement are hereby incorporated by reference. This includes, but is not limited to, the Federal Civil Rights Act of 1964 and, if applicable, the Drug-Free Workplace Act of 1988. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by City and Contractor to determine whether the provisions of the Agreement require formal modification.

- 5.16.2 This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinance or Codes of the City of Noblesville, County of Hamilton. Suit, if any, shall be brought in the State of Indiana, County of Hamilton.
- 5.17 Waiver. City's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of City's rights or remedies.
- 5.18 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.
- 5.19 Attorneys' Fees. Contractor shall be liable to City for reasonable attorneys' fees incurred by City in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Contractor, or from Contractor's failure to fulfill any provisions or responsibility provided herein.
- 5.20 Successors and Assigns. City and Contractor each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, Contractor shall not assign, sublet or transfer its interest in this Agreement without the written consent of City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of City or the Contractor.
- 5.21 Authority to Bind Contractor. Notwithstanding anything in this Agreement to the contrary, the signatory for Contractor represents that he/she has been duly authorized to execute agreements on behalf of Contractor and has obtained all necessary or applicable approval from the home office of Contractor to make this Agreement fully binding upon Contractor when his/her signature is affixed and accepted by City.
- 5.22 Debarment and Suspension
- 5.22.1 Contractor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from or ineligible for participation in any Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Contractor.
- 5.22.2 Contractor certifies, by entering into this Agreement, that it does not engage in investment activities in Iran as more particularly described in IC 5-22-16.5.
- 5.22.3 Contractor shall provide immediate written notice to City if, at any time after entering into this Agreement, Contractor learns that its certifications were

erroneous when submitted, or Contractor is debarred, suspended, proposed for debarment, declared ineligible, has been included on a list or received notice of intent to include on a list created pursuant to IC 5-22-16.5, voluntarily excluded from or becomes ineligible for participation in any Federal assistance program. Any such event shall be cause for termination of this Agreement as provided herein.

5.22.4 Contractor shall not subcontract with any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in any Federal assistance programs by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana.

5.23 Compliance With E-Verify Program. Pursuant to IC 22-5-1.7, Contractor shall enroll in and verify the work eligibility status of all newly hired employees of Contractor through the E-Verify Program ("Program"). Contractor is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.

5.23.1 Contractor and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that Contractor or its subcontractor subsequently learns is an unauthorized alien. If Contractor violates this Section 5.23, City shall require Contractor to remedy the violation not later than thirty (30) days after City notifies Contractor. If Contractor fails to remedy the violation within the thirty (30) day period, City shall terminate the contract for breach of contract. If City terminates the contract, Contractor shall, in addition to any other contractual remedies, be liable to City for actual damages. There is a rebuttable presumption that Contractor did not knowingly employ an unauthorized alien if Contractor verified the work eligibility status of the employee through the Program.

5.23.2 If Contractor employs or contracts with an unauthorized alien but City determines that terminating the contract would be detrimental to the public interest or public property, City may allow the contract to remain in effect until City procures a new contractor.

5.23.3 Contractor shall, prior to performing any work, require each subcontractor to certify to Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. Contractor shall maintain on file a certification from each subcontractor throughout the duration of the Project. If Contractor determines that a subcontractor is in violation of this Section 5.23, Contractor may terminate its contract with the subcontractor for such violation.

5.23.4 Pursuant to IC 22-5-1.7 a fully executed affidavit affirming that the business entity does not knowingly employ an unauthorized alien and confirming Contractor's enrollment in the Program, unless the Program no longer exists, shall be filed with City prior to the execution of this Agreement. This Agreement shall not be deemed fully executed until such affidavit is filed with the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates subscribed below.

AMS Mechanical Services ("Contractor")

Signed By:



Date:

7/5/24

Printed:

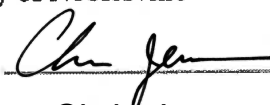
James D. Muckle

Title:

VP / general manager

City of Noblesville

By:



Date:

07/18/2024

Printed:

Chris Jensen

Title:

Mayor



PROPOSAL

AMS Mechanical Services & Contracting p(317) 240-3200 f(317) 240-3280

Proposal Date	Proposal Number	Agreement Number	Page
July 1, 2024	H24-0260-0		1 of 4

By and Between:

CONTRACTOR:
AMS Mechanical Services
1230 Brookville Way
Indianapolis, IN 46239

AND

CUSTOMER:
Noblesville Fire Department
135 S 9th St
Noblesville, IN 46060

Job Location: Station #77, 15251 Olio Rd, Noblesville, IN 46060

- AMS to furnish and install new 6" spiral ducting to extend Plymovent exhausts to include:
 - 6" spiral, fittings, and mountings to two areas as discussed
- Customer to supply scissor lift and clean working area

PROJECT TOTAL \$ 2,768.64

Options:

- Sales tax (if applicable) – add \$ 54.10

Exclusions: Engineering/design, structural steel, roofing/permanent seal, demo, electrical, gas line, plumbing, painting, extra owner-required safety training/certifications/tools, and/or additional personnel for spotting, anything else not specifically noted above is not included. Additional freight and sales tax not included and to be charged extra if applicable.

Notes: All unforeseen items will be brought to the owner's attention for change order approval as they arise. Failure by AMS to specifically exclude any particular item in addition to that noted above shall not be construed as an inclusion of that item in this scope of work. AMS shall not be held liable for errors or omissions in design by others nor inadequacies of materials and equipment specified or supplied by others. AMS will not be responsible for delays by owner, vendors, other contractors and/or inclement weather. Non-AMS induced delays may be subject to additional charges. Due to extreme supply chain volatility, material pricing and availability cannot be guaranteed and is subject to change. All work is to be performed during regular AMS office hours M-F 7a-4p. After hours and/or weekend work to be extra. Note: Invoices paid with credit card will incur additional processing fee.

This proposal is valid for (30) days from date of issue, after of which, pricing is subject to change.

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Progress payments will be made as outlined in the terms and conditions which are a part of this agreement.

Proposed By:
Ryan Neal
AMS Mechanical Services
(317) 240-3200

Customer Acceptance:

AMS Management Acceptance:



 Signature



 Signature

MURRY A. DIXON
Name

JAMES MARKLE
Name

DEPUTY CHIEF **7/5/24**
Title Date

VP/Gen **7/1/24**
Title Date

**AMS MECHANICAL SERVICES
CONSTRUCTION / QUOTED REPAIR – TERMS & CONDITIONS**

1. **Parties and Scope of Work** – AMS Mechanical Services (“AMS” or the “Company”) shall include the AMS company performing the work. “Customer” refers to the person or business entity ordering the work to be done by AMS. If Customer is acting on behalf of another, Customer represents and warrants that it is the duly authorized agent of said party. “Work” means the construction or related work to be performed by AMS as set forth in AMS’ proposal, Customer’s acceptance thereof and these terms & conditions (“T&C”) (collectively, the “Agreement”). Additional work ordered by Customer shall also be subject to these T&C. Customer assumes sole responsibility for determining whether the quantity and the nature of the Work are adequate and sufficient for Customer’s intended purpose. Customer shall communicate these T&C to each third party to whom Customer transmits any part of AMS’ Work. The ordering of work from AMS, or the reliance on any of AMS’ Work, shall constitute acceptance of the terms of AMS’ proposal and these T&C, regardless of the terms of any subsequently issued document.
2. **Access / Temporary Suspension of Equipment or Operations** – All Work provided under this Agreement shall be performed during the Company’s normal working hours. Customer shall provide reasonable means of access to the immediately surrounding area of the Work (“Site”), as necessary, including but not limited to appropriate building areas and/or utility or elevator services. Customer shall keep the Site free and clear of any obstructions that may impede performance of the Work contemplated herein. Any failure to provide such access may result in additional charges if AMS is required to return in order to perform the Work. Customer shall also allow AMS to start and stop or temporarily suspend operation of equipment or systems necessary and/or related to the Work.
3. **Exclusion** – Unless expressly included in the Work, asbestos removal, mold remediation, and/or related-work handling or removing any hazardous materials are excluded. Unless expressly included in the Work, Company shall also have no obligation to dispose of waste oil, refrigerants or other materials associated with, or generated in the performance of, the Work. Unless expressly included in the Work, life safety systems (including but not limited to fire alarms systems, smoke detectors and/or notification systems, and/or fire sprinkler systems), payment and performance bonds, replacement parts on existing equipment, insulation on existing piping and ductwork (except points or reconnection for new work), controls for the existing building automation system, temporary partitions, dust protection, concrete removal or replacement, firesafing of any penetrations, handling of equipment furnished by others, pro-rated back-charges, and liability for the errors or omissions in design by others or inadequacies of materials or equipment specified or supplied by others are excluded. Further, unless expressly included in the Work, any other obligation, work or service is excluded, including but not limited to the cost of temporary heating or cooling.
4. **Original Design, Condition or Installation of Equipment or System** – The Company shall not be responsible for the system’s original or pre-existing design or installation (including air and/or water balance) or for its performance in maintaining design conditions other than through the Work performed by AMS. AMS shall also not be responsible for any damages resulting in whole or in part from any preexisting condition in the system. Unless expressly included in the Work, AMS is not assessing or making recommendations regarding Customer’s entire HVAC or other mechanical systems.
5. **Payment** – The Customer will promptly pay invoices within ten (10) days of receipt. Should a payment become thirty (30) days or more delinquent, the Company may stop all work under this Agreement without notice. A finance charge will be added to past due accounts at the rate of one and one-half percent (1½%) per month, or at the highest legal rate, whichever is less. Failure to make payment when due or impairment of Customer’s credit shall relieve AMS of the obligation of further performance of this Agreement. In the event that AMS is working as a subcontractor to Customer, payment is due to AMS regardless of whether Customer is paid by the property owner or any other party with whom Customer has contracted. AMS expressly declines to assume the risk of non-payment by the owner or any other party with whom Customer has contracted.
6. **Value Engineering** – Should AMS make or have made any recommendations to reduce the price of the Work under this Agreement by proposing construction alternatives to pre-existing design drawings or specifications, Customer agrees that it shall have the original and/or a properly licensed design engineer approve of such recommendations, and Customer shall defend, indemnify and release AMS from any and all damages and/or liability arising from said recommendations to reduce the price of the Work hereunder. Customer expressly understands that AMS is not providing mechanical engineering services and is not performing the Work in said capacity.

7. **Prime Contract Terms** - In the event that Customer is a prime contractor or has contracted with a prime contractor, Customer expressly understands and agrees that the terms of the prime contract shall not modify any of the terms herein.

8. **Warranty** – The Company warrants its Work to be free from defects in workmanship and materials for a period of thirty (30) days from the date of substantial completion unless otherwise stated in the scope of Work. AMS' sole obligation shall be to repair or replace defective materials or to properly re-perform any defective Work. Except as expressly provided by this Agreement or as limited by law, AMS hereby expressly disclaims and negates any other representation or warranty, express or implied, relating to the services provided hereunder, including without limitation, any implied or express warranty of merchantability, fitness for a particular purpose, or conformity to models, samples or materials. AMS will transfer the benefit of any applicable manufacturer's warranty to Customer upon request. Any warranty claim for goods or equipment shall be made against the manufacturer only. Any subsequent work performed by another on any equipment included in the Work shall void any warranty and/or indemnity, if any, provided by AMS.

9. **Limitation of Liability and Claims** – Solely with regard to paragraphs 8 and 9, the term "Company" shall include the above-named Company performing the Work and its particular divisions, subsidiaries, parents, partners, managers, agents, employees, members, shareholders, attorneys, affiliates, successors and/or assigns. The Company shall not be liable for the operation of the equipment included in the Work or for injury or damage to person or property, except those arising or resulting directly from the negligent acts or omissions of AMS' employees, agents, contractors or subcontractors, if any. Should AMS be found to have been negligent in the performance of the Work, or to have made and breached any express or implied warranty, representation, or contract term, Customer, all parties claiming through Customer, and all parties claiming to have in any way relied on AMS' Work agree that no action or claim, whether in tort, contract or otherwise, may be brought against AMS more than one (1) year from the date the party knew or should have known of any claim the party may have, and further agree that in no event shall AMS be liable for any special, punitive, exemplary, indirect, consequential or incidental damages or for damages for lost profits, business interruption, revenue, use, or data. AMS shall also not be liable for expense in removing, replacing, or refinishing any part of the building structure. It shall not be liable for any loss or damage due to delays in furnishing labor or materials caused by reason of strikes or labor troubles affecting its employees or the employees of others, delays caused by priority or preference rating, orders or regulations established by any government or other authority having jurisdiction hereunder, by unusual delays in procuring supplies, by acts of God, war or terrorism, or for any other cause beyond its reasonable control.

10. **Mutual Indemnification** – Company and Customer mutually agreed to indemnify, defend and hold the other harmless from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of, or resulting from the other's performance under, this Agreement.

11. **Regulatory Requirements** – The Company shall not be required to furnish any items of equipment or labor or make special tests as are recommended or required by insurance companies, federal, state, or municipal governments, or other authorities, other than those expressly included in the Work.

12. **Taxes and Assessments** – Unless expressly included in the Work, the Customer shall be responsible for all taxes and assessments applicable to the Work.

13. **Pricing, Timing and Scheduling of Work** – The services set forth in AMS' proposal and Customer's acceptance will be accomplished by AMS personnel at the prices quoted, plus applicable taxes, etc. If, through no fault of its own, AMS is required to delay commencement of the Work or if, upon embarking upon its Work, AMS is required to stop or interrupt the progress of its Work as a result of changes in the Work requested by Customer, to fulfill the requirements of third parties, interruptions in the progress of construction, or other causes beyond the direct reasonable control of AMS, any additional charges incurred, including but not limited to (i) overhead of ten percent (10%), and (ii) reasonable profit, will be paid by Customer. Unless expressly included in the Work, all Work to be provided under this Agreement shall be performed during Company's normal working hours. Any work performed after hours, regardless of the reason, shall be billed at applicable rates and this Agreement shall be modified accordingly. Work not covered by this Agreement shall be billed at the Company's then-prevailing rates.

14. **Alternative Dispute Resolution ("ADR")** – If a dispute arises out of or relates to this Agreement, the parties agree that senior management shall attempt in good faith to settle the dispute to the satisfaction of all parties. If the parties are unable to settle the dispute within thirty (30) days from the time it arises, the parties agree to submit the dispute to arbitration. Upon expiration of the thirty-day period, the aggrieved party shall serve a written demand for arbitration upon the opposing party and the American Arbitration Association, and the parties shall select a mutually acceptable arbitrator with knowledge of the commercial construction and/or mechanical services industry. Arbitration shall occur in the metropolitan area in which the Work was performed and shall be in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the time of arbitration. The decision of the arbitrator shall be final, conclusive and binding upon all parties, and

judgment may be entered upon the award in the appropriate state or federal court having jurisdiction over the dispute. The arbitrator shall award the prevailing party all costs and expenses of such arbitration, including without limitation, reasonable attorneys' and experts' fees and/or costs. Failure to serve a demand for arbitration within one (1) year from the date the party knew or should have known of any claim the party may have shall be deemed a waiver of the party's claim.

15. **Attorneys' and Experts' Fees and Costs** – In the event of a dispute regarding this agreement or the Work contemplated herein and in conjunction with an award of fees contemplated under the ADR provision above, the prevailing party shall be entitled to be paid by the other party all reasonable attorneys' and experts' fees and costs, however incurred and in whatever forum or proceeding incurred, including but not limited to judicial, arbitral, and/or administrative.

16. **Insurance Proceeds** – If insurance proceeds are received by the Customer for any damages which are ultimately repaired or replaced by the Company under this Agreement and AMS has not been paid for said Work, the Customer shall pay said insurance proceeds to the Company. If payment is otherwise required, the liability of Customer for the payment owed the Company shall not be limited to the insurance proceeds received.

17. **Agreement Changes; Entire Agreement** – Any and all changes to this Agreement must be in writing and signed by authorized representatives of the Customer and Company. The Agreement, as defined above, is the entire agreement between the parties, and supersedes any prior oral or written understandings.

18. **Environmental** – If the Company, in the course of performing the Work hereunder, discovers hazardous materials or substances upon, beneath, about, or inside Customer's equipment or property, the Company immediately shall report its findings to the Customer; provided, however, that the Customer agrees and acknowledges that the Customer shall be solely responsible for all costs, expenses, damages, fines, penalties, claims and liabilities associated, or incurred in connection, with such hazardous materials or substances and the Customer shall be solely responsible for reporting the presence of said hazardous materials or substances to the proper governmental authorities. The Customer further agrees and acknowledges that title to, ownership of, and legal responsibility and liability for any and all such hazardous materials and substances at all times shall remain with the Customer and that the Customer shall be solely responsible for the removal, handling, and disposal of all hazardous materials in accordance with all applicable governmental regulations. To the extent applicable to the Work and they exist, Customer shall provide Company with any reports or Material Safety Data Sheets required by OSHA.

19. **Severability** – If any term, covenant, condition or provision of this agreement, or the application thereof to any circumstance, shall, at any time or to any extent, be determined by a court of competent jurisdiction or an arbitrator to be invalid or unenforceable, the remainder of this agreement, or the application thereof to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, condition and provision of this agreement shall be valid and enforceable to the fullest extent permitted by law.

20. **Termination** – Either party may terminate this Agreement on thirty (30) days advance written notice without cause. In the event of termination by Customer, Contractor shall be paid all costs actually incurred to that date plus ten percent (10%) profit and overhead.

21. **Notice** – To be effective, any notice under this Agreement must be in writing and sent via certified mail, return receipt requested or via a third-party courier with a delivery tracking capability.

E-Verify Affidavit

Pursuant to Indiana Code 22-5-1.7-11, the Contractor entering into a contract with the City is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program. The Contractor is not required to verify the work eligibility status of all its newly hired employees through the E-Verify program if the E-Verify program no longer exists.

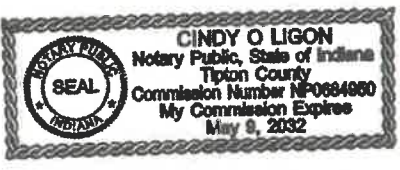
The undersigned, on behalf of the Contractor, being first duly sworn, deposes and states that the Contractor does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with the City, the undersigned Contractor will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

(Contractor): AMS Mechanical Services
By (Written Signature): [Signature]
(Printed Name): James D. Markle
(Title): UP/ general Manager

Important - Notary Signature and Seal Required in the Space Below

STATE OF Indiana
COUNTY OF Tipton

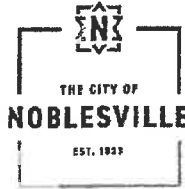
SS:



Subscribed and sworn to before me this 5th day of July, 2024.

My commission expires: May 8th, 2032 (Signed) Cindy O Ligon

a. Residing in Tipton County, State of Indiana



FINANCE & ACCOUNTING

Funding Verification/Encumbrance Request Form

Date to be submitted to BoW/Park Board: 7/23/24 (put N/A if not submitting to BoW/Park Board)

Vendor name: AMS Mechanical Services

Vendor Address: 1230 Brookville Way; Indianapolis, IN 46239

Brief description of purchase: ductwork at St. 77 for the Plymovent system

Source of Funding:

- Current Year Operational Budget
- Subsequent Year Operational Budget¹
- Funding not yet finalized (attach explanation)²
- Loan or debt proceeds
- Non-Appropriated Fund³

Fund #	101	
Department #	005	
Project # (NA if no project #)	NA	
	Expense Object #	Amount
#1	361.100	\$ 2,768.64
#2		
#3		

- 1) This option may only be selected AFTER the adoption of the subsequent year budget. OFA will create a PO after the start of the next year. If contract details change in between form submission and the start of the year, contact OFA Staff.
- 2) This option may only be selected in unusual circumstances. An additional FVF will need to be submitted to OFA once funding source has been determined. OFA will not create a PO until this follow-up form has been submitted.
- 3) These funds are not appropriated through the annual budget process. They include but are not limited to grant funds and impact fee funds.

Are you requesting that a Purchase Order (PO) be created for this expenditure?

- Yes Select for all purchases/contracts that will not be paid immediately
- No Select ONLY if department plans to initiate payment immediately

Additional Comments: _____

The Department certifies that sufficient appropriation authority exists in the stated fund and expense series to obligate the expense for future payment.

Department Director

(Signature)

Matt Mitchell

(Printed Name)

7/1/24

(Date)

Please email completed form to OFAbudget@noblesville.in.gov

FOR OFFICE OF FINANCE AND ACCOUNTING USE ONLY

OFA Action Taken

- Purchase Order Created
- Reviewed Availability of funds (Contract/Purchase of over \$50k or paid with debt proceeds only)
- No Action Taken (Department should still include this form in purchase/contract approval submission)

PO # (if applicable): 240243

OFA Signature Caitlin Moss

Comments:

Initials: HT

Date: 7/2/24



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
7/2/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement.

PRODUCER: Arthur J. Gallagher Risk Management Services, LLC
CONTACT NAME: Client Service Team
PHONE (A/C, No. Ext): 800-716-8314
FAX (A/C, No): 855-595-4605
E-MAIL ADDRESS: GGB.BU2.CL.Srv@ajg.com
INSURER(S) AFFORDING COVERAGE: INSURER A: Old Republic Insurance Company, INSURER B: Travelers Casualty Insurance Co of America, INSURER C: HANOVER INS CO, INSURER D, INSURER E, INSURER F

COVERAGES CERTIFICATE NUMBER: 1161401950 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL SUBR INSD, WVD, POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Includes rows for Commercial General Liability, Automobile Liability, Umbrella Liability, Workers Compensation and Employers' Liability, and Installation Floater.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Continental Insurance Co. NAIC #35289. Policy #7018226549 3/1/24-3/1/25 Excess Over Umbrella Limit: \$10,000,000 / Aggregate: \$10,000,000.

City of Noblesville - Fire Department is included as Additional Insured, ATIMA, for ongoing and completed operations, and waivers of subrogation apply in favor of the additional insureds when required by written contract. Umbrella policy Follows Form over the GL, Auto & Employers Liability. Sixty (60) days prior written notice of cancellation/change in coverage applies per policy provisions.

Endorsements attached: CG20101219-GI Additional Insured-Owners, Lessees or Contractors-Scheduled Person or Organization CG20371219-GI Additional Insured-Owners, Lessees or Contractors-Completed Operations See Attached...

CERTIFICATE HOLDER: City of Noblesville - Fire Department
CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE: [Signature]