

**GOODS & SERVICES
CONTRACT**

Between

**CITY OF TOLEDO
One Government Center
640 Jackson Street
Toledo, Ohio 43604
And**

(Contractor Name – Vendor Number)

THIS CONTRACT IS MADE by and between the City of Toledo, an Ohio charter municipality ("Toledo") and _____(name), a [state of jurisdiction] _____
[type of business entity] _____, with a principal mailing address of _____
_____ ("Contractor"), each duly authorized.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions and terms to be kept and performed, it is agreed by the parties as follows:

SECTION 1 GENERAL

The general purpose of this contract, as fully detailed in the below referenced documents, is to purchase/provide the following goods and/or services:

Uniforms

All such work or services contained in this Contract are supplemented by the following, which are attached hereto and made a part hereof or incorporated by reference as if fully written out or attached to this Contract:

Instructions to Bidders
Bid Sheet or Request for Proposal
Project Specifications including all Addenda if applicable
Contractor's Bid/ Quote/ Proposal
Ordinance # 232-19__

SECTION 2 TERM

Unless otherwise specified, this Contract shall be effective as of the date the contract is signed by the Mayor, and shall either (note whichever is applicable): ☐ continue in effect until all

obligations are performed in accordance with the Contract not to exceed one year(s), or shall expire in (1 years). If there is an option to renew it is as follows: a) ☐ for one year; b) ☐ on a month to month basis; c) ☐ for the number of years of the original term; d) not applicable; or e) ☒ Other three one-year renewals

SECTION 3 GOODS

A. DELIVERY: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives, examines and accepts the Deliverables. Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables.

B. ACCEPTANCE: The City expressly reserves all rights to inspect the Deliverables at or near the time of delivery before accepting them. Upon prompt inspection the City will either accept the goods or it may reject defective or non-conforming Deliverables.

C. RETURNED GOODS:

i) For problems related to Contractor error (including, but not limited to, over shipment, defective merchandise, unapproved substitution), the Contractor shall make arrangements to remove the goods from Toledo's premises within seven (7) calendar days after notification or they will be deemed as abandoned property to be disposed of accordingly. The Contractor shall not apply any restocking or other charges to Toledo. At the option of Toledo, replacement items may be accepted and will be shipped within seven (7) calendar days of notification.

ii. If Toledo elects to return goods for reasons not covered by section 3Ci, above, Toledo will agree to abide by the Contractor's reasonable return policy if it was provided and accepted as part of this contract. In the absence of any Contractor policy, Contractor agrees that Toledo may elect to return goods for a reasonable period after Delivery if Toledo will be responsible for the costs associated with repackaging, shipment and transportation. For any orders of custom manufactured items, failure of the Contractor to provide a production sample and obtain approval from Toledo before Delivery shall result in the Contractor bearing all responsibility and costs associated with the return of these goods.

SECTION 4 WARRANTIES

A. GOODS. The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances.

i) Moreover, Contractor warrants and represents that all Deliverables shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Deliverables shall be new in all aspects unless Toledo specifically identified in the bid or RFP that the merchandise may be recycled, used, reconditioned or pre-owned.

ii) Unless otherwise specified elsewhere in this Contract, the warranty period shall be at least one year from the date of Delivery of the Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs of such repair or replacement shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

iii) If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City.

iv) Contractor may not limit, exclude or disclaim the foregoing warranties or any warranty implied by law; and any attempt to do so shall be without force or effect.

B. SERVICES. The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations by competent and trained personnel.

i) Unless otherwise specified elsewhere in this Contract, the warranty period shall be at least one year from the Delivery Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty

(30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

ii) The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

SECTION 5 REQUIREMENTS CONTRACT

If this contract is a requirements contract it provides that the Contractor will sell the City all of the goods or services that are the subject of this contract that the City, in good faith, needs. If the quantity was not specified in the bid or RFP then the City will provide the Contractor with a reasonable estimate of the quantities to be purchased upon request. If the City's needs go unreasonably beyond that which the parties have established as the anticipated quantity the Contractor may provide the goods or services or may decline if it is unable to do so. In that event the City may purchase the goods or services from another vendor.

SECTION 6 PAYMENT

Payments for goods or services identified on Contractor's bid sheet or RFP will be paid within thirty (30) calendar days of the City's Acceptance of the Deliverables or of a Proper Invoice, whichever is later. Contractor shall submit separate invoices on each purchase order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made. Invoice(s) shall be emailed to **accountspayable@toledo.oh.gov** or mailed to **City of Toledo, Division of Accounts, 640 Jackson Street, Suite 2020, Toledo, Ohio 43604.**

SECTION 7 CHANGE ORDERS

- A. If Toledo seeks to make any change in the scope of work, including but not limited to changes in the specifications, quantities or details, it shall request the same from Contractor via written change order. Any increases or decreases in the Contractor's costs, or the time required for the performance of any part of the work under this Contract, shall be clearly articulated and the Contract will be deemed modified as of the change order, which shall be signed by both parties.
- B. If Contractor needs to seek a change order from the City the same shall be submitted in writing for review. Any approved increase or decrease in costs or change in the time for performance will be indicated and the Contract will be deemed modified as of the change order, which shall be signed by both parties.

SECTION 8 TERMINATION

A. Either party may terminate this Contract, in whole or part, in writing, if the other party substantially fails to fulfill its obligations under this Contract through no fault of the terminating party. However, no such termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.

B. Toledo may terminate this Contract, in whole or part, in writing, for its convenience, after issuing thirty (30) days written notice to the Contractor.

C. If Toledo terminates for default, an equitable adjustment in the price provided for in this Contract shall be made, but: (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to Contractor at the time of termination may be adjusted to the extent of any additional costs Toledo incurs because of Contractor's default. If Contractor terminates for default or if Toledo terminates for convenience, the equitable adjustment shall provide for payment to Contractor of reasonable expenses incurred before the termination, in addition to termination settlement costs Contractor reasonably incurs relating to commitments that had become firm before the termination.

D. Upon receipt of a termination action under paragraphs A or B of this section, Contractor shall: (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to Toledo all completed or partially completed supplies and manufacturing materials that the Contractor has specifically produced or acquired for the terminated portion of the Contract.

E. Upon termination under paragraphs A or B of this section, Toledo may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work Toledo takes over for completion will be completed at Toledo's risk, and Toledo will hold harmless Contractor from all claims and damages arising out of improper use of Contractor's work.

SECTION 9 REMEDIES

A. Contractor is liable to Toledo for all actual and direct damages caused by Contractor's default. Toledo may buy substitute supplies or services, from a third party, for those that were to be provided by Contractor. Toledo may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by Contractor's default, from Contractor.

B. If actual and direct damages are uncertain or difficult to determine, Toledo may recover liquidated damages in the amount of 1% of the value of the order, or \$250.00 per day, whichever is less, for every day the default is not cured by Contractor.

C. Toledo may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on the Contract.

D. All claims, counterclaims, disputes and other matters in question between Toledo and the Contractor arising out of or relating to this Contract or its breach will be decided in a court of competent jurisdiction in Lucas County, Ohio. This Contract shall be deemed to be executed in the City of Toledo, Lucas County, State of Ohio and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with the laws of the State of Ohio, as applicable to contracts entered into and to be performed entirely within Ohio. Any litigation arising between Toledo and Contractor arising under or regarding this Contract shall occur, if in the state courts, in the Lucas County court having jurisdiction thereof, or if in the federal courts, in the United States District Court for the Northern District of Ohio, Western Division.

SECTION 10 INDEMNIFICATION

A. Contractor, for itself and its related entities, agents, employees, subcontractors and the agents and employees of said subcontractors, agrees to and shall indemnify, hold harmless and defend Toledo, its successors, assigns, officers, employees, agents and appointed and elected officials, for any claim, cost, loss, damage or obligation whatsoever in nature (including reasonable attorneys fees and expenses) arising out of or through in any way from Contractor's breach of any of the conditions of this Contract; excluding, however, claims arising from Toledo's negligence, omission or willful misconduct and for which immunity is not provided by the Ohio revised Code for such negligence, omission or willful misconduct. This exception shall not extend to acts, omissions, or intentional torts occurring as a result of or in response to any emergency. The indemnification obligation shall not be limited in any way by the insurance requirements but shall be in addition to those requirements.

B. In any and all claims against Toledo, its officers, officials, agents or employees by any employee of the Contractor, any subcontractor, agent and anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the Contractor hereby expressly waives the immunity provided to Contractor by Article II, Section 35 of the Ohio Constitution and Ohio Revised Code Sections 4123.74 and 4123.741, so that this indemnification obligation may be enforced by Toledo against Contractor in those instances.

C. If the Contractor subcontracts any part of the work required under this Contract, subject to Toledo written approval of each such subcontract(s), it shall require its subcontractor to indemnify Toledo in accordance with this section. Contractor shall provide to Toledo in writing information about each subcontractor as Toledo shall request from time to time.

SECTION 11 ASSIGNMENT; COMPLIANCE WITH LAW

Neither party may assign or transfer rights and obligations under this Contract without the written consent of the other party. Each party agrees that it will perform its obligations in accordance with all applicable Ohio laws, rules, and regulations now or hereinafter in effect.

SECTION 12 EQUAL EMPLOYMENT OPPORTUNITY

Contractor agrees that it will not discriminate against any customer, employee or applicant for employment because of race, ancestry, religion, color, sex, age, national origin or disability.

SECTION 13 INDEPENDENT CONTRACTOR

The Contract shall not be construed as creating an employer-employee relationship, a partnership or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City. Moreover, Contractor shall execute any and all City and State forms that exist to confirm that no Public Employee Retirement Services ("PERS") will be or should be deducted from Payment.

SECTION 14 ENTIRE AGREEMENT

This Contract, including any subsequent amendments, contains all representations and the entire understanding of the agreement between the parties. No changes to this Contract shall be valid unless made by a written amendment executed and approved by the parties. Time is of the essence of this Contract. The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract.

SECTION 15 CONFLICTS

In the event of a conflict between the terms and conditions in the foregoing sections of this Contract and the terms and conditions in any of the Contractor's Bid/Quote/Proposal or other Contractor documents attached or incorporated by reference to this Contract, the foregoing terms and conditions shall control unless Toledo specifically waives such terms and conditions in writing.

SECTION 16 AUTHORITY TO ACT

The signatory or signatories hereto on behalf of the Contractor warrant(s) and represent(s) that they and have the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby on behalf of the Contractor and have been duly authorized to execute this Agreement.

IN WITNESS WHEREOF, Toledo and the Contractor have caused this Contract to be executed as of the date of the Mayor's signature listed below.

CONTRACTOR:

(Corporation Name)

(Phone Number)

(Print Name)

(Title)

(Signature)

(Date)

(Email Address)

CITY OF TOLEDO:

(Mayor's Signature)

(Mayor's Authorized Designee)

(Date)

(Date)

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

(Law Department)

(Director)

(Department)