

Under an Agreement the County is hiring a Contractor to remove snow from the listed properties.

I. SCOPE OF DUTIES:

- A. Purchased Services under an Agreement will include the following:
1. Contractor will remove snow from the areas described below and shown on the attached map and made part of this Agreement.
 - a. Government Center parking areas located at the southeast corner of 9th Street and 4th Avenue, at the southwest corner of 9th Street and 4th Avenue, and at the northwest corner of 9th Street and 4th Avenue. **The snow in the lot located on the Government Center block in the southeast corner of 9th Street and 4th Avenue shall be moved across the street to the lot on the southwest corner of the intersection and stockpile in perimeter stalls close to the alley.**
 - b. Library parking area adjacent to the alley between 4th Avenue and 5th Avenue. This includes the length of the alley within 10 feet of the curb along the building and the stalls north of the building up to 5th Avenue.
 2. Except as noted above, Contractor will stockpile and store the snow removed from parking areas and driving lanes on the parking lots.
 3. Contractor will remove snow from the access roads and parking lots prior to 7:00 a.m.
 4. Contractor shall be available to remove snow throughout the day and night as needed, at the discretion of the County, depending on the circumstances. Each time the contractor is required to return to plow snow shall be a snow event.
 5. Contractor will provide a list of equipment for the purpose of completing the Purchased Services (list equipment, size and capacity):
- B. The County's responsibilities are as follows:
1. The County shall provide payment upon completion of said Contractor's duties hereunder upon submission of an itemized claim by the Contractor to the County for payment of the contract price as set out in Section V. COMPENSATION below.
 2. Any de-icing chemicals that might need to be applied to ice and compacted snow shall be furnished and applied by Nobles County Public Works.
 3. Nobles County Public Works Department will determine if stockpiles of snow need to be removed and disposed of, and will do the work necessary to remove and dispose of the stockpiles.

Additional Agreement language will be offered as follows:

II. TERM:

The term of an Agreement shall be from November 30, 2023 to May 15, 2026, regardless of the dates of signatures.

III. TERMINATION:

A. This Agreement can be terminated by either party for any reason prior to September 30th in the first year of the Agreement, and between May 15 and September 30th of any subsequent year of the Agreement.

B. Either party may terminate the Agreement with reasonable cause, effective immediately upon the giving of written notice of the termination the other party as provided in Section XI NOTICE below. The grounds for reasonable cause shall include but not be limited to: material violation of the Agreement, including failure to complete duties in accordance with state law and timelines; any act exposing the other party to liability for personal injury, property damage, or any other legal basis for liability; conduct on the part of the Contractor which adversely impacts the interests of the County, including any form of dishonesty or conduct which may be harmful to employees or the public; or engaging in a conflict of interest as determined by the County.

IV. COMPENSATION:

A. The County shall pay the Contractor according to the following table. The amounts shown below include labor, applicable sales tax, equipment costs, cost of insurance and performance bond, and all other costs associated with the snow removal and stockpiling operations for each snow event.

B. A separate “Snow Event” occurs each time the Contractor mobilizes to remove snow. More than one Snow Event can occur in a day, depending on how the snow falls and accumulates.

C. Rate per Snow Event for clearing snow from Downtown Parking Lots:

	<u>2023 – 2024</u>	<u>2024 – 2025</u>	<u>2025 - 2026</u>
Library	\$ _____	\$ _____	\$ _____
Government Center Lots	\$ _____	\$ _____	\$ _____

- D. Contractor shall submit a monthly invoice for services rendered the previous month. The invoice shall include dates Purchased Services were provided.
- E. Upon receipt of the invoice, the County shall promptly provide payment.
- F. Contractor is liable for the repairing of any damage done by the Contractor to County property.

V. RELATIONSHIP BETWEEN PARTIES:

- A. The County and Contractor are independent of one another. The Agreement does not create and shall not be interpreted to create an employment relationship, joint venture, or partnership. Neither party has the authority to bind the other to any third party.
- B. The Contractor shall not act as an employee of the County and is not authorized to enter into contracts or agreements on behalf of the County or to otherwise create obligations of the County to third parties.
- C. Contractor shall be solely responsible for the payment of all income taxes, unemployment insurance, self-employment taxes, and social security insurance, and for providing all insurance (such as professional malpractice, workers' compensation, automobile liability, or general casualty and liability coverage) as may be applicable to Contractor or any of its employees, managers, owners or contractors. All payments by the County to Contractor will be reported as IRS 1099 income.
- D. The County shall have no right to Contractor's full time or exclusive services. The County and Contractor both shall have the right to contract with others for the performance of services, except that Contractor shall refrain from engaging in any activity that represents a conflict of interest, as determined by the County in its sole discretion.
- E. Contractor shall be responsible for regular business expenses arising from his performance under this Agreement. Contractor shall provide the equipment, materials and supplies required for the performance of the Services and the County shall not have any duty to provide any such items or to reimburse Contractor for the purchase or use by Contractor of such items.
- F. Personnel, if any, supplied or used by the Contractor to provide the Purchased Services under this Agreement shall be deemed employees or subcontractors of Contractor and will not be considered employees or subcontractors of the County.
- G. Contractor acknowledges that as a non-employee, neither the Contractor, nor any of Contractor's employees, agents, subcontractors or assigns is eligible to participate in any of County's employee benefit programs (nor are her/his/their spouse or dependents) and agrees any and all rights to such benefits, including any right to file a

claim for any employee benefits under the PERA, applicable state or local law, or any County policy, practice, procedure, or program are waived. Contractor also agrees that should the Contractor at a later time become an employee of County the Contractor or any of Contractor's employees, agents, subcontractors or assigns would become eligible to participate in County's employee benefit programs at that time, in accordance with the terms of each plan and County policies, practices, procedures, and programs and that the time spent as a Contractor nor any of Contractor's employees, agents, subcontractors or assigns would not be included for purposes of any benefit calculations.

VI. INSURANCE AND BOND:

The Contractor shall carry at a minimum the following insurance and provide a certificate of the insurance naming Nobles County as an additional insured:

- A. **Public Liability & Property Damage:** The Contractor shall maintain during the duration of this Agreement insurance protecting the Contractor (and the County) from claims or damages for personal injuries, including accidental death, for claims or damages for property damage which may arise from operations under this Agreement whether the operations are by the Contractor, by a subcontractor or by anyone under or directly or indirectly employed by either of them.
- B. That Public Liability and Public Property Damage Insurance Policy shall provide that the insurance company waives the right to assert the immunity of the County as a defense to any claims made under said insurance policy
- C. The amount of Public Liability Insurance shall be not less than
 - 1. One and one half million (\$1,500,000) dollars per occurrence;
 - 2. One and one half million (\$1,500,000) dollars per personal injury and advertising injury
 - 3. Three million (\$3,000,000) dollars general aggregate;
 - 4. Three million (\$3,000,000) dollars products and complete operations aggregate;
 - 5. One hundred thousand (\$100,000) dollars fire damage limit; and
 - 6. Five thousand (\$5,000) dollars medical expense.
- D. The amount of Automobile Public Liability Insurance shall be: A combined single limit of one and a half million dollars (\$1,500,000) per occurrence for all damages to or destruction of property during the policy period, if any motor vehicles are engaged in operations within the term of the Agreement on the site of work covering the use of all such motor vehicles unless such coverage is included in the insurance provided under subsection A above.
- E. **Worker's Compensation Insurance:** The Contractor shall provide Workers Compensation insurance for all employees employed at the site where services are being performed pursuant to this Agreement, and in case any work is sublet, the

Contractor shall require any subcontractor to provide Worker's Compensation Insurance for all its employees.

- F. In case any work is sublet, the Contractor shall require any subcontractor to provide Public Liability and Property Damage insurance in the same amounts and include Nobles County as additionally insured.
- G. Contractor will not commence work under this Agreement until Certificates of Insurance have been provided to the County. Contractor will provide updated Certificates on demand by the County.
- H. The Contractor's insurance policies and certificates shall provide that the policies and certificates shall remain in force and effect throughout the expected term of the Agreement. If the Contractor cancels or changes insurance, Contractor shall provide 30 day's written notice to the County before the effective date of the cancellation or change.
- I. Performance Bond: The Contractor shall provide the County with a performance bond in the amount of fifteen thousand dollars (\$15,000) to ensure the performance of the Purchased Services for the term of this Agreement and to ensure that any damages caused by the Contractor in the course of providing Purchased Services is repaired. The performance bond must guarantee that if the Contractor fails to provide Purchased Services or fails to repair damage, the Contractor's bonding company will assume responsibility to provide Purchased Services, and will assume responsibility to effect the needed repairs.

VIII. NONDISCRIMINATION:

During the performance of the work and services hereunder, the Contractor agrees to fully comply with Title VI of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, as amended; the American's With Disabilities Act of 1990, as amended; the Minnesota Human Rights Act, Minnesota Statutes § 363A.01, et. seq., as amended.

IX. INDEMNIFICATION:

- A. The contractor shall indemnify and save harmless the County of Nobles, their officers and employees, from all suits, actions and claims of any character brought because injuries or damages received or sustained by any person, persons or property on account of the operations of the said contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any claims arising or amounts recovered from infringements of patent, trademark or copyright; or because of any claims arising or amounts recovered under the Worker's Compensation Act; or under any law, ordinance, order or decree. This obligation to indemnify shall survive the expiration or

termination of the Agreement, and/or the Contractor relationship, by either party for any reason.

X. MODIFICATION:

An Agreement will contain the entire understanding of the Parties. It may not be changed orally, but only upon an Agreement in writing approved by the Parties. It may be modified as to terms and conditions from time to time upon the mutual consent of the Parties, however, such modification shall be reduced to writing, signed by the Parties, and the document appended to and made part of this Agreement.

XI. NOTICE:

- A. Any formal correspondence or notice of termination between the Parties pursuant to the Agreement shall be addressed to the Contractor and the County contacts.

XII. STAFFING:

The Contractor shall provide appropriate staffing to complete the Purchased Services agreed to in the Agreement.

XIII. PROHIBITION AGAINST ASSIGNMENT:

- A. Except as otherwise expressly provided in the Agreement, the Contractor agrees that this Agreement, and the rights, interests, and benefits hereunder shall not be assigned, transferred, or pledged in any way by the Contractor or by any other person claiming under it by virtue of the Agreement and shall not be subject to execution, attachment, or similar process. Any attempt at assignment, transfer, or of pledge in any way or other disposition of this Agreement or of such rights, interests, and benefits contrary to the foregoing provisions or the levy of any attachment or similar process shall be null and void and without effect and shall be cause for termination of the Agreement.
- B. If there is an emergency that prevents the Contractor from performing the Purchased Services, the Contractor shall seek County approval to subcontract out the Purchased Services. The County shall not unreasonably withhold approval for subcontracting under emergency circumstances.

XIV. CONTROLLING LAW AND VENUE:

The Agreement shall be controlled by the laws of the State of Minnesota and any action brought because of any claim, demand, or cause of action arising under the terms of this Agreement shall be brought in Nobles County in the State of Minnesota.

XV. MUTUAL DRAFTING.

The Agreement is the result of negotiations between the Parties and, accordingly, shall not be construed for or against any party, regardless of which party drafted the Agreement or any portion thereof. The Agreement shall for all purposes be deemed to have been mutually drafted.