

**STREET SWEEPING SERVICES AGREEMENT
BETWEEN THE CITY OF PACIFICA AND CONTRACT SWEEPING
SERVICES, INC.**

This Agreement is made and entered into as of the 10th day of December, 2018 by and between the City of Pacifica hereinafter called "CITY" and Contract Sweeping Services, Inc. hereinafter called "CONTRACTOR".

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

- A. That CITY desires to engage the CONTRACTOR to render certain professional services as enumerated in the REQUEST FOR PROPOSAL, STREET SWEEPING SERVICES dated November 2018, a copy of which is attached hereto and incorporated by this reference;
- B. That CONTRACTOR is qualified to provide such services to the CITY and;
- C. That the CITY has elected to engage the services of CONTRACTOR upon the terms and conditions as hereinafter set forth.

AGREEMENT

1. Services. The services to be performed by CONTRACTOR under this Agreement shall include those services set forth in the REQUEST FOR PROPOSAL, STREET SWEEPING SERVICES dated November 2018, which is, by this reference, incorporated herein and made a part hereof as though it were fully set forth herein.

Performance of the work specified in said REQUEST FOR PROPOSAL, STREET SWEEPING SERVICES dated November 2018 is hereby made an obligation of CONTRACTOR under this Agreement, subject to any changes that may be made subsequently hereto upon the mutual written agreement of the said parties.

Where in conflict, the terms of this Agreement supersede and prevail over any terms set forth in the REQUEST FOR PROPOSAL, STREET SWEEPING SERVICES dated November 2018.

2. Term; Termination. (a) The term of this Agreement shall commence upon the date hereinabove written. The initial term of this Agreement shall be three (3) years (36 months). The contract may be renewed subject to successful completion of the initial contract term, in up to three (3) one-

year (12 months) increments. (b) Notwithstanding the provisions of (a) above, any of the parties may terminate this Agreement without cause by giving written notice not less than ninety (90) days prior to the effective date of termination, which date shall be included in said notice. In the event of such termination, the City shall compensate Contractor for services rendered, and reimburse Contractor for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. It is equally understood that CONTRACTOR shall reimburse the CITY for services yet to be rendered. In ascertaining the services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of the City to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to the CITY hereunder.

3. Compensation; Expenses; Payment. CITY shall compensate Contractor for all services performed by Contractor hereunder in an amount based upon the COST PROPOSAL SCHEDULE included in the STREET SWEEPING PROPOSAL prepared by the CONTRACTOR dated November 27, 2018 during the time of the performance of said services.

Compensation and reimbursement of costs and expenses hereunder shall be payable upon monthly billing therefore by Contractor to the CITY, which billing shall include an itemized statement, briefly describing by task and labor category or cost/expense items billed.

4. Additional Services. In the event the CITY desires the performance of additional services not otherwise included within the services described in the REQUEST FOR PROPOSAL, STREET SWEEPING SERVICES dated November 2018 such services shall be authorized in advance of the performance thereof by the CITY, in writing. Such amendment to this Agreement shall include a description of the services to be performed there under, the maximum compensation and reimbursement of costs and expenses payable therefore, the time of performance thereof, and such other matters as the parties deem appropriate for the accomplishment of such services. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such amendment.
5. Records. Contractor shall keep and maintain accurate records of all time expended and costs and expenses incurred relating to services to be performed by Contractor hereunder. Said records shall be available to the CITY for review and copying during regular business hours at Contractor's place of business or as otherwise agreed upon by the parties.

6. Authorization. This Agreement becomes effective when endorsed by all parties in the spaces provided below.
7. Reliance on Professional Skill of Contractor. CONTRACTOR represents that it has the necessary professional skills to perform the services required and the CITY shall rely on such skills of the CONTRACTOR to do and perform the work. In performing services hereunder Contractor shall adhere to the standards generally prevailing for the performance of expert services similar to those to be performed by Contractor hereunder.
8. Status of Contractor: The parties intend that CONTRACTOR, in performing the services hereinafter specified, shall act as an independent contractor and shall have the control of the work and the manner in which it is performed. It is understood and agreed that this agreement is not a contract of employment in the sense that the relationship of master and servant exists between the CITY and undersigned. At all times, CONTRACTOR shall be deemed to be an independent contractor and CONTRACTOR is not authorized to bind the CITY to any contracts or other obligations in executing the Agreement. CONTRACTOR is not to be considered an agent or employee of the CITY, and is not entitled to participate in a pension plan, insurance, bonus or similar benefits the City of Pacifica provides. CONTRACTOR CERTIFIES that no one who has or will have any financial interest under this agreement is an officer or employee of the CITY. CONTRACTOR will determine the method, details and means of performing the services set forth in the REQUEST FOR PROPOSAL, STREET SWEEPING SERVICES dated November 2018.
9. Schedule. Contractor shall adhere to the schedule set forth in the REQUEST FOR PROPOSAL, STREET SWEEPING SERVICES dated November 2018.

Contractor acknowledges the importance to the CITY of the street sweeping project schedule and agrees to put forth its best professional efforts to perform its services under this Agreement in a manner consistent with that schedule.

10. Indemnity. Contractor shall protect, defend (with counsel acceptable to City), indemnify, and hold harmless CITY, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, costs and fees of litigation including attorneys fees) of every nature, kind or description, which may be brought against, or suffered or sustained by, the CITY, its Councils, boards, commissions, officers, employees or agents caused by, or alleged to have been caused by, the negligence, intentional tortuous act or omission, or willful misconduct of CONTRACTOR, its officers, employees, subcontractors, or

agents in the performance of any services or work pursuant to this Agreement or resulting from any breach by CONTRACTOR of its obligations under this Agreement.

This duty of CONTRACTOR to indemnify and hold harmless, includes the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to require CONTRACTOR to indemnify the CITY, its Councils, boards, commissions, officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

11. Insurance. CONTRACTOR shall acquire and maintain Workers' Compensation, employer's liability, commercial general liability, owned and non-owned and hired automobile liability insurance coverage relating to Contractor's services to be performed hereunder covering the CITY's risks in form approved by CITY's Attorney and/or Risk Manager. The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event shall be as follows:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	statutory minimum
Employer's Liability	\$1,000,000 per accident for bodily injury or disease
Commercial General Liability	\$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage
Automobile Liability	\$1,000,000 per accident for bodily injury and property damage (coverage required to the extent applicable to Contractor's vehicle usage in performing services hereunder)

Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A: VII, unless otherwise acceptable to the CITY.

Concurrently with the execution of this Agreement, CONTRACTOR shall furnish the CITY with certificates and copies of information or declaration pages of the insurance required hereunder and, with respect to evidence of commercial general liability and automobile liability insurance coverage, original endorsements:

- (a) Precluding cancellation or reduction in coverage before the expiration of thirty (30) days after the CITY shall have received written notification of cancellation or reduction in coverage by first class mail;

- (b) Providing that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability (cross liability endorsement);
 - (c) Providing that the insurer agrees to waive all rights of subrogation against the CITY, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the CONTRACTOR for CITY. This provision also applies to the CONTRACTOR'S Workers' Compensation policy.
 - (d) Naming the CITY, its Councils, officers, boards, commissions, employees, and agents, as additional insureds; and
 - (e) Providing that CONTRACTOR's insurance coverage shall be primary insurance with respect the CITY its Councils, officers, boards, commissions, employees, and agents, and any insurance or self-insurance maintained by each city for itself, its Councils, officers, boards, commissions, employees, or agents shall be in excess of Contractor's insurance and not contributory with it.
13. WORKERS' COMPENSATION. CONTRACTOR certifies that he is aware of the provisions of the Labor Code of the State of California which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and CONTRACTOR certifies that he will comply with such provisions before commencing the performance of the work of this agreement.
14. NON-DISCRIMINATION. The CONTRACTOR shall comply with all applicable federal, state, and local laws, rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, or physical handicap.
15. NOTICE. All notices required by this Agreement shall be given to the CITY and CONTRACTOR in writing, by first class mail, postage prepaid, addressed as follows:
- CITY OF PACIFICA
Attention: Van Dominic Ocampo, P.E.
- Contractor: Contract Sweeping Services, Inc.
Name: Joe Vella
Title: President
Address: 760 E. Capitol Avenue, Milpitas, CA 95035-6812
16. Non-Assignment. This Agreement is not assignable either in whole or in part.

17. Merger and Modification. This writing is intended both as the final expression of the agreement between the parties hereto with respect to the included terms of the agreement, pursuant to California Code of Civil Procedure Section 1856 and as a complete and exclusive statement of the terms of the agreement. No modification to this agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
18. Severability. Each provision of this agreement is intended to be severable. If any term of any provision shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever; such provision shall be severed from this agreement and shall not affect the validity of the remainder of the agreement.
19. Governing Law. This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.
20. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
21. Conflict of Interest. CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct, or indirect, which would conflict in any manner or degree with the performance of its service hereunder. CONTRACTOR further covenants that in the performance of this contract no person having any such interest shall be employed.
22. Entire Agreement. This Agreement, including REQUEST FOR PROPOSAL, STREET SWEEPING SERVICES dated November 2018 comprises the entire Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf


ROY JOHNSON
Contract Sweeping Services, Inc.
Contractor

BRANCH
MANAGER
Date: 11/29/18

Kevin Woodhouse
City Manager

Date: _____

Attest by:

Sarah Coffey
City Clerk

Date: _____

Approved as to form:

Michelle M. Kenyon
City Attorney

Date: _____