



City of Emeryville

CALIFORNIA

MAINTENANCE SERVICES CONTRACT

THIS MAINTENANCE SERVICES CONTRACT ("Contract") is made and entered into this _____ day of _____, 2019, ("Effective Date") by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **CONTRACT SWEEPING SERVICES, INC.** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties."

WITNESSETH THAT

WHEREAS, Contractor submitted a proposal for City Wide Street Sweeping Operations and Service, and

WHEREAS, City has determined that Contractor is qualified by training and experience to render such services; and

NOW, THEREFORE, the Parties mutually agree as follows:

1. AWARD OF CONTRACT

1.1 Contract Documents

The Contract Documents shall include this Contract, including all exhibits attached hereto, and any Plans and Specifications, Notice to Contractors, Contractor's Proposal, Addenda and Change Orders. In the event of any conflict between the printed provisions of this Contract and those of Contractor's offer of acceptance, the provision of this Contract shall prevail.

1.2 Scope of Work

In conformance with the Contract Documents, Contractor will furnish all labor, materials, services, transportation, appliances, and mechanical workmanship and disposal required in order to provide the maintenance services ("Work") as described in **Exhibit A**, attached hereto. Any quantities for work are estimates. The City does not guarantee any level of work under this Contract. The City, in its discretion, reserves the right to hire or contract with others to do the work set forth in the Contract.

1.3 Price

- A. The Contractor shall be compensated for Work in accordance with the lump sum and rates set forth in **Exhibit A**. The specified compensation will stay in effect for the duration of this Contract. Should the Contractor fail to perform the Work in accordance with the Contract, a corresponding deduction in any recurring amounts owed under **Exhibit A** will be made by the City.

FOR CITY USE ONLY			
Contract No.		CIP No.	
Resolution No.		Project No.	

- B. Overtime rates for extra work, if any, shall be charged only on weekdays from 4:30 p.m. to 8:00 a.m., Saturdays, Sundays, and all national holidays. Overtime shall be charged only for the actual time spent at the work site in fifteen (15) minute intervals as approved in advance in writing by the City.
- C. The total amount to be paid under this Contract shall not exceed the sum of **TWO HUNDRED THIRTY-EIGHT THOUSAND AND THIRTY-ONE DOLLARS AND SIXTY-FOUR CENTS (\$238,031.64)** ("Total Compensation"). An allowance in an amount not to exceed **FIVE THOUSAND DOLLARS AND NO CENTS (\$5,000.00)** is included in the Total Compensation for extra work as described in **Exhibit A** should it be needed. The Contractor shall not perform any extra work unless approved in writing by the City Public Works Director.

1.4 Payment

Contractor shall invoice City not more frequently than once a month for the Work performed. Compensation shall be paid to Contractor upon receipt and approval by City of invoices setting forth in detail the Work performed. City shall pay Contractor within forty-five (45) days after approval of the invoice by City staff.

1.5 Term

This Contract shall begin on the Effective Date and shall terminate on **JUNE 30, 2022**.

1.6 Annual Compensation Adjustment

This Contract ☒ **is** / ☐ **is not** awarded pursuant to a request for qualifications or proposals, seeking a multi-year contract. If this Contract is awarded pursuant to a request for qualifications or proposals, the Contractor may increase its rates at a percentage no greater than the percent increase in the March to March San Francisco/Oakland Metropolitan Area Consumer Price Index as released by the United States Department of Labor on a yearly basis with a maximum inflation increase of 5% per year, upon written notice to the City at least sixty (60) days in advance of the new rates taking effect.

2. PROSECUTION OF WORK

2.1 Change Orders

City may, without notice to any sureties, and without invalidating the Contract, at any time: a) make alterations, deviations, additions to or deletions from the Contract Documents; b) increase or decrease the quantity of any item or portion of the Work; c) delete any item or portion of the Work; or d) require extra work, as determined by City to be necessary or advisable. All such Work shall be performed under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered. Any such changes in the Work will be set forth in a written change order issued by City ("Change Order").

The Change Order will specify:

- A. The Work to be done in connection with the change to be made;
- B. The amount of the adjustment of the lump sum and rates set forth in **Exhibit A** and Total Compensation, if any, and the basis for compensation for the Work ordered; and
- C. The extent of the adjustment in the time specified for performance of Work, if any.

A Change Order shall not become effective until it has been signed by the Director of Public Works. Upon receipt of an approved Change Order, Contractor shall promptly proceed with the ordered Work, unless otherwise provided in the approved Change Order.

No changes or deviations from the Contract Documents shall be made without the authority of an approved Change Order, except that in cases of emergency the Director of Public Works may direct a change in writing. A Change Order increasing the Total Compensation under the Contract requires a written amendment to the Contract.

Whenever it appears to Contractor that a change is necessary, Contractor shall immediately notify the Director of Public Works of the change it believes necessary and the reasons for such change; however, work in the area affected shall not be discontinued unless ordered by the Director of Public Works.

2.2 Public Convenience

Contractor shall so conduct its operations as to offer the least possible obstruction and inconvenience to the public and it shall have under construction no greater length or amount of Work than it can prosecute properly with due regard to the rights of the public. Maintenance operations shall be conducted in such a manner as to cause as little inconvenience as possible to owners of abutting property. Convenient access to driveways, houses and buildings along the line of work shall be maintained, and temporary approaches to roads or highways shall be provided and kept in good condition.

2.3 Safety Requirements

Contractor shall comply with all safety requirements prescribed by applicable federal, state and local laws and regulations to ensure the safety and health of those working and the local community. Contractor shall assume all responsibility for public safety during the prosecution of the work and all such costs shall be included in the Contract price. Whenever Contractor's operations create a condition hazardous to traffic or to the public, it shall furnish, erect and maintain, at its expense, such fences, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public.

2.4 Inspection

All authorized representatives of City shall have access to the Work. Work and materials not meeting the requirements of City shall be corrected, and unsuitable Work or material may be rejected. Failure on City's part to reject nonconforming Work shall not be construed to imply acceptance of such Work. Observation by City of the Work shall not relieve Contractor of its responsibility to conduct its own comprehensive inspections of the Work and to furnish materials and perform work in accordance with the Contract Documents.

2.5 Termination

2.5.1 Termination for Cause

City shall have the right to terminate Contractor's right to proceed with some or all of the Work and may terminate this Contract for default by providing written notice thereof at least five (5) calendar days in advance of the termination date. The term "default" includes, but is not limited to: a) performance of Work in violation of the terms of the Contract or other applicable law, order, regulation, permit or requirement; b) abandonment; c) assignment or subletting without City approval; d) bankruptcy or appointment of a receiver for Contractor's property; e) refusal or failure to properly prosecute the Work; f) use of materials, supplies, plant or equipment of improper quality or quantity; g) refusal or failure to use an adequate number of properly skilled workers; h) failure to provide proper workmanship; i) failure to take effective steps to end a labor dispute; j) performance of this Contract in bad faith or k) failure to pay subcontractors. Upon such termination, City shall have the right to complete the Work, or the portion involved, by whatever means and methods it deems expedient, at the Contractor's expense which the City can deduct from any amounts due Contractor. City at its sole discretion may withhold any payment otherwise due Contractor until completion and final settlement of the Work covered by the notice of default.

2.5.2 Termination without Cause

City may also terminate the Contract for convenience if in the best interests of City upon thirty (30) calendar days' notice in advance. In such event, Contractor shall be paid for all substantiated direct costs of materials furnished and Work performed up to the date of termination any additional compensation that City deems reasonable.

2.5.3 Termination for Lack of Appropriation

This Contract is subject to immediate termination in the event the City Council does not appropriate sufficient funds for this Contract.

Upon receipt of a notice of termination, Contractor shall: a) stop all Work unless directed otherwise; b) take such action to protect materials from damage; c) notify all subcontractors and suppliers that Contract is terminated; d) provide City with inventory list of materials previously produced, purchased or ordered and not yet used in the Work; e) dispose of all materials not used on the Work as directed by City; f) if directed by City, assign all rights and interests of Contractor under subcontracts or orders for the

project; g) furnish any required documentation; and h) take any other actions as City may direct.

3. CONTRACTOR'S RESPONSIBILITIES

3.1 Responsibility for Damage; Indemnification

Contractor shall be responsible for any loss or damage that may happen to the Work; for any loss or damage to any of the materials of other things used or employed in performing the Work; for injury to or death of any person (including but not limited to workers or the public) from any cause whatsoever; or damage to property from any cause whatsoever.

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Contractor or subcontractors as well as any claim by any employee, agent, Contractor or independent contractor hired or employed by Contractor that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert contractors or expert witnesses incurred in connection therewith and the costs of investigation, arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Contractor, any subcontractor, anyone directly or indirectly employed by them or anyone that they control. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Contract. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the City or the City's agents, servants, or independent contractors who are directly responsible to the City, or for defects in design furnished by those persons.

3.2 Insurance

Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under **Exhibit B**, attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under **Exhibit B**. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

3.3 Payment of Taxes

3.3.1 Taxes Included

The lump sum and rates set forth in **Exhibit A** shall include full compensation for all taxes which Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to, Federal excise tax. No tax exemption certificate nor any document designed to exempt Contractor from payment of any tax will be furnished to Contractor by City, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the Contract. Contractor shall withhold and pay any and all sales and use taxes, withholding taxes, whether State or Federal, Social Security taxes, State Unemployment Insurance charges and all other taxes which are now or hereafter may be required to be paid or withheld under any laws.

3.3.2 Business Tax

Contractor has and shall maintain a current business license with City of Emeryville during the term of this contract. Contractor shall insert in each of its subcontract Contracts a provision which requires its subcontractors to present proof that the subcontractor has obtained a current business license with City of Emeryville during the term of this contract.

3.4 Permits and Licenses

Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of Contractor by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Work contracted for under this Contract. Contractor shall comply with all permits applicable to the Work. Contractor has and shall maintain the appropriate State Contractor's License, pursuant to [Chapter 9 of Division 3 of the California Business and Professions Code](#).

The [California Environmental Quality Act \(Public Resources Code, Section 21000 to 21176\)](#) may be applicable to permits, licenses and other authorizations which Contractor must obtain from State or local agencies in connection with performing the Work of the Contract. Contractor shall comply with the provisions of that Act in obtaining such permits, licenses and other authorizations and they shall be obtained in sufficient time to prevent delays to the Work.

3.5 California Labor Code Requirements

- A. Contractor is aware of the requirements of [California Labor Code](#) Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the Work is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.
- B. If the Work is being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Work must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Contract and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.
- C. This Contract may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

- D. Pursuant to the requirements of section 1860 of the California Labor Code, Contractor will be required to secure the payment of workers' compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Contract, Contractor certifies the following:

"I am aware of the provisions of section 3700 of the California Labor Code 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 I will comply with such provisions before commencing the performance of the work of this contract."

- E. Failure by Contractor to comply with any provision of this Section shall constitute a default of this Contract and shall be grounds for termination as provided in this Contract.

3.6 Warranty

Contractor warrants that all materials and Work furnished (1) shall meet all requirements and conditions of City's Contract and manufacturer's warranty if any; (2) shall be free from defects in design, material; workmanship and methods of installation; and (3) shall be fit for the purposes intended. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and nonconforming. This warranty by the Contractor is in addition to any warranties or guarantees required or provided by the manufacturer or supplier.

Contractor shall correct the Work at its own expense promptly after written notice from City to do so and pay for any damage to other property resulting from such nonconforming Work. If Contractor fails to do so promptly, or in an emergency when delay could cause risk of damage or loss, then City take whatever actions are necessary to have the nonconforming Work removed, replaced or corrected at the expense of Contractor and to recover its damages, costs and expenses, including withholding the amount from any payment that is due or to commencing an action against any performance bond.

Nothing in this section shall be construed to establish a period of limitation with respect to other obligations that Contractor may have under these Contract Documents.

3.7 Independent Contractor Status

The Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Work as an independent contractor and not as the agent or employee of the City. The Contractor agrees to be solely responsible for its own matters relating to the time and place the Work is performed; the instrumentalities, tools, supplies and/or materials necessary to complete the Work; hiring of consultants, subcontractors, agents or employees to complete the Work; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Contractor agrees to be solely responsible for

its own acts and those of its subordinates and employees during the term of this Contract.

3.8 Compliance with Laws

All Work performed by Contractor under this Contract shall be in accordance with applicable federal, state and local requirements, including, but not limited to environmental laws and laws regarding disposal of hazardous wastes.

3.9 Noncollusion Declaration

By executing this Contract, Contractor declares that only persons or parties interested in this Contract are those named in Contractor's bid or proposal and that such bid or proposal was not made in the interest of or on behalf of any undisclosed person, firm or organization; that the bid or proposal was genuine and not collusive or sham; that the signatory to this Contract has not directly or indirectly induced or solicited others to put in a sham bid or proposal, or to refrain from bidding or proposing; and that the signatory to this Contract has not in any manner sought by collusion to secure for itself an advantage over other potential proposers.

3.10 Conflicts of Interest

Contractor covenants and declares that other than this Contract, it has no holdings or interests within the City nor business holdings or agreements with any official, employee or representative of City and shall disclose any such holdings or interests to City in writing.

3.11 Discrimination Prohibited

Contractor covenants and agrees that in performing the Work required under this Contract, Contractor shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability, except as provided in section 12940 of the Government Code.

3.12 Bonds (Required for Contract Prices \$25,000 and Greater)

3.12.1 Payment Bond

☐ Required / ☒ Not Required

If required for this Contract, before beginning the Work, Contractor shall provide a labor and materials bond in the amount of one hundred percent (100%) of the Total Compensation, and which conforms with the requirements of Civil Code section 9550 et seq., as may be amended from time to time.

3.12.2 Performance Bond

☐ Required / ☒ Not Required

If required for this Contract, before beginning the Work, Contractor shall provide a performance bond in the amount of one hundred percent (100%) of the Total Compensation to guarantee the faithful performance of the Work.

3.12.3 Bond Provisions

Any and all bonds required for this Contract shall be in a form acceptable to the City Attorney. Any such bond must be issued by a corporate surety which is an admitted surety insurer in the State of California. Any bond signed by an agent must be accompanied by a certified copy of such agent's authority to act. If the surety on any bond provided by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the work is located, Contractor shall, within seven (7) days thereafter, substitute another bond and surety in accordance with the requirements set forth herein. Any alteration or alterations made in the Plans and Specifications which are a part of this Contract or in any provision of this Contract shall not operate to release any surety from liability on any required bond and the consent to make such alterations is hereby given. Any surety on such bonds hereby waives the provisions of Section 2819 of the Civil Code.

3.13 *City Labor Requirements*

- A. As of the Effective Date, compliance with the City's living wage ordinance is ☒ **required** / ☐ **not required** for this Contract. If this Contract provides for compensation to Contractor of \$25,000 or more within a single fiscal year for providing services to the City, then Contractor shall comply with the requirements of the City's Living Wage Ordinance set forth in [Chapter 31 of Title 5 of the Emeryville Municipal Code](#), unless (i) Contractor is a governmental entity, (ii) this Contract is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Contract is subject to federal or state laws or regulations that would preclude the application of the City's laws.
- B. Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Contract for all employees of Contractor who perform at least twenty-five percent (25%) of the work arising from this Contract, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to [Section 5-31.08 of the Emeryville Municipal Code](#). Contractor shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.
- C. Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Contractor for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Contract and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

- D. Contractor shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this Contract. "Living Wage" means no less than **\$16.20 PER HOUR** (which is subject to increase annually on July 1st to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.
- E. In addition to the Living Wage Ordinance, the Contractor may be required to comply with the City's Minimum Wage, Paid Sick Leave, and Other Employment Standards Ordinance, as set forth in Chapter 37 of Title 5 of the Emeryville Municipal Code, to the extent it is applicable.

4. GENERAL PROVISIONS

4.1 *Applicable Law*

If any action at law or in equity is brought to enforce or interpret the provisions of this Contract, the rules, regulations, statutes and laws of the State of California will control. The exclusive venue for any legal action taken pursuant to this Contract shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

4.2 *Assignment and Subcontracting*

Neither this Contract nor any interest herein nor any claim hereunder may be assigned or subcontracted by Contractor either voluntarily or by operation of law, without the prior written consent of City. No such consent shall relieve Contractor of its obligations to comply fully with the requirements of this Contract.

4.3 *Records*

Contractor will permit City to audit, examine, and make copies of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Contract. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Contract.

4.4 *No Waiver*

Failure of City to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies or to properly notify Contractor in the event of breach, or the acceptance of or payment for any good hereunder, shall not release Contractor of any of the warranties or obligations of this

Contract and shall not be deemed a waiver of any right of City to insist upon strict performance hereof.

4.5 Notices

4.5.1 Communications Relating to Daily Activities

All communications relating to the day to day activities of the work and invoices shall be addressed to the **Joseph Aguilera** and **Joe Vella** for the Contractor:

CITY	CONTRACTOR
Joseph Aguilera, Public Works Operations and Facilities Manager Phone No: 510-853-1140 E-Mail : jaguilera@emeryville.org	Joe Vella, President Phone No: 1800-837-9337 E-Mail : jvella@contractswEEPing.com

4.5.2 Official Notices

All other notices, writings or correspondence as required by this Contract shall be directed to City and Contractor, respectively, as follows:

CITY	CONTRACTOR
Christine Daniel, City Manager/Acting Public Works Director 1333 Park Avenue Emeryville, California 94608 Phone No: 510-596-4330 E-Mail : cdaniel@emeryville.org <i>with a copy to:</i> Joseph Aguilera, Public Works Operations and Facilities Manager 1333 Park Avenue Emeryville, California 94608 Phone No: 510-853-1140 E-Mail : jaguilera@emeryville.org	Joe Vella, President 760 East Capitol Avenue Milpitas, CA 95035 Phone No: 1800-837-9337 E-Mail : jvella@contractswEEPing.com

4.6 No Personal Liability

No member, official or employee of the City shall be personally liable to the Contractor or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Contractor or successor or on any obligation under the terms of this Contract.

4.7 Entire Agreement

This Contract constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Contract. No other agreement, statement or promise relating to the subject matter of this Contract not contained in this Contract shall be valid or binding. This Contract may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

4.8 Successors and Assigns

Subject to the provisions of this Contract regarding assignment, this Contract shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

4.9 Severability

The caption or headnote on articles or sections of this Contract are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Contract nor in any way affect this Contract. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Contract shall remain in full force and effect to the extent possible.

4.10 Counterparts

This Contract may be signed in counterparts, each of which shall constitute an original. It is expressly agreed that each Party to this Contract shall be bound by its own telecopied, scanned, electronic or digital signature and shall accept the telecopied, scanned, electronic or digital signature of the other Party to this Contract.

4.11 No Third-Party Beneficiaries

Except to the extent expressly provided for herein, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

4.12 Non-Exclusivity

City reserves right to employ other contractors in connection with the Work and Project covered under this Contract.

4.13 Other Requirements

This Contract ☒ has / ☐ does not have additional requirements set forth in an Exhibit C. If an Exhibit C is attached, then due to the nature of the Work, or due to this Work being funded, in whole or in part, by a third party, Contractor shall also fully and adequately comply with the provisions included in Exhibit C ("Other Requirements") attached hereto and incorporated herein by reference ("Other Requirements"). With respect to any conflict between such Other Requirements and the terms of this Contract and/or the provisions of state law, the more stringent requirement shall control.

SIGNATURES ON FOLLOWING PAGE

5. SIGNATURE PAGE TO MAINTENANCE SERVICES CONTRACT

IN WITNESS WHEREOF the City and the Contractor have executed this Contract, which shall become effective as of the date first written above.

Approved As To Form:



not City Attorney

Dated:

_____, 2019

CITY OF EMERYVILLE

Christine S. Daniel, City Manager

Dated:

11-19 _____, 2019



(Signature)

Joe Vella, President

EXHIBIT A

The proposal prices are to include and cover the furnishing of all labor, materials, equipment, incidentals, website for on-line reporting, and overhead necessary to perform the work described in the "Specifications" section of the City-Wide Street Sweeping Request for Proposals FY2019/2020 document.

PART 1:

City of Emeryville City Wide Street Sweeping Bid Form		
Item description		Amount
City Wide Street Sweeping per schedule and map definition shown in City-Wide Street Sweeping Request for Proposals FY2019/2020 document.	Monthly rate =	\$6,999.99
	X 12 months =	\$83,999.99

PART 2:

The City, at its option, may infrequently make provision for additional work, e.g. special events, fall leaf clean-up, and emergencies.

Enter below the rates applicable to each situation.

City of Emeryville Street Sweeping Additional Work Hourly Rates	
Item description	Hourly Rate
Special events and additional fall leaf season cleanup when previously arranged and scheduled – cost per hour – straight time	\$140.00
Callouts for emergencies– cost per hour – minimum call-out is four (4) hours	\$175.00



EXHIBIT B
Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **CONTRACT SWEEPING SERVICES**.

1. MINIMUM REQUIREMENTS

Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work or Services required by the Contract hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage, as checked below:

1.1 Minimum Scope of Insurance

Coverage shall be at least as broad as the latest version of the following:

- ☒ **General Liability**
Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).
- ☒ **Automobile Liability**
Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto) or if Contractor owns no vehicles, this requirement may be met through a non-owned auto endorsement to the General Liability Policy.
- ☐ **Professional Liability / Errors and Omissions**
Written on a policy form specifically designed to protect against acts, errors or omissions of the Contractor wherein "Covered Professional Services" as designated in the policy must specifically include Services performed under this Contract.
- ☒ **Workers' Compensation and Employer's Liability**
Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract.
- ☒ **Pollution Liability Insurance**
Pollution Liability insurance for claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater. This shall include on and off-site clean up and emergency response costs and claims arising from above ground and below ground storage tanks.

1.2 Minimum Limits of Insurance

Contractor shall maintain limits no less than:

General Liability

- ☒ **All Contract Types**
\$1,000,000.00 per occurrence and \$2,000,000.00 aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability.

OR

- ☐ **Construction Specific**
\$2,000,000.00 per occurrence and \$4,000,000.00 aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability, and coverage for explosion, collapse and underground property damage hazards.

- ☒ **Automobile Liability**
\$2,000,000.00 per accident for bodily injury and property damage.

- ☐ **Professional Liability / Errors and Omissions**
\$2,000,000.00 per claim and aggregate.

- ☒ **Workers' Compensation and Employer's Liability**
Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000.00 each accident, policy limit bodily injury or disease, and each employee bodily injury or disease.

- ☒ **Pollution Liability Insurance**
\$2,000,000.00 per occurrence and \$2,000,000.00 aggregate.

Except for the professional liability / errors and omissions policy, defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the Parties required to be named as additional insureds pursuant to this Contract.

2. INSURANCE ENDORSEMENTS

The insurance policies shall contain the following provisions, if checked, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions, if checked, to the insurance policies:

- ☒ **General Liability**
(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10 or CG20 37, or endorsements providing the exact same coverage, with

respect to the work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it.

☒ **Automobile Liability**

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

☐ **Professional Liability Coverage**

Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and Contractor agrees to maintain continuous coverage through a period no less than three years after termination of the Contract.

☒ **Workers' Compensation and Employer's Liability Coverage**

The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

☒ **Pollution Liability Coverage**

(1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status with respect to claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon

land, any structure, the atmosphere, watercourse or body of water, including groundwater; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

ALL COVERAGES

Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and authorized volunteers.

3. SEPARATION OF INSURED; NO SPECIAL LIMITATIONS

All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and authorized volunteers.

4. DEDUCTIBLES AND SELF-INSURANCE RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

5. ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

6. VERIFICATION OF COVERAGE

Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The

certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

7. SUBCONTRACTORS

All subcontractors shall meet the requirements of this Section before commencing any work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

8. REPORTING OF CLAIMS

Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the work performed under this Contract.



MAINTENANCE SERVICES CONTRACT

EXHIBIT C

Other Requirements

As used in this Exhibit C, Contractor refers to **CONTRACT SWEEPING SERVICES**.
The Contractor shall comply with the following requirements as checked below:

☒ **DIFFERING SITE CONDITIONS**

Contractor shall promptly, and before such conditions are disturbed, notify the Director of Public Works in writing of:

- A. Material that Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II or class III disposal site in accordance with provisions of existing law;
- B. Subsurface or latent physical conditions differing materially from those indicated in this Contract; or
- C. Unknown physical conditions, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

The Director of Public Works shall promptly investigate the conditions. If the Director of Public Works finds that such conditions do materially differ and cause an increase or decrease in Contractor's cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in accordance with the change order procedures set forth herein.

In the event of any dispute between City and Contractor over the significance or existence of the changed conditions, Contractor shall not be excused from the scheduled completion date set forth herein, but shall retain such rights it may have as provided in these Contract Documents.

No claim of Contractor under this clause shall be allowed unless Contractor has given the notice required by this section, except that City may extend the prescribed time. No claim by Contractor for an equitable adjustment under this provision shall be allowed if asserted after final payment under this Contract.

☐ _____ **TRAFFIC CONTROL MEASURES**

Contractor shall provide appropriate vehicular, pedestrian and bicycle traffic control measures.

- A. Where facilities exist, a minimum sidewalk and bike path width of four (4) feet shall be maintained at all times for safe passage through the work area. At no time shall pedestrians be diverted onto a portion of the street used for vehicular traffic. At locations where adjacent alternate walkways cannot be provided, appropriate signs and barricades shall be installed at the limits of the construction site and in advance of the closure of the nearest crosswalk or intersection to divert pedestrians across the street. Access shall be maintained for persons with disabilities.
- B. All Work shall be planned and carried out so that there is the least possible inconvenience to vehicular traffic, including deliveries to adjacent properties. Warning signs, lights and safety devices and other measures shall conform to the requirements of the Manual of Traffic Controls issued by Caltrans. Traffic control for day or nighttime lane closures (if nighttime work is permitted) shall be in conformance with the Caltrans Standard Plans for Traffic Control Systems. Contractor is authorized to place properly attired flagger(s) to stop and warn traffic. Traffic shall not be unreasonably delayed. Flagging procedures shall be in conformance with the Instructions to Flaggers pamphlet and/or Manual of Traffic Controls for Construction and Maintenance Work Zones issues by Caltrans.

☐ _____ **AIR POLLUTION CONTROL**

Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any Work performed pursuant to the Contract. Material to be disposed of shall not be burned, either inside or outside the Work site.

☒ _____ **WATER POLLUTION CONTROL**

Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays and coastal waters from pollution with fuels, oils, bitumens, calcium chloride and other harmful materials and shall conduct and schedule its operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, bays and coastal waters. Care shall be exercised to preserve roadside vegetation beyond the limits of construction.

☒ _____ **STORM WATER POLLUTION PREVENTION STANDARDS**

Contractor shall comply with City's Storm Water Pollution Prevention standards at all times during operation of this contract by incorporating current Best Management Practices (BMP) for use during the work.

☐ _____ **SOUND CONTROL REQUIREMENTS**

Contractor shall comply with all local sound control and noise level rules, regulations and ordinances which apply to any work performed pursuant to the Contract. Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer.

☐ _____ **WEIGHT LIMITATIONS**

Unless expressly permitted by the Director of Public Works, Contractor shall not operate construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limits set forth in Division 15 of the California Vehicle Code over completed or existing base, surfacing, pavement or structures.

☐ _____ **SUBSURFACE EXCAVATIONS; NOTIFICATION**

Attention is directed to Government Code Sections 4216 to 4216.9, and in particular Section 4216.2 which provides, in part:

"Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center at least two working days, but no more than 14 calendar days, prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator, and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation."

Contractor shall contact the regional notification center, "Underground Service Alert," and schedule the Work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities.

☐ _____ **TRENCH EXCAVATION SAFETY PLAN**

Attention is directed to California Labor Code, Section 6705. At least five (5) days in advance of excavation of any trench five feet or more in depth, Contractor shall submit to the Director of Public Works a detailed plan showing the design of shoring, bracing, sloping and other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards established by the State Construction Safety Orders, the plan shall be prepared and signed by a registered civil or structural engineer. Nothing in this section shall be deemed to allow the use of a shoring, sloping or protective system less effective than that required by the Construction Safety Orders of the Division of Industrial Safety. Nothing in this section shall be construed to impose liability on City or its employees or agents.

☐ _____ **HAZARDOUS CHEMICALS AND WASTES**

Should any release, discharge, leakage, spillage, emission or pollution of any hazardous chemicals or wastes occur due to Contractor's acts or omissions, then Contractor at its sole cost, shall clean all affected property to the satisfaction of City and any governmental body with jurisdiction. Contractor shall immediately report any such release to the Director of Public Works.

If the performance of the Work outlined by these Contract Documents creates any hazardous wastes, Contractor shall properly dispose of such wastes in full accordance with federal, state and local laws, at its expense. Contractor shall provide City with written proof of its or its subcontractor's registration as a hazardous waste transporter.

☐ _____ **OTHER REQUIREMENTS**

Use this space to list any other requirements not stated above.