

AGREEMENT

The following agreement is made and entered into, as of the date executed by the City Manager, by and between Commercial Cleaning Systems (CCS), hereinafter referred to as the "Contractor", and the City of Westminster, a Municipal Corporation, hereinafter referred to as the "City".

WHEREAS, the Mayor and City Council have authorized the City Manager to enter into a written contract with Contractor for the following work:

MAINTENANCE/SERVICE AGREEMENT FOR JANITORIAL SERVICES FOR CERTAIN CITY BUILDINGS

WHEREAS, CITY desires to engage CONTRACTOR to provide general janitorial services to the City. Services include, but are not limited to, trash pickup, mopping, vacuuming, dusting, bathroom cleaning, paper & soap stocking, wiping conference tables, breakroom counters, and cleaning exterior door jambs for certain City Buildings (City Hall, Community Services/Senior Center, and Police Department), as described and set forth in CONTRACTOR'S proposal, a copy of which is attached as Exhibit "A", incorporated herein by this reference as if set forth in full; and

WHEREAS, CONTRACTOR is experienced in providing such services for municipal corporations and is able to provide personnel with the requisite experience and background to carry out these duties.

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and promises hereinabove stated, the parties hereto agree as follows:

1. General Scope of Work: Contractor shall provide services for general janitorial services in the City. Services include, but are not limited to, trash pickup, mopping, vacuuming, dusting, bathroom cleaning, paper & soap stocking, wiping conference tables, breakroom counters, and cleaning exterior door jambs for certain City Buildings (City Hall, Community Services/Senior Center, and Police Department) Said work for the Project shall be performed in accordance with the Contract Proposal, and in accordance with the instructions of the designated City representative.

2. Contract Price and Payment: City shall pay Contractor for furnishing the material and doing the proscribed work at the unit prices or lump sum prices a set forth in Contractor's proposal.

3. Incorporated Documents to be Considered Complementary: The Contract Documents as set forth in the Commercial Cleaning Systems (CCS), attached, are hereby incorporated herein by this reference as though set forth in full. The Contract Documents constitute the entire agreement between the parties ("Agreement"). This Agreement is intended to require a complete and finished piece of work, and contemplates that Contractor will perform any necessary work to complete the project

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properly and in accordance with the law and lawful governmental regulations, whether specifically identified in the Contract Documents or not. Should any inconsistency be found to exist between the aforesaid Contract Documents and this written Agreement, the provisions of this written Agreement shall control.

4. Term: This agreement shall be for an initial one (1) year term with four (4) successive one (1) year terms unless earlier terminated by either party in the manner set forth herein. The City Manager or his designee shall be authorized to extend this Agreement for each renewal period, with the concurrence of the Contractor. Renewal will be at the discretion of the City and based on continuance of the Contractor providing satisfactory services and the City's approval of cost increases, if any.

5. Insurance: The Contractor shall procure and maintain, during the entire term of this Agreement, the insurance coverage as set forth in the City's "Insurance Requirement for Contractors," attached hereto as Exhibit "B" and incorporated herein by this reference.

The Contractor shall furnish the City with satisfactory proof of the above insurance required by submitting endorsements, certificates, or policies of insurance on City insurance forms or equivalent forms as determined by the City Attorney, to the City Engineer, prior to the commencement of the work under this Agreement. The policies shall be endorsed as follows: "It is hereby understood and agreed that the policy to which this certificate refers may not be canceled, mutually changed, nor the amount of coverage thereof reduced nor the policy allowed to lapse until thirty (30) calendar days after receipt by the City Clerk of the City of Westminster, Westminster, California, of a registered written notice of such cancellation or reduction in coverage".

Nothing herein contained shall be construed as limiting in any way the extent to which the Contractor may be held responsible for payment of damages to persons or property resulting from the Contractor's operations or the operations of any subcontractors. The Contractor shall sign and file with the City the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which requires 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 performance of any work pursuant to this Agreement."

6. Liquidated Damages: The parties agree that it will be impracticable or extremely difficult to fix the amount of actual or projected losses resulting from Contractor's failure to complete the work in a timely manner. Therefore, the parties agree that a reasonable estimate of such damages owed to the City for any delays will be the amount of Five Hundred Dollars (\$500.00) for each calendar day that the work remains incomplete beyond the completion date stated in Paragraph 4 herein above. Contractor shall be liable to the City for said liquidated damages and shall pay to the City the assessed liquidated damages within thirty (30) calendar days following billing by the City, unless otherwise extended by the City, or, shall be deducted from the Contractor's retention, as determined by the City.

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7. **Assignability:** This Agreement may not be sold, transferred or assigned by either party, or by operation of law, to any other person or persons or business entity, without the other party's written permission. Any such sale, transfer or assignment, or attempted sale, transfer or assignment without written permission, may be deemed by the other party to constitute a voluntary termination of this Agreement and this Agreement shall thereafter be deemed terminated and void.

8. **Indemnification, Defense, and Hold Harmless:** Contractor agrees to defend, indemnify, hold free and harmless the City, its elected and appointed officials, officers, agents and employees, at contractor's sole expense, from and against any and all claims, actions, suits, damages to property or injuries to or death of any person or persons, including attorneys' fees, or other legal proceedings brought against the City, its elected and appointed officials, officers, agents, and employees arising out of the performance of the contractor, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the contractor, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the contractor, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected and appointed officials, officers, agents and employees based upon the work performed by the contractor, its employees, and/or authorized subcontractors under this Agreement, whether or not the contractor, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the contractor shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City. This provision shall supersede and replace all other indemnity provisions contained either in the City's specifications or contractor's proposal, which shall be of no force and effect.

9. **Compliance with Law:** All services rendered hereunder shall be provided in accordance with all applicable requirements of local, State, and Federal law.

10. **Familiarity with Work:** By execution of this Agreement, Contractor warrants that:

- (a) It has thoroughly investigated and considered the work to be performed;
- (b) It has expertise in the subject area;
- (c) It carefully considered how the work should be performed; and
- (d) It fully understands the difficulties and restrictions attending the performance of the work under this Agreement.

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11. **Validity.** The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any of the other provisions of this Agreement.

12. **Termination:** This Agreement may be terminated with or without cause by City at any time by providing Contractor with written notice of termination. In the event of such termination, Contractor shall be compensated for services rendered as of the date of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the date of termination. In the event of such termination, Contractor shall immediately stop rendering services under this Agreement, unless directed otherwise by City, and shall deliver to City all plans, data, reports, summaries, floppy disks, and all such other information and materials as Contractor may have accumulated in performing this Agreement.

This Agreement may be terminated by Contractor by providing City with written notice no less than thirty (30) calendar days in advance of such termination.

13. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal action relating to or arising out of this Agreement shall be subject to the jurisdiction of the County of Orange, California.

14. **Entire Agreement:** This Agreement supersedes any and all other agreements whether oral or written, between the parties hereto with respect to the subject matter hereof, and contains all of the covenants and agreements between the parties with respect to said matter, and each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement or modification of this Agreement shall be effective only if executed in writing and signed by both City and Contractor.

15. **Representatives and Notices:** The City Manager or designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

_____ shall be the representative of Contractor for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of Contractor, called for by this Agreement, except as otherwise expressly provided in this Agreement. All notices and written communications sent by one party to the other shall be personally delivered or sent by registered or certified U.S. Mail, postage prepaid, return receipt requested, to the following addresses indicated below:

If to City: Public Works Director/City Engineer
City of Westminster
8200 Westminster Boulevard

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Westminster, California 92683

If to Contractor: _____

The effective date of any notice or written communications sent by one party to the other shall be the date received if by personal service, or forty-eight (48) hours after deposit in the U.S. Mail as reflected by the official U.S. postmark. Either party may change its address by giving notice in writing to the other party.

16. Independent Contractor: Contractor is an independent contractor and not an employee of the City, and all personnel to be utilized by Contractor in the performance of this Agreement shall be employees of Contractor and not employees of the City. The parties hereto acknowledge and agree that the relationship between City and Contractor is one of principal and independent contractor and no other. Nothing contained in this Agreement shall create or be construed as creating a partnership, joint venture, employment relations, or any other relationship except as set forth between the parties. The parties specifically acknowledge and agree that no activities of City or Contractor or statements made by City or Contractor shall be interpreted by any of the parties hereto as establishing any type of business relationship other than an independent contractor relationship.

17. Waiver: No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought, referring expressly to this Paragraph. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

18. Headings: Section and subsection headings are not to be considered part of this Agreement, are included solely for convenience, and are not intended to modify or explain or to be a full or accurate description of the content thereof.

19. Additional Services: Contractor shall not receive compensation for any services provided outside the scope of the Contract Documents unless such additional services, including change orders, are approved in writing by City prior to Contractor performing the additional services. It is specifically understood that oral requests or approvals of such additional services, change orders, or additional compensation, and any approvals from the City, shall be barred and are unenforceable.

20. Counterparts: This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one Agreement.

21. Corporate Authority: The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on

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behalf of said Parties and that by doing so, the Parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all formalities required by law on the respective dates set forth opposite their signatures.

CITY OF WESTMINSTER

CHRISTINE CORDON, CITY MANAGER

DATE

ATTEST:

ASHTON AROCHO, CITY CLERK

DATE

APPROVED AS TO FORM:

SCOTT PORTER, CITY ATTORNEY

CONTRACTOR

SIGNATURE & TITLE

DATE

COMPANY NAME

ADDRESS, CITY, STATE, ZIP

STATE LICENSE NUMBER

EXPIRATION DATE

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