

WEST VALLEY SANITATION DISTRICT

AGREEMENT FOR JANITORIAL SERVICES
BETWEEN WEST VALLEY SANITATION DISTRICT
AND
CONTRACTOR

This Agreement (Agreement) for the Janitorial Services Contract is entered into by and between the West Valley Sanitation District of Santa Clara County (District), and [Contractor name] (Contractor), at Campbell, California, as of the later date set forth below the signatures executing this Agreement (hereinafter collectively referred to as the "Parties").

RECITALS

1. The District intends to initiate a multiple year term contract to perform a variety of janitorial services at its facilities located at 100 East Sunnyside Avenue, Campbell, CA in order to maintain a clean, sanitary, and professional office working environment.
2. On March 14, 2019, the District issued a Request for Proposal (RFP) for the Janitorial Services Contract (Contract) identifying the terms and conditions, and the Scope of Services (Services) required.
3. A mandatory Pre-bid and Facility Inspection Meeting was held on March 21, 2019 for interested contractors to review the RFP, Services, and the facilities to be serviced.
4. In response to the District's RFP, the District received and opened proposals on March 28, 2019.
5. The Contractor represents that it has the knowledge and experience to carry out the Services required, and is qualified and prepared to provide such Services in accordance with the Contract.
6. District staff has considered said proposals and based on their review of experience statements, references, and proposed cost, has concluded that the Contractor submitted the lowest responsive and responsible bid.
7. On April 10, 2019, the District Board approved the award of the Contract to the Contractor and authorized the District Manager and Engineer to award the initial three-year term of the contract to Contractor and provided authority to extend this Contract up to two (2) additional three-year terms.
8. District staff has determined with certainty that there is no possibility that the performance of janitorial services pursuant to this Contract will have a significant effect on the environment and is exempt from CEQA pursuant to Title 14, Section 15301 of the California Code of Regulations, because this Contract consists of the maintenance of existing public facilities and structures involving negligible or no expansion of use beyond that existing at the time of the award.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Contract Documents

The documents forming the entire Contract between District and Contractor shall consist of this Agreement, the Request for Proposal (RFP) Package, and the executed Contractor's Proposal Documents which are attached hereto and incorporated herein by reference.

2. Scope of Services

Contractor shall perform those services set forth in the Scope of Services found in the RFP Package.

3. Term of Contract

The maximum term of this Contract is nine years from FY2019-2020 to FY2027-2028 and will be issued in three (3) three-year terms. The initial three-year term will be issued upon award by the District Board and will begin on May 1, 2019 and end on June 30, 2022, for a total of 38 months. The District Manager and Engineer has the discretion to award the second and third three-year terms, FY2022-2025 and FY2025-2028, respectively. The District shall notify Contractor of its decision to exercise its option to extend this Contract for each an additional three-year term no less than thirty (30) days prior to the end of the then-current term.

4. Schedule of Performance

Contractor's services shall be completed according to the Scheduled Janitorial Services set forth in the Scope of Services found in the RFP Package.

5. Compensation

District shall pay Contractor the amount stated in their proposal set forth in the executed Contractor's Proposal Documents during the first and second three-year contract terms. By March 31, 2025 the Contractor shall submit pricing for the final three-year term (July 1, 2025 to June 30, 2028) for District review. The District will, in part, base its decision to extend the contract for the final term based on the pricing submitted.

6. Payment Schedule

Contractor shall submit invoices to District at the beginning of each month for work performed the prior month. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- The monthly amount for Scheduled Services for the applicable fiscal year, and any additional work performed as Optional Services, and the total due this period.

Invoices shall be submitted via e-mail or U.S. mail to the following address:

West Valley Sanitation District
Attn: Accounts Payable
100 East Sunnyoaks Avenue
Campbell, CA 95008
AP@westvalleysan.org

District shall make monthly payments to Contractor, based on valid invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. District shall have thirty (30) days from the receipt of an invoice (that complies with all of the requirements above) to pay Contractor.

7. Taxes and Charges

Contractor shall be solely responsible for the payment of all taxes, fees, contributions or charges applicable to the conduct of Contractor's business.

8. Changes

By written notice or order (including Contractor Claims), District may make changes in scope, quantities, unit pricing, and schedule to the Scope of Services. An equitable adjustment in pricing, if any, shall be negotiated between District and the Contractor within five (5) days after the change is ordered or after the District concurs with a validated Contractor Claim. Nothing in this clause shall excuse the Contractor from proceeding immediately with work as changed. The District shall issue a change order to document the change and the negotiated price adjustment.

9. Termination

a. Termination for Convenience

District may terminate this Contract without cause, in whole or in part, at any time by written notice to the Contractor when it is in the District's best interest. The Contractor shall be paid for services performed up to the time of termination. The Contractor shall promptly submit its termination claim to District for such payment upon termination.

b. Termination for Default (Breach or Cause)

If the Contractor fails to perform any of its material obligations under this Contract, in addition to all other remedies provided by law, District may terminate this Contract immediately upon written notice.

c. Termination Authority

The District Manager and Engineer is empowered to terminate this Contract on behalf of the District.

10. Indemnification and Waiver

a. Contractor's Indemnification

The Contractor shall indemnify, defend with counsel reasonably acceptable to District, and hold harmless District, its officers, employees, volunteers, and agents from and against any and all claims, losses, liability, suits, actions, damages, or causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts (active or passive) or omissions of Contractor or Contractor's employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Contractor shall not apply when the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of District or its officers, employees, agents or volunteers. District's acceptance of insurance certificates and endorsements required under this Contract shall not relieve Contractor from liability under this indemnification and hold harmless clause. This clause shall survive the expiration or early termination of this Contract.

b. Contractor's Assumption of Risk and Waiver of Claims

Contractor agrees to voluntarily assume any and all risk of, and waives any and all claims or causes of action against District, its officers, employees, or agents ("District Parties") for any and all loss, damage or injury to the person or property of Contractor, its agents, subcontractors, employees, officers, representatives, permittees, and invitees, which may occur in, on or about the District facilities or property at any time in any manner, except such loss, injury or damage as may be caused by the sole active negligence or sole willful misconduct of District Parties.

11. Attorney's Fees and Costs

In the event of a judicial dispute between the Parties with respect to the enforcement or interpretation of this Contract, the prevailing party in such dispute shall be entitled to receive, in addition to such other award as the court may deem appropriate, full reimbursement for its court costs and reasonable attorneys' fees incurred therein.

12. Partial Invalidity

In the event that any portion of this Contract or any provision hereof shall be deemed as invalid as contrary to applicable law, the balance of this Contract shall be enforced according to its term, and that portion found unenforceable shall be interpreted and enforced to the extent that it may be within said applicable laws.

13. Disputes

All claims, counterclaims, disputes and other matters in question between the District and the Contractor arising out of or relating to this Contract or its breach will be decided by arbitration if

the parties mutually agree, or in a court of competent jurisdiction within the State of California. Pending final resolution of a dispute thereunder the Contractor shall diligently proceed with the services provided under this Contract.

14. Contractor Requirements (Licenses, Bonding, Insurance)

Contractor shall provide and maintain licenses, bonding, and insurance requirements as specified in the Contractor Requirements, Paragraph 4.A, 4.B, and 4.C in the Proposal Documents found in the RFP Package.

15. Waiver

Contractor agrees that District's waiver of any breach or violation of any provision of this Contract shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. District's acceptance of the performance of any of Contractor's services will not be a waiver of any provision of this Contract.

16. Independent Contractor

Contractor, in performance of this Contract, is an independent contractor. Contractor shall maintain complete control over all of Contractor's employees, any subcontractors and Contractor's operations. Neither Contractor nor any person retained by Contractor may represent, act or purport to act as the agent, representative or employee of District. Neither Contractor nor District is granted any right or authority to assume or create any obligation on behalf of the other.

17. Compliance with Laws and Regulations

Contractor shall comply with all applicable laws, ordinances, codes, regulations, orders, requirements, and policies (collectively, "laws") of the federal, state, and local governments, including without limitation, any and all laws specified elsewhere in this Contract.

18. Conflict of Interest

Contractor shall avoid all conflict of interest or the appearance of conflict of interest in performance of this Contract.

19. Prohibited Interest

The parties hereto covenant and agree that to their knowledge no board member, officer, or employee of District, during his/her tenure or for one year thereafter, has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of a contracting party other than District. If any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other parties, even if such interest would not be considered a conflict of interest under Article 4, Chapter 1, Divisions 4 and 4.5, Title I of the Government Code of the State of California.

20. Nondiscrimination

Contractor shall fully comply with all Federal and State of California laws pertaining to nondiscrimination, and shall not discriminate against or grant preferential treatment to any person, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, marital status, or family status, in connection with or related to the performance of this Contract.

21. Gifts

Contractor acknowledges that District's officers and employees are prohibited from accepting gifts. Contractor agrees not to offer any District officer or employee any gift. Contractor's offer or giving of any gift will constitute a material breach of this Contract. In addition to any other remedies District may have in law or equity, District may terminate this Contract for such breach as provided in Section 7 of this Contract.

22. Confidential Information

All data, documents, discussion or other information developed or received by or for Contractor in performance of this Contract are confidential and shall not be disclosed to any person except as authorized by District, or as required by law.

23. Ownership of Materials

All records, reports, documents or other materials developed or discovered by Contractor or any other person engaged directly or indirectly by Contractor to perform Contractor's services are District's property without restriction or limitation upon their use.

24. Assignability

The parties agree that the expertise and experience of Contractor are material considerations for this Contract. Unless specifically authorized by this Contract, contractor may not assign the performance of any obligation or interest under this Contract without the prior written consent of District. Any attempt by Contractor to assign this Contract, in violation of this Section, will be voidable at District's sole option.

25. Governing Law

This Contract shall be construed – and its performance enforced – under the laws of the State of California.

26. Venue

In the event that a lawsuit is brought by either party to this Contract, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara.

Contractor further agrees that in the event a lawsuit involving this Contract is filed by District,

Contractor will unconditionally accept the jurisdiction of a federal or state court located in Santa Clara County, California.

27. Notices

All formal notices and other communications required or permitted to be given under the Contract shall be in writing and shall be sent via e-mail or U.S. postal service addressed to the respective parties as follows:

District:
Edward Oyama
Director of Engineering and Operation
West Valley Sanitation District
100 East Sunnyoaks Avenue
Campbell, CA 95008
eoyama@westvalleysan.org

Contractor:

Notice will be effective on the date delivered or if sent by US Postal Service it will be effective three (3) days after its date stamp.

The parties may change their respective addresses in accordance with provisions of this Section. Informal regular communication may be made directly with Kelvin Hatchett, Operations Supervisor at khatchett@westvalleysan.org or by telephone at (408)385-3012.

28. Authority of District Manager

Where this Contract requires or permits District to act and no officer of the District is specified, the District Manager and Engineer or the designated representative of District Manager has the authority to act on District's behalf.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed.

DISTRICT

CONTRACTOR

District Manager and Engineer

President/Owner

Date

Date

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