

AGREEMENT FOR GENERAL SERVICES
JANITORIAL SERVICES FOR CITY FACILITIES
FISCAL YEARS 2024-25 THRU 2027-28

THIS AGREEMENT, made and entered into this ___ day of _____, 2024 by and between the CITY OF MARTINEZ, hereinafter referred to as CITY, and _____, hereinafter referred to as PROVIDER, whose address is _____. The CITY and PROVIDER hereby agree as follows:

SPECIFIC PROVISIONS

1. **DESCRIPTION OF PROJECT**

This Project consists of providing Janitorial services at four (4) City of Martinez Facility sites for Fiscal Years 2024-25 through Fiscal Years 2027-28 (July 1, 2024 through June 30, 2028), with the option of two additional one-year extensions upon mutual agreement by both City and PROVIDER. Agreement was authorized by Resolution No. _____ of the Martinez City Council on _____, 2024.

2. **SCOPE OF SERVICES TO BE PROVIDED BY PROVIDER**

The Provider shall provide the services described in attached Exhibit "A", "Scope of Services and Payment" attached to this agreement and incorporated herein.

3. **SCOPE OF SERVICES TO BE PROVIDED BY CITY**

Services to be provided by the City, if any, shall be as set forth in Exhibit "A", "Scope of Services and Payment".

4. **PAYMENT**

a. **Compensation:**

The City agrees to pay PROVIDER for the services specified in Section 2 in accordance with the terms and conditions provided in Exhibit "A", "Scope of Services and Payment". The total maximum amount of payment under this Agreement shall not exceed

_____ without City's written approval.

b. **Time of Payment**

Provided PROVIDER is not otherwise in default under this Agreement, PROVIDER shall be compensated monthly in arrears based on the time spent during the previous month for which an itemized invoice shall have been submitted. City agrees to pay PROVIDER within thirty (30) days of receipt of monthly invoices.

5. TIME OF COMPLETION

PROVIDER shall perform the work described in Section 2 in accordance with the schedule and frequency for maintenance set forth in the attached to Exhibit "A", "Scope of Services and Payment".

6. PROVIDER and the CITY agree the schedule in Section 5 above represents their best estimates with respect to completion dates and both PROVIDER and CITY acknowledge that departures from the schedule may occur. Therefore, both PROVIDER and CITY will use reasonable efforts to notify one another of changes to the schedule. Any proposed change in the schedule, including a change based on the events described in Section 7, immediately below, shall be delivered to the other party in writing. Any such proposed change by one party shall be subject to the approval of the other party; provided, however, that any such approval may not be withheld unreasonably. The person executing this Agreement on behalf of the CITY shall have the authority to agree to extensions proposed by the PROVIDER.

7. PROVIDER shall not be responsible for performance delays caused by others, or delays beyond PROVIDER'S control, and such delays shall extend the times for performance of the work by PROVIDER.

GENERAL PROVISIONS

1. The status of PROVIDER is that of an independent contractor operating having control of his/her work and the manner in which it is performed. PROVIDER is not considered to be an officer, an employee, or an agent of CITY, nor shall he/she hold him/herself out as or represent that he/she is an officer, employee, or agent of the CITY. PROVIDER is required to obtain a business license with the City. A copy of the business license application is included as Exhibit "B".

2. The PROVIDER agrees that he/she/it has not employed or retained any company or person, other than a bona fide employee working solely for the PROVIDER, to solicit or secure this Agreement, and that he/she/it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the PROVIDER, any fee, commission, percentage, brokerage fee, gifts, or any other considerations, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CITY shall have the right to annul and cancel this Agreement without liability of any sort and/or, in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

3. PROVIDER shall provide properly skilled professional and technical personnel to perform all services under this contract. The PROVIDER shall not engage the services of any person or persons now employed by the CITY, except with the written permission of the CITY. Except as otherwise herein provided, the PROVIDER shall not assign or sublet any portion of the services to be performed under this Agreement without the prior written consent of the CITY. Said consent may be withheld with or without reasons. In the event that the CITY, in writing, approves any assignment or subletting of this Agreement or the retention of sub-PROVIDERS by PROVIDER, the PROVIDER shall provide to the CITY copies of each and every sub-PROVIDER contract prior to the execution thereof by the PROVIDER and sub-PROVIDER.
4. PROVIDER shall comply with all Federal, State and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including without limitation laws requiring licensing and non-discrimination in employment because of race, creed, color, sex, sexual orientation, gender, gender identity, age, marital status, physical or mental disability, national origin or other prohibited bases.
5. All changes and/or extra work shall be performed and paid for in accordance with the following:
 - a. Only the CITY Manager may authorize extra and/or changed work. PROVIDER expressly recognizes that other CITY personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of PROVIDER to secure the CITY Manager's prior, written authorization for such extra and/or changed work shall constitute a waiver of any and all right to adjustment in contract price due to such unauthorized work and PROVIDER thereafter shall be entitled to no compensation whatsoever for performance of such work.
 - b. If the PROVIDER is of the opinion that any work he has been directed to perform is beyond the scope of this Agreement and constitutes extra work, he shall promptly notify the CITY Manager of the fact. The CITY Manager shall make a determination as to whether or not such work is, in fact, beyond the scope of this Agreement and constitutes extra work. In the event that the CITY Manager determines that such work does constitute extra work, the CITY shall provide compensation to the PROVIDER on a fair and equitable basis. A Supplemental Agreement providing for such compensation for extra work shall be negotiated between the CITY and the PROVIDER. Such Supplemental Agreement shall be executed by the PROVIDER and be approved by the necessary CITY officials.
 - c. In the event the CITY Manager determines that such work does not constitute extra work, PROVIDER shall not be paid extra compensation above that provided herein. The determination of the CITY Manager may

be appealed to the CITY Council as long as a written appeal is submitted to the CITY Manager within five (5) days after the date of the CITY Manager's determination. Said written appeal shall include a description of each and every ground upon which PROVIDER challenges the CITY Manager's determination.

6. CITY has relied upon the professional ability and training of PROVIDER as a material inducement to enter into this Agreement. PROVIDER shall perform in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that payment for or acceptance of PROVIDER'S work by CITY shall not operate as a waiver or release. PROVIDER shall indemnify and hold harmless the CITY from and against any and all claims or expenses caused or occasioned directly or indirectly by PROVIDER'S failure to so perform.
7. PROVIDER assumes all responsibility for damages to property or injury or death to persons caused by the negligent performance errors or omissions of PROVIDER and/or his/her agents or employees. To the extent permitted by law, PROVIDER shall indemnify, hold harmless, release and defend CITY, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, failure to comply with any current or prospective laws, and expenses including attorneys' fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including PROVIDER from any cause whatsoever including another's concurrent negligence arising out of or in any way connected with the activities of PROVIDER, his employees and agents hereunder and regardless of CITY'S passive negligence. CITY agrees to provide PROVIDER with reasonable notification of legal claims and/or lawsuits which CITY may receive and for which CITY will request indemnification under this Section.

This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for PROVIDER under Workers' Compensation, disability or other employee benefits acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by PROVIDER.

8. Without limiting PROVIDER'S indemnification provided hereunder, PROVIDER shall take out and maintain at all times during the life of this contract, up to the date of acceptance of the work by the CITY, the following policies of insurance with a Best rating of no less than A-:VII.
 - a. Workers' Compensation insurance to cover its employees, and the PROVIDER shall require all sub-PROVIDERs similarly to provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the sub-PROVIDER's employees. All Workers' Compensation policies shall be endorsed with the provision that it will not be canceled without first giving thirty (30) days prior notice to the CITY.

In the event any class of employees engaged in hazardous work under the Contract is not protected under Workers' Compensation Statutes, the PROVIDER shall provide, and shall cause all sub-PROVIDERs to provide, adequate and suitable insurance for the protection of its employees not otherwise protected. Such policy must be acceptable to CITY and shall provide that it will not be canceled without first giving thirty (30) days notice to the CITY.

PROVIDER'S Worker's Compensation insurance shall include the following language: "All rights of subrogation are hereby waived against the CITY, its officers and employees when acting within the scope of their appointment or employment."

- b. Commercial general liability insurance including personal injury and property damage insurance for all activities of the PROVIDER and its sub-PROVIDERs arising out of or in connection with this contract, written on a commercial general liability form including, but not limited to, Broad Form Property Damage, blanket contractual, completed operations, cross liability, x, c, u hazards, subcontractors named as additional insureds (inapplicable if no subcontractors or sub Providers), vehicle coverage, products liability and employers non-ownership liability coverage in an amount no less than \$2 million dollars combined, single limit personal injury and property damage for each occurrence. The completed operations and product liability insurance shall continue for not less than 365 days following acceptance of the work by CITY. The commercial general liability policy shall be endorsed with the following language:
 - (1) The CITY OF MARTINEZ is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the contract.
 - (2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.
 - (3) The insurance provided herein is primary and no insurance held or owned by the CITY OF MARTINEZ shall be called upon to contribute to a loss.
 - (4) The coverage provided by this policy shall not be canceled without thirty (30) days prior written notice given to the CITY of MARTINEZ.

- d. PROVIDER shall submit to CITY documentation evidencing its required insurances signed by the insurance agent and companies, copies of which are attached as Exhibit "C". Any deductible or self-insured retentions must be declared to and approved by CITY. At the option of CITY, insurer shall reduce or eliminate such deductible or self-insured retention as respects CITY, its officers and employees or PROVIDER shall procure a bond guaranteeing payment of losses and related investigations, claims, administration and defense expenses.
9. The CITY shall furnish the PROVIDER, to the extent that they are available, CITY standards, details, specifications, and regulations applying to the Project and other such information which may be helpful to the PROVIDER in performance of its service. Any and all additional data necessary for design shall be the responsibility of the PROVIDER.
10. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the CITY within its sole discretion upon written notice to PROVIDER. PROVIDER may terminate this Agreement upon thirty (30) days' written notice to the CITY only for good cause, including without limitation, PROVIDER'S serious illness or material breach of this Agreement by the CITY. PROVIDER'S written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. Upon termination, all finished and unfinished documents, project data and reports shall, at the option of the CITY, become its sole property and shall, at PROVIDERS' expense, be delivered to the CITY or to any party the CITY may so designate. In the event of termination by PROVIDER, PROVIDER shall only be compensated for all work PROVIDER satisfactorily performs prior to the time PROVIDER delivers to the CITY the termination notice, unless other arrangements are agreed to by the CITY. In the event of termination by the CITY, PROVIDER shall be compensated for all work satisfactorily performed prior to the time PROVIDER receives the termination notice, and shall be compensated for all materials ordered by PROVIDER, and services of others ordered by PROVIDER prior to receipt of the CITY'S termination notice, whether or not such materials or instruments of services of others have actually been delivered to PROVIDER or to the CITY, provided that PROVIDER is not able to cancel such orders for materials or services of others. In the event this Agreement is terminated pursuant to this section, PROVIDER shall not be entitled to any additional compensation over that provided herein; nor shall PROVIDER be entitled to payment for alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this Agreement by the CITY pursuant to this section.
11. Should the PROVIDER fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, the CITY may terminate this Agreement by giving written notice of such termination, stating the reasons for such termination in such event. PROVIDER shall be compensated as above, provided, however, there shall be

deducted from such amount the amount of damage, if any, sustained by CITY by virtue of the PROVIDER'S breach of this Agreement.

12. This Agreement shall inure to the benefit of, and be binding upon, the successors in interest, legal representatives, trustees, and permitted assigns of either party.
13. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to included terms and a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure, section 1856. No modification hereof shall be effective unless and until such modification is evidenced by a writing signed by parties to this Agreement.
14. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed **return** has not been received. After receipt of a demand for assurance, either party's failure to provide within a reasonable time but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances is a breach of this Agreement by that party. Acceptance of any improper delivery of service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.
15. All notices permitted or required hereunder shall be addressed as follows:

If to the CITY:

City Manager
City of Martinez
525 Henrietta Street
Martinez, CA 94553

If to the PROVIDER:

16. This Agreement shall be construed in accordance with the law of the State of California. Venue shall be in the County of Contra Costa.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the day first above written in the CITY OF MARTINEZ, California.

CITY OF MARTINEZ
A Municipal Corporation

Date: _____

By: _____

PROVIDER is a corporation duly organized and validly existing and in good standing under the laws of the State of California and is authorized to perform the services under this agreement. The corporate officer executing this agreement has been authorized and directed to do so by corporate resolution.

PROVIDER

Date: _____

By: _____

APPROVED AS TO FORM
(standard form)

By: _____
City Attorney