

## **THIRD AMENDMENT TO STREET SWEEPING AGREEMENT**

This Third Amendment to Street Sweeping Agreement (“Amendment No. 3”), between the City of La Habra (“City”) and Nationwide Environmental Services (“Contractor”), a division of Joe’s Sweeping, Inc., a California corporation, takes effect on March 1, 2022.

### **BACKGROUND**

On March 26, 2007, the City entered into an agreement (“Agreement”) with Contractor for street sweeping services. On March 23, 2010, the City and Contractor executed Amendment No. 1 to said Agreement. On June 6, 2016, the City and Contractor executed Amendment No. 2 to said Agreement. The parties now wish to extend the term of the contract, change the amount of compensation, and add some additional modifications to the contract. The parties, therefore, agree as follows:

### **AGREEMENT**

1. Section 1.3 of the Agreement is deleted in its entirety and replaced with the following:

1.3 Term.

The term of this Agreement shall begin on March 1, 2022 and continue until June 30, 2027. This Agreement may be renewed for one (1) five-year additional period, upon mutual agreement by both **CITY** and **CONTRACTOR**; or, until such time as it is earlier terminated pursuant to the provisions in ARTICLE V of this Agreement.

2. Section A of Exhibit B, which is referenced in Section 3.1 of the Agreement, is deleted in its entirety and replaced with the following:

A. Annual Contract. **CONTRACTOR** agrees to provide all services specified in this Agreement and its Exhibits for the costs below. Annual costs include all costs associated with providing the services herein, including, but not limited to, staffing, equipment, supplies, capital outlay, facilities, insurance and overhead. The annual cost includes 22,920 gallons of fuel per year. Additional fuel charges will be based on the amounts outlined in section “B” of this Exhibit. The annual charges (not including additional fuel charges) to the **CITY** shall follow the formula outlined below in section A1 with a detailed table included in section A2. Further examples are shown in sections A3 and A4.

1) Starting from March 1, 2022, through June 30, 2022, monthly operational costs shall increase by \$3,500 per month and the total contract cost each month shall be \$31,127.83. Starting from July 1, 2022, through June 30, 2023 the total contract cost each month shall equal \$32,217.30. This monthly total was calculated by including the annual average Consumer Price Index (CPI)<sup>1</sup> percentage increase from Calendar Year (CY) 2021, capped at a rate of no more than 3.50%. Starting in FY 2023-24 and thereafter, there shall be an annual average CPI adjustment each year on July 1 as shown in the table below. Future Annual Contract Costs for a new FY shall multiply the prior Annual Contract Cost by the annual average percentage change in the prior calendar year CPI. In any year that the annual percentage change in the CPI is greater than 3.5%, then the annual street sweeping charges shall be capped and shall not increase by more than 3.5% for that FY.

2)

Contract Cost Table					
Period / Year	Monthly Contract Cost	Months	CPI % Increase	Annual Contract Cost	Fuel Threshold
FY 2021-2022 (Jul to Feb)	\$27,627.83	8	-	-	-
FY 2021-2022 (Mar to Jun)	\$31,127.83	4	-	<b>\$345,533.96</b>	\$2.95
FY 2022-2023	\$32,217.30	12	3.50%	<b>\$386,607.65</b>	\$2.95
FY 2023-2024	*	12	**	***	\$2.95
FY 2024-2025	*	12	**	***	\$2.95
FY 2025-2026	*	12	**	***	\$2.95
FY 2026-2027 (Expires)	*	12	**	***	\$2.95
FY 2027-2028	*	12	**	***	\$2.95
FY 2028-2029	*	12	**	***	\$2.95
FY 2029-2030	*	12	**	***	\$2.95
FY 2030-2031	*	12	**	***	\$2.95
FY 2031-2032	*	12	**	***	\$2.95
* Monthly Contract Cost = Annual Contract Cost ÷ 12 months					
** CPI % Increase = Annual CY Average CPI Change					
*** Annual Contract Cost = Prior Annual Contract Cost x (CPI % Increase + 1)					

<sup>1</sup> Consumer Price Index for all Urban Consumers (National CPI-U) for the Los Angeles/Long Beach/Anaheim, series ID CUURS49ASA0 compiled and published by the United States Department of Labor, Bureau of Labor Statistics, or any other measure hereafter employed by the Federal Bureau of Labor Statistics in lieu of the consumer price index that measures the cost of living in U.S. cities.

3) Example 1: If prior FY 2021-2022 Annual Contract Cost was \$345,534.00 and the prior year CPI % Increase for CY 2021 was 3.0%, then the resulting FY 2022-2023 annual charges shall be \$355,900.02  $[(0.030+1)*\$345,534]=\$355,900.02$ ].

4) Example 2: If prior FY 2021-2022 annual charges were \$345,534.00 and the prior year CPI Index change for Calendar Year (CY) 2021 was 4.0%, then the resulting increase shall be capped at 3.5% and the FY 2022-2023 annual charges shall be \$357,627.69.  $[(0.035+1)*\$345,534]=\$ 357,627.69$ ]

3. Section 5.1 of the Agreement is deleted in its entirety and replaced with the following:

5.1 Notice of Termination

**CITY** may terminate the whole or any part of this Agreement at any time and without cause by giving one-hundred eighty (180) days written notice to **CONTRACTOR** of such termination, and specifying the effective date thereof, (“Notice of Termination”). **CONTRACTOR** shall discontinue all services affected by such termination one-hundred eighty (180) days after receipt of such Notice of Termination, unless otherwise instructed by **CITY** in writing. **CONTRACTOR** shall not terminate this Agreement except for cause.

4. Section 5.2 of the Agreement is deleted in its entirety and replaced with the following:

5.2 Termination Without Cause

If **CITY** terminates this Agreement as provided for in Section 5.1, **CONTRACTOR** shall be paid for services performed through the date of termination, upon receipt of written documentation of said services by **CITY**. Such payment shall include a pro-rated amount of profit, if applicable, but no amount shall be paid for anticipated profit on unperformed services.

5. Section 6.3 of the Agreement is deleted in its entirety and replaced with the following:

6.3 Successors and Assigns.

This Agreement shall be binding on the successors and assigns of the parties. This Agreement may not be sold, transferred or assigned by either party, or by operation of law, to any person or persons or business entity without the other party’s written permission, which shall not be unreasonably withheld. Any such sale, transfer or assignment, or attempted sale, transfer or assignment without the prior 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.

6. Section 6.22, Force Majeure, of the Agreement is amended by adding this provision to the Agreement as follows:

6.22 Force Majeure. Contractor shall not be in default under this Agreement in the event that the services of Contractor are temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President or Congress and affecting the City of La Habra; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fires; pandemic; epidemic; quarantine; acts of any government (including judicial action) related to such events; strikes, lockouts and other labor disturbances; or other catastrophic events which are beyond the reasonable control of Contractor. "Other catastrophic events" does not include the financial inability of Contractor to perform or failure of Contractor to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public entity where such failure occurs where Contractor has failed to exercise reasonable diligence. Should any service interruptions occur, cost for such month(s) shall be prorated and the term specified in the Agreement shall be extended by the same number of days as the service interruption. The additional days extending the agreement shall be charged at the contracted rate at the time the service interruptions occurred. The Contractor shall, within three (3) business days of the commencement of such delay, notify the Public Works Director, or designee in writing of the causes of the delay.

7. Except as expressly amended herein, all of the terms and conditions of the Original Agreement, as amended by the First Amendment, Second Amendment, and this Third Amendment, shall remain in full force and effect and are ratified by each Party. The Original Agreement, First Amendment, Second Amendment and this Third Amendment contain the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. The Parties agree that if any provisions of this Third Amendment conflicts with the First Amendment, Second Amendment, or the Original Agreement, then the provisions of this Third Amendment shall prevail. If any portion of this Third Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

CITY OF LA HABRA

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Jim Sadro, CITY MANAGER

By: \_\_\_\_\_  
Richard D. Jones, CITY ATTORNEY

ATTEST:

By: \_\_\_\_\_  
Laurie Swindell, CMC, CITY CLERK

COUNTER SIGNED:  
NATIONWIDE ENVIRONMENTAL SERVICES,  
(Division of Joe's Sweeping, Inc.)

By:  \_\_\_\_\_  
NAME: Ani Samuelian

March 1, 2022  
DATE

President  
\_\_\_\_\_  
TITLE: