

**AMENDMENT TO CONTRACT**# 1

The County of San Benito ("COUNTY") and Jack Davenport Sweeping Service, Inc. a California corporation, ("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

**1. Existing Contract.****a. Initial Contract.**

COUNTY and CONTRACTOR acknowledge that the parties entered into a contract, dated January 1, 2019.

**b. Prior Amendments. (Check one.)**

☒ The initial contract previously has not been amended.

☐ The initial contract previously has been amended. The date(s) of prior amendments are as follows:

**c. Incorporation of Original Contract.**

The initial contract and any prior amendments to the initial contract (hereafter collectively referred to as the "original contract") are attached to this amendment as Exhibit 1 and made a part of this amended contract.

**2. Purpose of this Amendment.**

The purpose of this amendment is to change the agreement between the parties in the following particulars:

**a. Term of the Contract. (Check one.)**

☒ The term of the original contract is not modified.

☐ The term of the original contract (Exhibit 1) is extended from the current expiration date of \_\_\_\_\_, to a new expiration date of \_\_\_\_\_.

**b. Scope of Services. (Check one.)**

☒ The services specified in the original contract (Exhibit 1) are not modified.

☐ The services specified in the original contract (Exhibit 1) are modified as specified below: (Check one.)

☐ The services specified in the original contract are modified only as specified below:

**Modified Scope of Services:**

(Insert modified or new services.)

☐ The services specified in the original contract are deleted in their entirety and replaced with the following services:

**New Scope of Services:**

(Insert new services.)

**c. Payment Terms.** (Check one.)

- ☐ The payment terms in the original contract (Exhibit 1) are not modified.
- ☒ The payment terms in the original contract (Exhibit 1) are modified as specified below: (Check one.)

☒ The payment terms are modified only as specified below:

**Modified Payment Terms:**

(Insert modified or new payment terms.)

Paragraph B-3 (Compensation) of Attachment B (Payment Schedule) to the original contract (Exhibit 1) is hereby amended to increase the compensation by an additional amount not to exceed \$6,536.00 for the extension of services provided under the original contract, for a total contract value not to exceed \$72,096.00, as follows:

Original Contract:	\$65,560.00
<u>1<sup>st</sup> Amendment:</u>	<u>\$ 6,536.00</u>
Total:	\$72,096.00

Paragraph B-3 of Attachment B (Payment Terms) is hereby amended to read as follows:

**B-3. COMPENSATION**

COUNTY shall pay to CONTRACTOR: (Check one.)

- ☐ a total lump sum payment of \$\_\_\_\_\_, or
- ☐ a total sum not to exceed \$72,096.00, as follows:

- A sum not to exceed \$16,380.00 per year for routine (monthly) services within the CSA designated in Attachment A to this contract, in total sum not to exceed:
  - \$55,716.00 for a four (4) year contract;
  - \$72,096.00 for a five (5) year contract

for services rendered pursuant to the terms and conditions of the original contract (Exhibit 1) and this amendment, and pursuant to any special compensation terms specified in paragraph B-4.

All other provisions of Attachment B to the original contract (Exhibit 1) shall remain the same.

☐ The payment terms are deleted in their entirety and replaced with the following payment terms:

**New Payment Terms:**

**B-1. BILLING**

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (Check one.)

- ☐ One month in arrears.
- ☐ Upon the complete performance of the services specified in the original agreement (Exhibit 1) and this amendment.
- ☐ The basis specified in paragraph B-4.

**B-2. PAYMENT**

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of the original contract, net thirty (30) days from the invoice date.

**B-3. COMPENSATION**

COUNTY shall pay to CONTRACTOR: (Check one.)

- ☐ a total lump sum payment of \$\_\_\_\_\_, or
  - ☐ a total sum not to exceed\_\_\_\_\_,
- for services rendered pursuant to the terms and conditions of the original contract (Exhibit 1) and this amendment, and pursuant to any special compensation terms specified in paragraph B-4.

**B-4. SPECIAL COMPENSATION TERMS: (Check one.)**

- ☐ There are no additional terms of compensation.
- ☐ The following specific terms of compensation shall apply:

**d. Other Terms. (Check one.)**

- ☒ There are no other terms of the original contract that are modified.
- ☐ Other terms of the original contract are modified only as specified below:

**Other Modified or New Terms:**

(Insert other modified or new terms.)

**3. Other Terms.**

All other terms and conditions of the original contract (Exhibit 1) which are not changed by this amendment shall remain the same.

**CONTRACTOR:**

Jack Davenport Sweeping Service, Inc.

DocuSigned by:

Eric Sunderland

3B9154D6A82247E...

By: Eric Sunderland, Director of Operations

4/8/2022

Date

**COUNTY:**

San Benito County Board of Supervisors

By: Bea Gonzales, Chair

Date

**APPROVED AS TO LEGAL FORM:**

Barbara J. Thompson, County Counsel

DocuSigned by:

Joel Ellinwood

077F352FB873476...

By: Joel Ellinwood, Assistant County Counsel

4/9/2022

Date

**EXHIBIT 1**  
**TO AMENDMENT # 1**

**ORIGINAL**  
**CONTRACT**

(Please attach the initial contract and any prior amendments, from the most recent to the initial contract, in reverse chronological order.)

## C O N T R A C T

The COUNTY OF SAN BENITO ("COUNTY") and Jack Davenport Sweeping Services ("CONTRACTOR") enter into this contract which shall be effective on the date stated in Paragraph 1.

**1. Duration of Contract.**

This contract shall commence on 1/1/2019, and end on 1/1/2022, with two (2) one-year options to extend the term, unless sooner terminated as specified herein.

**2. Scope of Services.**

CONTRACTOR, for COUNTY's benefit shall perform the services specified on Attachment A to this contract. Attachment A is made a part of this contract.

**3. Compensation for Services.**

In consideration for CONTRACTOR's performance, COUNTY shall pay compensation to CONTRACTOR according to the terms specified in Attachment B. Attachment B is made a part of this contract.

**4. General Terms and Conditions.**

The rights and duties of the parties to this contract are governed by the general terms and conditions mutually agreed to and listed in Attachment C. Attachment C is made a part of this contract.

**5. Insurance Limits.**

CONTRACTOR shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

- (a) Comprehensive general liability insurance: \$1,000,000
- (b) Professional liability insurance: N/A
- (c) Comprehensive motor vehicle liability insurance: \$1,000,000

**6. Termination.**

The number of days of advance written notice required for termination of this contract is 30.

**7. Specific Terms and Conditions (check one)**

- ☐ There are no additional provisions to this contract.
- ☒ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment D. Attachment D is made a part of this contract.
- ☐ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment E. Attachment E is made a part of this contract.

**8. Information about Contract Administrators.**

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

**Contract Administrator for COUNTY:**

Name: Jessica Stratton

Title: CSA Coordinator

Address: 2301 Technology Parkway

Hollister, California 95023

Telephone No.: (831)245-9657

Fax No.: (831) 636-4176

**Contract Administrator for CONTRACTOR:**

Name: Eric Sunderland

Title: Director of Operations

Address: P.O Box 9222

Bakersfield, CA 93389

Telephone No.: 661-589-6495

Fax No.: 661-588-6513

**SIGNATURES**

**San Benito County Board of Supervisors**



Anthony Botelho, Chair

Date: December 11, 2018

**Contractor**

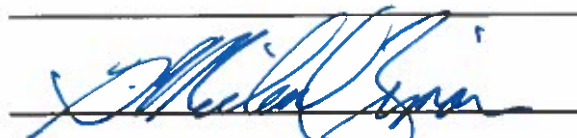


Eric Sunderland, Director of Operations

Date: 12/5/18

**APPROVED AS TO LEGAL FORM:**

San Benito County Counsel



G. Michael Ziman, Deputy County Counsel

Date: December 6, 2018

## **ATTACHMENT A SCOPE OF SERVICES**

Contractor will provide monthly street sweeping services to County Service Area (CSA) # 9 (Ridgemark) on a regularly scheduled basis. Services shall include removing litter, leaves, dirt, and debris from designated streets. This program shall leave the streets with a presentable appearance and free from dust created by traffic.

Services will include all necessary personnel, equipment, tools, materials, and expertise necessary to perform street sweeping services. The area to be swept is as follows:

**A. Ridgemark**

Refer to **Exhibit A** for street list and maps in Paragraph 8 of this **Attachment A**.

**1. SCOPE AND PERFORMANCE OF WORK.**

Attached below is a street list and map.

The standards of performance, which the contractor is obligated to perform hereunder are standards considered to be good street sweeping practices.

Street sweeping shall be conducted in a manner reflecting roadway function and design. Street sweeping operators shall have appropriate training to assure competence in machine operation.

Street sweepers will operate at suggested manufacturers sweeping speeds in accordance with local conditions and desired results. At no time may the street sweeper speed exceed 7 miles per hour. The contractor shall so conduct his operations as to cause the least possible obstruction and inconvenience to public traffic.

Hours of Sweeping will be approved and directed by the County. The Contractor shall sweep the entire paved surface of each street assigned to it, including all curb lines as well as intersections (cross gutter area), so as to leave the street clean and free of all road debris that would normally be expected to be picked up by a mechanical broom-type sweeper without excessive damage to the sweeper, such as wood, leaves, paper, plastics, and bottles, glass, cans, metal fragments, stones, pavement fragments and similar materials. All debris (including debris following inclement weather) along regularly scheduled routes, no matter what quantity, is to be removed.

The COUNTY OF SAN BENITO will inspect the work of the contractor. It is understood that if the streets do not meet acceptable County standards, the contractor will be required to sweep the deficient streets again within 48 hours at no cost to the County. The determination of acceptable County standards will be made by the Public Works Administrator and/or his designee.



The Contractor shall furnish all labor, equipment, materials, tools, water, debris disposal and incidentals necessary for accomplishing the work. It will be the sole responsibility of the contractor to obtain potable water used for dust control, and no additional compensation will be allowed therefore.

The Contractor shall comply with all applicable laws, ordinances, and codes of the State of California and local governments, including, but not limited to those for dust control on each street sweeping unit.

The Contractor shall be responsible for notifying and making arrangements with owners of vehicles parked within the work area for their removal.

All sweeping shall be performed by a pre-approved route. Once sweeping begins on a street it shall be swept to completion. No "jumping around" shall be permitted. Sweeping shall be accomplished in the same direction as traffic flow at all times. The Contractor shall make every reasonable effort to minimize the streaks left by sweepers.

The Contractor shall ensure that all catch basin grates and inlets are left free and clear of debris.

The Contractor shall provide dust control measures as may be required to comply with all applicable laws and regulations, and to prevent nuisance conditions from impacting any neighborhood or street at all times during sweeping. The Contractor shall be required to provide for cleanup of any dust or dirt distributed on sidewalks, houses, vehicles, clothing or other areas or facilities due to improper or inadequate dust control.

Sweeping shall normally consist of a single pass over an area, however, the Contractor shall make as many additional passes or such extra effort as may be required to adequately clean the street. Obstructions such as accumulation of silt, compacted dirt, leaves and similar debris shall be removed unless the removal of such obstruction can not be accomplished without damage to equipment, inflicting personal injury or clearly is beyond the capabilities of the specified equipment. Obstructions such as small tree limbs and rocks shall be removed from the sweeping path and hauled away by the Contractor rather than bypassing the area. The Contractor shall not be responsible for removing larger items, such as broken pieces of curbing, large boards, large tree limbs, or similar materials. Larger obstructions such as impaired vertical and/or horizontal clearance by tree limbs, fallen tree limbs, disabled vehicles, construction equipment or materials, and/or other similar items shall be reported per "Notification of Sweeping Obstructions", set forth below. No extra compensation shall be paid for any extra effort in complying with the above.

The County shall perform inspections on a regular basis, as well as spot checks and response to complaints. The County Resource Management Agency Director, or his designee, shall decide the adequacy of sweeping. In the event that the results of a sweep are considered unsatisfactory, the Contractor shall re-sweep the unsatisfactory area at its own expense within five (5) days after notification by phone.

The County reserves the right to withhold payment for missed, incomplete, or unsatisfactory sweeping performance.

## **2. SCHEDULING REQUIREMENTS**

Within twenty (20) days after notification of award, the Contractor shall submit a proposed schedule of the dates when the area is to be swept. The schedule shall be subject to the review and approval of County. In the event that a storm causes excess debris in the streets, or excess debris occurs on the street for any other reason, the Contractor shall, at the request of the County, and in lieu of the next scheduled sweep, sweep such debris as soon as possible.

## **3. EQUIPMENT**

All equipment used for the performance of this contract shall be standard heavy duty mechanical broom sweeping or air/vacuum equipment necessary to properly clean streets of litter, dirt, rocks, leaves, and other debris. Equipment shall be properly maintained as to condition and appearance so as to insure a high level of street sweeping services, and shall be all current State and Local regulations and requirements. Sweeping equipment as well as disposal trucks shall be equipped with adequate warning devices and lights for safe operation and shall meet all vehicle operation requirements of the State of California Department of Motor Vehicles, the California Highway Patrol, Cal OSHA regulations, and all other applicable codes required in the State of California.

Machines must be maintained both mechanically and visually throughout the term of this agreement with capability to insure scheduled routine maintenance and proper adjustment for sweepers.

Sweeping machines must be equipped with an adequate water spray-system for dust control. All Sweeping machines shall have the capability of being contacted by their main office with radio or cell phone equipment. Sweeping machines must be equipped with a GPS tracking device with a minimum 1 minute "ping" frequency and be able to provide daily GPS tracking reports for each sweeper used on the project. The GPS tracking report must include the following:

- The sweeper operators name.
- Street Names as well as Latitude/Longitude
- Identify when sweeper is sweeping vs when it is traveling
- When the street sweeper dumps
- The speed the sweeper is operating

All units must be clearly and prominently marked with the contractor's name and unit number. All equipment must be properly registered and insured in accordance with state and local laws. Contractor must show proof of ownership or a signed lease for sufficient machinery to adequately perform services as specified in this agreement.

## **4. DISPOSAL**

The contractor shall dispose of all refuse and debris collected in the sweeping operation by hauling to the John Smith Road Landfill disposal site for disposal of

sweeping debris, in compliance with all State, Federal and local laws. No "on-road" storage or dumping shall be permitted. Refuse disposal cost should be included in the respondents proposal. No additional compensation will be provided. The disposal site is located at the following address:

John Smith Road Landfill  
2650 John Smith Road  
Hollister, CA 95023

**5. NOTIFICATION OF SWEEPING OBSTRUCTIONS**

The Contractor shall notify the County of any obstruction and/or reason why sweeping could not be performed for a specific area. The initial report shall be made verbally within twenty-four (24) hours, followed by a written report within five (5) days. The County shall take action which is reasonably appropriate to mitigate the obstruction, or the Contractor is relieved from its sweeping responsibilities in that area until the obstruction is removed. This provision shall not apply to parked vehicles.

**6. Maximum Response Time**

Guaranteed maximum response time to non-scheduled service calls will be twelve (12) hours.

**7. Submittals**

Respondent shall submit the following to the county of San Benito:

- Invoice
- Certified Payroll
- Report showing services completed, including actual number of curb miles swept for each CSA.
- GPS Tracking Report as indicated in Section 3

**8. Street List and Map (Exhibit A)**

**A. CSA # 9 – Ridgemark**

- i) Ridgemark Homes Association
- ii) Ridgemark XI Homeowners Association
- iii) Villa Pacheco Homeowners Association
- iv) The Greens Homeowners Association
- v) The Villages Homeowners Association
- vi) The Bluffs Homeowners Association

**Split – Ridgemark Dr. makes sharp left turn; road becomes S. Ridgemark Dr. Boundary between Ridgemark Homes Association and Ridgemark XI HOA**

**ATTACHMENT B  
PAYMENT SCHEDULE**

**B-1. BILLING**

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (check one)

- ☒ One month in arrears.  
☐ Upon the complete performance of the services specified in Attachment A.  
☐ The basis specified in paragraph B-4.

**B-2. PAYMENT**

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of this contract, net thirty (30) days from the invoice date.

**B-3. COMPENSATION**

COUNTY shall pay to CONTRACTOR: (check one)

- ☐ a total lump sum payment of \$ \_\_\_\_\_, or  
☒ a total sum not to exceed thirteen thousand one hundred and twelve dollars (\$13,112.00) per year; or thirty-nine thousand three hundred thirty-six dollars (\$39,336.00) for three (3) year contract; or fifty-two thousand four hundred and forty-eight dollars (\$52,448.00) for a four (4) year contract; or sixty-five thousand five hundred and sixty dollars (\$65,560.00) for five (5) year contract.

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

**B-4. SPECIAL COMPENSATION TERMS:** (check one)

- ☒ There are no additional terms of compensation.  
☐ The following specific terms of compensation shall apply: (Specify)

- END ATTACHMENT B -

## **ATTACHMENT C**

### **General Terms and Conditions**

#### **C-1. INDEMNIFICATION.**

CONTRACTOR and COUNTY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

#### **C-2. GENERAL INSURANCE REQUIREMENTS.**

Without limiting CONTRACTOR's duty to indemnify COUNTY, CONTRACTOR shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by Paragraph C-3 shall satisfy the following requirements:

- (a) Each policy shall be issued by a company authorized by law to transact business in the State of California.
- (b) Each policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.
- (c) The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.
- (d) The required coverage shall be maintained in effect throughout the term of this contract.

CONTRACTOR shall require all subcontractors performing work under this contract to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this agreement.

#### **C-3. INSURANCE COVERAGE REQUIREMENTS.**

If required by paragraph 5 of the contract, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this contract:

- (a) Comprehensive general liability insurance. CONTRACTOR shall maintain comprehensive general liability insurance, covering all of CONTRACTOR's operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.
- (b) Professional liability insurance. CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.

- (c) Comprehensive motor vehicle liability insurance. CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this contract, with a combined single limit of not less than the amount set out in Paragraph 5 of this contract.
- (d) Workers' compensation insurance. CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If CONTRACTOR elects to be self-insured, the certificate of insurance otherwise required by this contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

#### **C-4. CERTIFICATE OF INSURANCE.**

Prior to the commencement of performance of services by CONTRACTOR and prior to any obligations of COUNTY, CONTRACTOR shall file certificates of insurance with COUNTY, showing that CONTRACTOR has in effect the insurance required by this contract. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR's self-insurance provides substantially the same protection to COUNTY as the insurance required herein. CONTRACTOR further agrees to notify COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

#### **C-5. RECORDS TO BE MAINTAINED.**

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to COUNTY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by COUNTY, its authorized representative, or officials of the State of California.

#### **C-6. RETENTION OF RECORDS.**

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if the COUNTY notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.

#### **C-7. TITLE TO DOCUMENTS; COPYRIGHT.**

All reports and other materials collected or produced by the CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of COUNTY, and shall not be subject to any copyright claimed by the CONTRACTOR, subcontractor, or their agents or employees. CONTRACTOR may retain copies of all such materials exclusively for administrative purposes. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of COUNTY is prohibited.

#### **C-8. INDEPENDENT CONTRACTOR.**

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to COUNTY and not officers or employees of COUNTY. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of COUNTY. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to COUNTY that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

#### **C-9. CONFLICT OF INTEREST.**

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed.

#### **C-10. COMPLIANCE WITH APPLICABLE LAWS.**

CONTRACTOR shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

#### **C-11. NONDISCRIMINATION.**

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.

#### **C-12. BANKRUPTCY.**

CONTRACTOR shall immediately notify COUNTY in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.



**C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.**

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTOR without the prior written consent of COUNTY, and any attempted assignment or delegation without such consent shall be void.

**C-14. NEGOTIATED CONTRACT.**

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

**C-15. SEVERABILITY.**

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

**C-16. ENTIRE CONTRACT.**

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

**C-17. TIME IS OF THE ESSENCE.**

Time is of the essence in the performance of this contract.

**C-18. TERMINATION.**

Either party may terminate this contract with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-19, below. In the event of termination, COUNTY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of the termination.

**C-19. NOTICES.**

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or
- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or

- (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

#### **C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.**

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

#### **C-21. MATERIALITY.**

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

#### **C-22. WAIVER.**

Waiver by either party of a breach of any covenant of this contract will not be construed to be a continuing waiver of any subsequent breach. COUNTY's receipt of consideration with knowledge of CONTRACTOR's violation of a covenant does not waive its right to enforce any covenant of this contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

#### **C-23. AUTHORITY AND CAPACITY.**

CONTRACTOR and CONTRACTOR's signatory each warrant and represent that each has full authority and capacity to enter into this contract.

#### **C-24. BINDING ON SUCCESSORS.**

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

#### **C-25. CUMULATION OF REMEDIES.**

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

#### **C-26. INDEPENDENT ADVICE.**

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also

represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

**C-27. NO RELIANCE ON REPRESENTATIONS.**

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract may hereunder turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

**C-28. REDUCTION OF CONSIDERATION.**

CONTRACTOR agrees that COUNTY shall have the right to deduct from any payments specified in Attachment B any amount owed to COUNTY by CONTRACTOR as a result of any obligation arising prior to, or after, the execution of this contract. For purposes of this paragraph, obligations arising prior to, or after, the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If COUNTY exercises the right to reduce the consideration specified in Attachment B, COUNTY, at the time of making a reduced payment, shall give CONTRACTOR notice of the amount of any off-set and the reason for the reduction.

**C-29. COUNTERPARTS.**

This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one contract.

**END OF ATTACHMENT C.**

## **ATTACHMENT D ADDITIONAL TERMS**

### **A. Delivery and Storage**

Delivery and storage of all equipment and materials (if applicable) shall be the responsibility of the contractor.

### **B. Prevailing Wage**

The County believes that street sweeping operations are exempt from prevailing wage requirements. However, during the term of this contract, if it is determined that prevailing wages must be paid for street sweeping services, in accordance with Labor Code Sections 1773 et. seq., by any revised administrative regulations or by a court decision in which the County is a party, Contractor shall invoice the County for the difference in rates based upon the difference between the actual wages paid and the required prevailing wages and the County shall pay such difference in rates to the extent that Contractor pays such amounts to its employees or former employees. County shall not be responsible for the reimbursement or payment of any penalties or interest.

### **C. Controlling Law**

The Contract shall be governed and construed in accordance with the laws of the State of California and proper venue for legal action regarding the Contract shall be the COUNTY OF SAN BENITO.

### **D. Warranty**

Contractor warrants to County and CSA No. 9 that the services covered by this Contract will conform to the specifications, description and time provisions furnished by the County and will be of first class workmanship; and County reserves the right to cancel the unfilled portion of this contract without liability to Contractor for breach of this warranty. Unacceptable service is not waived by acceptance of previous unacceptable service nor by failure to notify Contractor thereof.

### **E. Rights and Remedies of the COUNTY OF SAN BENITO for Default**

1. In the event any service furnished by the contractor in the performance of the contract should fail to conform to specifications therefore, the COUNTY OF SAN BENITO may reject the same, and it shall thereupon become the duty of the contractor to complete the service as specified, without additional expense to the COUNTY OF SAN BENITO; providing that should the contractor fail, neglect or refuse so to do the COUNTY OF SAN BENITO shall have the right to purchase the service in the open market, in lieu thereof, and deduct from any moneys due or that may thereafter become due to the contractor the difference between the prices named in the contract and the actual cost thereof to the COUNTY OF SAN

BENITO, except when delivery is delayed by fire, strike, freight embargo, or Act of God or the government.

2. Cost of providing any service which does not meet specifications, will be the responsibility of the contractor.
3. The rights and remedies of the COUNTY OF SAN BENITO provided above shall not be exclusive and are in addition to any other rights and remedies provided by the law or under the contract.

F. Force Majeure

Contractor shall not be liable for any delays with respect to the Contract due to causes beyond its reasonable control, such as acts of God, epidemics, war, terrorism or riots.

G. Recycled Products

A "product containing recycled materials" shall mean, with respect to a paper product, a "recycled paper product" as that term is defined in Section 12301 (c) the Public Contract Code, and shall mean, with respect to other products, a "recycled product," such as, but not limited to, plastic, motor oil, paint, pavement, insulation, tires, etc., as that term is defined in Section 12301 (d) of the Public Contract Code.

To the extent that the Public Contract Code or other provisions of State law provide for purchasing preferences which are more extensive than those established herein, or for additional procedures to increase the use of recycled materials, the provisions of State law shall prevail.

H. Subcontractors

Contractor may subcontract out the work of the contract to be awarded, subject to the prior approval of County, which shall not be unreasonably withheld.

Contractor shall provide the contract with subcontractor to County for its review and approval in advance. Contractor shall insure that any subcontractor contract requires the subcontractor to comply with this contract in all respects. Without limitation, the subcontractor shall be required to indemnify the County and shall be required to comply with all insurance coverage requirements required of successful contractor under this contract.

I. Insurance Requirements

1. Indemnity

In conjunction with work performed at County site, the Contractor shall exonerate, indemnify, defend, and hold harmless COUNTY (which shall include, without limitation, its officers, agents, employees and volunteers) from and against:

- a. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property as a result of,

arising out of, or in any manner connected with the CONTRACTOR'S performance under the terms of this Contract, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of CONTRACTOR and third persons. In addition, the Contractor shall hold the County of San Benito its officers, agents, and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article, or appliance furnished or used in connection with the Contract or purchase order.

- b. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Contract (including, without limitation, unemployment insurance, Social Security and payroll tax withholding).

## 2. Insurance

CONTRACTOR, at its sole cost and expense, for the full term of this Contract (and extensions thereof), shall obtain and maintain at minimum all of the following insurance coverage. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be excess of CONTRACTOR'S insurance coverage and shall not contribute to it.

### a. Types of Insurance and Minimum Limits:

- 1) Worker's Compensation and Employer's Liability Insurance in conformance with the laws of the State of California.
- 2) CONTRACTOR'S vehicles used in the performance of this Contract, including owned, non-owned (e.g. owned by CONTRACTOR'S employees), leased or hired vehicles, shall each be covered with Automobile Liability Insurance in the minimum amount of \$1,000,000.00 combined single limit per accident for bodily injury and property damage.
- 3) CONTRACTOR shall obtain and maintain Comprehensive General Liability Insurance coverage in the minimum amount of \$1,000,000.00 combined single limit, including bodily injury, personal injury, and property damage. Such insurance coverage shall include, without limitation:
  - (i) Contractual liability coverage adequate to meet the CONTRACTOR'S indemnification obligations under this Request,

- (ii) Full Personal Injury coverage,
- (iii) Broad form Property Damage coverage, and
- (iv) A cross-liability clause in favor of COUNTY.

3. Other Insurance Provisions

- a. As to all insurance coverage required herein any deductible or self-insured retention exceeding \$5,000.00 shall be disclosed to and be subject to written approval by COUNTY.
- b. If any insurance coverage required hereunder is provided on a "claims made" rather than "occurrence" form, CONTRACTOR shall maintain such insurance coverage for five years after expiration of the term (and any extensions) of this Contract.
- c. All required Automobile Liability Insurance, Comprehensive or Commercial General Liability Insurance or Professional Liability Insurance shall contain the following endorsement as a part of each policy: **"The County of San Benito is hereby added as an additional insured as respects the operations of the named insured."**
- d. All the insurance required herein shall contain the following clause:

"It is agreed that these policies shall not be canceled nor the coverage reduced until thirty (30) days after the COUNTY shall have received written notice of such cancellation or reduction. The notice shall be deemed effective the date delivered to the COUNTY as evidenced by properly validated return receipt. Such notice shall be sent to: County of San Benito, San Benito County Administration Office, 481 4<sup>th</sup> Street, San Benito, CA 95023."
- e. CONTRACTOR agrees to provide COUNTY at or before the effective date of any award from the IFB with a certificate of insurance of the coverage required.
- f. All required insurance policies shall be endorsed to contain the following clause:

"This Insurance shall not be cancelled until after thirty (30) days prior written notice has been given to:

San Benito County  
Administration Department  
481 4th Street  
Hollister, CA 95023."

4. **CONTRACTOR** agrees to provide its insurance broker(s) with a full copy of these insurance requirements and provide **COUNTY** on or before the effective date of this Contract Certificates of Insurance for all required coverage.
5. In the event of any conflict between this Paragraph I and Attachment C to the County's Standard Contract, the requirements of this Paragraph I shall prevail.

**- END ATTACHMENT D -**