

CONTRACTOR AGREEMENT

THIS AGREEMENT (“**Agreement**”) is entered into this _____ day of _____ 20____, by and between the CITY OF BRISBANE, a municipal corporation (the "**City**"), and **COMPANY**, a (California corporation, partnership, sole proprietor, individual) whose address is Address, (“**Contractor**”), in reference to the following:

RECITALS:

- A. The City of Brisbane is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California.
- B. The City is in need of the following: Annual Street Sweeping Services. City staff issued a Request for Quotes on February 3, 2021, after a submittal period of 19 calendar days, received **NUMBER** of timely submitted bids, and the bids were opened on February 22, 2021. Staff reviewed the bids and City staff selected Contractor as the lowest responsive and responsible bidder.
- C. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.
- D. NOT USED.
- E. City and Contractor desire to enter into an agreement for Annual Street Sweeping Services upon the terms and conditions herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM:

The Contractor shall have one year from the date the work is to commence pursuant to the Notice to Proceed to diligently prosecute the work to completion.

2. SERVICES TO BE PERFORMED:

Contractor shall, at its own cost and expense, furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all work strictly in accordance with the Scope of Work, Specifications, Special Provisions and Plans, which Scope of Work, Specifications, Special Provisions and Plans are hereby referred to and expressly made a part hereof with the same force and effect as if the same were fully incorporated herein.

3. COMPENSATION TO CONTRACTOR:

Contractor shall be compensated for work performed pursuant to this Agreement in the amount and manner set forth in Contractor's bid, which is attached hereto as Exhibit "A" and

incorporated herein by this reference. Payment will be made in the same manner that claims of a like character are paid by the City, with checks drawn on the treasury of said City.

Payment will be made by the City in the following manner: On the first day of each month, Contractor shall submit a written estimate of the total amount of work done the previous month. However, the City reserves the right to adjust budget within and between tasks. Pricing and accounting of charges are to be according to the bid packet pricing, unless mutually agreed to in writing.

(NOT USED) Payment shall be made for 95% of the value of the work completed as determined by the City. The City shall retain 5% of the value of the work as partial security for the completion of the work by Contractor. Retained amounts shall be paid to Contractor within sixty days of acceptance by the City of the project. Payment shall not be construed as acceptance of defective work. No interest will be paid to Contractor on retained funds.

Total compensation for work is \$ [REDACTED], with a [REDACTED] percent contingency in the amount of \$ [REDACTED] for a total not to exceed of \$ [REDACTED]. Use of contingency shall be for items of work outside the original scope and requires prior written authorization by the City.

(NOT USED) Prompt Payment Of Withheld Funds To Subcontractors: The City shall hold retainage from the Contractor and shall make prompt and regular incremental acceptances of portions, as determined by the City of the contract work and pay retainage to the Contractor based on these acceptances. The Contractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the City. Any delay or postponement of payment may take place only for good cause and with the City's prior written approval. Any violation of these provisions shall subject the Contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the Contractor in the event of a dispute involving late payment, or nonpayment by the Contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor, including but not limited to remedies under California Public Contract Code Section 9204. This paragraph applies to both DBE and non-DBE subcontractors.

4. TIME IS OF THE ESSENCE:

Time is of the essence regarding the performance of this Agreement.

In case all the work called for under the Agreement is not completed before or upon the expiration of the time limit as set forth in Section 1 above, damage will be sustained by the City, and that it is and will be impracticable to determine the actual damage which the City will sustain in the event of and by reason of such delay. It is therefore agreed that the Contractor will pay to the City the sum of ONE HUNDRED DOLLARS (\$100.00) per day for each and every day's delay beyond the time prescribed to complete the work; and the Contractor shall pay such liquidated damages as herein provided and, in case the same are not paid, the City may deduct the amount thereof from any money due or that may become due the Contractor under the Agreement.

In case the work called for under the Agreement is not finished and completed in all parts and requirements within the time specified, the City shall have the right to extend the time for completion or not, as may seem best to serve the interest of the City; and if the City decides to extend the time limit for the completion of the Agreement, it shall further have the right to charge the Contractor, its assigns, or sureties, and to deduct from the final payment for the work, all or any part, as it may deem proper, of the actual costs and overhead expenses which are directly chargeable to the Agreement, and which accrue during the period of such extensions.

The Contractor shall not be assessed with liquidated damages during any delay in the completion of the work caused by an act of God or of the public enemy, acts of the City, fire, flood, epidemic, quarantine restriction, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; provided that the Contractor shall, within one (1) day from the beginning of such delay, notify the City in writing of the causes of delay. The City shall ascertain the facts in good faith and the extent of the delay, and its findings of the facts thereon shall be final and conclusive.

5. STANDARD OF CARE:

Contractor shall perform all work hereunder in a manner commensurate with the prevailing standards of like professionals in the San Francisco Bay Area and agrees that all work shall be performed by qualified and experienced personnel who are not employed by the City nor have any contractual relationship with City.

6. INDEPENDENT PARTIES:

Contractor hereby declares that it is engaged as an independent business and it shall perform its work as an independent contractor. The manner and means of conducting the work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Contractor's work or this Agreement. None of the benefits provided by City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Contractor, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, CalPERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Contractor. Payments of the above items, if required, are solely the responsibility of Contractor.

7. IMMIGRATION REFORM AND CONTROL ACT (IRCA):

Contractor assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Contractor shall indemnify, defend, and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Contractor.

8. NON-DISCRIMINATION:

Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, any harassment or discrimination directed toward a job applicant, a

City employee, or a third party by Contractor or Contractor's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Any and all violations of this Section shall constitute a material breach of this Agreement.

9. HOLD HARMLESS:

Contractor shall indemnify, defend, and hold harmless the City, its City Council, boards, commissions, officials, employees, and volunteers ("Indemnitees") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("Claims"), arising from or in any manner connected to Contractor's negligent act or omission, whether alleged or actual, regarding performance of work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence on behalf of the Contractor, Contractor shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Contractor. However, Contractor shall not be obligated to indemnify Indemnitees from Claims arising from the sole negligence or willful misconduct of Indemnitees.

10. INSURANCE:

On or before the commencement of the terms of this Agreement, Contractor shall furnish the City's Public Works Director with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with subsections 10A, B, C and D. Such certificates, which do not limit Contractor's indemnification, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide fourteen (14) days' advance written notice to the City of Brisbane, "Attention: Public Works Director."

Contractor shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to the City's Public Work Director and licensed to do insurance business in the State of California. Endorsements naming the City, its City Council, boards, commissions, officials, employees, and volunteers as additional insured shall be submitted with the insurance certificates.

A. COVERAGE:

Contractor shall maintain the following insurance coverage:

- (1) Workers' Compensation:
Statutory coverage as required by the State of California.
- (2) Liability:
Commercial general liability coverage in the following minimum limits:
 - Bodily Injury: \$1,000,000 each occurrence
 \$2,000,000 aggregate - all other
 - Property Damage: \$1,000,000 each occurrence

\$2,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above.

(3) Automotive:

Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury:	\$1,000,000 each occurrence
Property Damage:	\$1,000,000 each occurrence

or

Combined Single Limit:	\$2,000,000 each occurrence
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(4) Pollution Prevention:

Legal liability required for hazardous materials excavation in the amount of \$2,000,000 each occurrence.

(5) Builders Risk: \$2,000,000.

B. SUBROGATION WAIVER:

In the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Contractor shall look solely to its insurance for recovery. Contractor hereby grants to the City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Contractor or City with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance.

C. FAILURE TO SECURE:

If Contractor at any time during the term hereof should fail to secure or maintain the foregoing insurance, the City shall be permitted to obtain such insurance in the Contractor's name or as an agent of the Contractor and shall be compensated by the Contractor for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. ADDITIONAL INSURED:

City, its City Council, boards, commissions, officials, employees, and volunteers shall be named as an additional insured under all insurance coverages, except worker's compensation insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. SUFFICIENCY OF INSURANCE:

Contractor shall furnish the following bonds from a bonding company, licensed to do fidelity and surety insurance business in the State of California and acceptable to the City's Public Works Director. Faithful Performance Bond and Labor and Material Bond are only required for work over \$25,000.

The insurance limits required by City are not represented as being sufficient to protect Contractor. Contractor is advised to consult Contractor's insurance broker to determine adequate coverage for Contractor.

11. BONDS :

Contractor shall furnish the following bonds from a bonding company licensed to do fidelity and surety insurance business in the State of California and acceptable to the City's Public Works Director:

A. Faithful Performance:

A bond in the amount of 100% of the total contract price guaranteeing the faithful performance of this Agreement, and

B. Labor and Materials (NOT USED):

A bond for labor and materials in the amount of 100% of the total Agreement price.

12. PROHIBITION AGAINST TRANSFERS:

Contractor shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, Contractor's claims for money from the City under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to the City by Contractor.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate

member or cotenant, if Contractor is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Contractor, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

13. SUBCONTRACTOR APPROVAL:

Unless prior written consent from the City is obtained, only those people and subcontractors whose names are listed in Contractor's bid shall be used in the performance of this Agreement.

Requests for additional subcontracting shall be submitted in writing, describing the scope of work to be subcontracted and the name of the proposed subcontractor. Such request shall set forth the total price or hourly rates used in preparing estimated costs for the subcontractor's services. Approval of the subcontractor may, at the option of the City, be issued in the form of a Work Order.

In the event that Contractor employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general and automobile liability insurance in reasonable conformity to the insurance carried by Contractor. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

14. PERMITS AND LICENSES:

Contractor, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City Business License that may be required in connection with the performance of work hereunder.

15. REPORTS:

Each and every report, draft, work product, map, record and other document reproduced, prepared or caused to be prepared by Contractor pursuant to or in connection with this Agreement shall be the exclusive property of the City.

No report, information nor other data given to or prepared or assembled by Contractor pursuant to this Agreement shall be made available to any individual or organization by Contractor without prior approval by the City.

Contractor shall, at such time and in such form as the City may require, furnish reports concerning the status of the work required under this Agreement.

16. RECORDS:

Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by the City that relate to the performance of work under this Agreement.

Contractor shall maintain adequate records of work provided in sufficient detail to permit an evaluation of such work. All such records shall be maintained in accordance with generally

accepted accounting principles and shall be clearly identified and readily accessible. Contractor shall provide free access to such books and records to the representatives of the City or its designees at all proper times, and gives the City the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained for a period of three (3) years after receipt of final payment.

If supplemental examination or audit of the records is necessary due to concerns raised by the City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of this Agreement or failure to act in good faith, then Contractor shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

17. NOTICES:

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals from Contractor to the City shall be addressed to the City at:

City of Brisbane
50 Park Place
Brisbane, CA 94005
ATTENTION: Public Works Director
Ph: 415.508.2130 / Fax: 415.467.5547
Email: cityengineer@brisbaneca.org

All notices, demands, requests, or approvals from the City to Contractor shall be addressed to Contractor at:

[Contractor Name]

[Address]

ATTENTION; [Title]
Ph: (xxx) xxx-xxxx / Fax: (xxx) xxx-xxxx
Email:

18. SAFETY:

The Contractor will be solely and completely responsible for conditions of all vehicles owned or operated by Contractor, including the safety of all persons and property during performance of the work and tasks under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Contractor will comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety

and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. The Contractor's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

The Contractor will immediately notify the City's Public Works Director within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. The Contractor will promptly submit to the City a written report of all incidents that occur in connection with this Agreement. This report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Contractor's employee(s) involved in the incident; (iii) name and address of Contractor's liability insurance carrier; (iv) a detailed description of the incident; and (v) a police report.

19. LAWS TO BE OBSERVED:

Contractor shall comply with all applicable laws, state, federal, and all ordinances, rules and regulations enacted or issued by City. In addition, the Contractor shall keep itself fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Brisbane which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

20. DEPARTMENT OF INDUSTRIAL RELATIONS COMPLIANCE AND PREVAILING WAGE REQUIREMENTS ON PUBLIC WORKS PROJECTS:

Effective January 1, 2015, no contractor or subcontractor may be listed on a bid proposal for a public works project (submitted after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 (with the limited exceptions from this requirement for bid purposed only under Labor code Section 1771.1(a)). Register at <https://efiling.dir.ca.gov/PWCR>

No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

The Contractor is required to post job site notices prescribed by regulations. See 8 Calif. Code Regulation §16451(d).

Effective April 1, 2015, All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner at: <https://apps.dir.ca.gov/ecpr/das/altlogin>

21. HOURS OF LABOR:

As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Agreement, upon the work or upon any part of the work contemplated by this Agreement, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work provided that the employees' compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

The Contractor shall pay to the City a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by the Contractor, or by any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor or a subcontractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half (1½) times the above specified rate of *per diem* wages, unless otherwise specified. Holidays shall be defined in any collective bargaining contract applicable to each particular craft, classification, or type of worker employed.

22. APPRENTICES:

Attention is directed to the provisions in sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor on contracts greater than \$30,000 or 20 working days. The Contractor and any subcontractor shall comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices.

Section 1777.5 requires the Contractor or subcontractor employing workers in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of the public works project, and which administers the apprenticeship program in that trade, for a certificate of approval, if they have not previously applied and are covered by the local apprenticeship standards.

The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if: (1) the Contractor employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions; or (2) if the Contractor is not a signatory to an apprenticeship fund and if the funds administrator is unable to accept Contractor' required contribution. The Contractor or subcontractor shall pay a like amount to the California Apprenticeship Council.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

23. LABOR DISCRIMINATION:

No discrimination shall be made in the employment of persons upon public works because of the race, color, sex, religion, age, national origin, sexual orientation, or physical disability of such persons and every Contractor for public works violating this section is subject to all the penalties imposed for a violation of the provisions of the Labor Code, and, in particular, Section 1735.

24. REGISTRATION OF CONTRACTORS:

Before submitting bids, contractors shall be licensed in accordance with the provisions of Chapter 9, Division 3, of the Business and Professional Code of the State of California.

25. URBAN RUNOFF MANAGEMENT (NOT USED):

The Contractor shall avoid creating excess dust when breaking asphalt or concrete and during excavation and grading. If water is used for dust control, Contractor shall use as little as necessary. Contractor shall take all steps necessary to keep wash water out of the streets, gutters and storm drains.

The Contractor shall develop and implement erosion and sediment control to prevent pollution of storm drains. Such control includes but is not limited to:

- a. Use storm drain inlet protection devices such as sand bag barriers, filter fabric fences, block and gravel filters. (Block storm drain inlets prior to the start of the rainy season (October 15), on site de-watering activities and saw-cutting activities; shovel or vacuum saw-cut slurry and remove from the site).
- b. Cover exposed piles of soil or construction material with plastic sheeting. All construction materials must be stored in containers.
- c. Sweep and remove all materials from paved surfaces that drain to streets, gutters and storm drains prior to rain as well as at the end of the each work day. At the completion of the project, the street shall be washed and the wash water shall be collected and disposed of offsite in an appropriate location.
- d. After breaking old pavement, Contractor shall remove all debris to avoid contact with rainfall or runoff.
- e. Contractor shall maintain a clean work area by removing trash, litter, and debris at the end of each workday. Contractor shall also clean up any leaks, drips, and other spills as they occur.

The objective is to ensure that compliance with the City of Brisbane’s NPDES Permit No. CA0029921 (and any amendment, revision or reissuance thereof) is adequately enforced. These controls should be implemented prior to the start of construction, up-graded as required, maintained during construction phases to provide adequate protection, and removed at the end of construction.

These provisions are intended to be used in conjunction with the California Stormwater Quality Association Stormwater Best Management Practices Construction Online Handbook (copyright 2019 by CASQA), local program guidance materials from City, and any other appropriate documents on storm water quality controls for construction.

Failure to comply with this Section will result in the issuance of noncompliance notices, citations, project stop orders or fines. The fine for noncompliance is one hundred dollars (\$100.00) for a first citation; two hundred dollars (\$200.00) for a second citation; and five hundred dollars (\$500.00) for each additional citation. The State under the Federal Clean Water Act may also impose a fine on the Contractor, pursuant to Cal. Water Code §13385.

26. COMPLIANCE WITH THE CITY’S INTEGRATED PEST MANAGEMENT POLICY (NOT USED):

The Contractor shall follow the requirements of the City's Integrated Pest Management (IPM) Policy to ensure the City is in compliance with its most current Municipal Regional Stormwater NPDES Permit, Order No. issued by the San Francisco Bay Regional Water Quality Control Board.

- Contractor shall use the most current IPM technologies available to ensure the long-term prevention or suppression of pest problems and to minimize negative impacts on the environment, non-target organisms, and human health for the control or management of pests in and around City buildings and facilities, parks and golf courses, urban landscape areas, rights-of-way, and other City properties.
- Contractor will consider the City IPM Policy’s hierarchy of options or alternatives listed below, in the following order before recommending the use of or applying any pesticide on City property: (1)
 - a. No controls (e.g. tolerating the pest infestation, use of resistant plant varieties or allowing normal life cycle of weeds);
 - b. Physical or mechanical controls (e.g. hand labor, mowing, exclusion);
 - c. Cultural controls (e.g. mulching, disking, alternative vegetation) and good housekeeping (e.g. cleaning desk area);
 - d. Biological controls (e.g., natural enemies or predators);
 - e. Reduced-risk chemical controls (e.g., soaps or oils);
 - f. Other chemical controls.
- Prior to applying chemical controls the Contractor shall complete a checklist for the City’s pre-approval that explains why a chemical control is necessary. For annual

contracts that require regular application of chemical controls the contractor shall submit one checklist prior to the initiation of the project demonstrating that the hierarchy has been reviewed and no other options exist. (Attached as Exhibit C). Additionally, the Contractor shall provide documentation to the City's project manager of the implementation of the IPM techniques hierarchy described in the City's IPM Policy.

- Contractor shall avoid the use of the following pesticides that threaten water quality, human health and the environment:
 - a. Acute Toxicity Category I chemicals as identified by the Environmental Protection Agency (EPA)
 - b. Organophosphate pesticides (e.g., those containing Diazinon, chlorpyrifos or malathion)
 - c. Pyrethroids (bifenthrin, cyfluthrin, beta-cyfluthrin, cypermethrin, deltamethrin, esfenvalerate, lambda-cyhalothrin, permethrin, and tralomethrin), carbamates (e.g., carbaryl), and fipronil
 - d. Copper-based pesticides unless their use is judicious, other approaches and techniques have been considered, and the threat of impact to water quality is prevented.
- Contractor shall sign the Contractor Verification Form (attached as Exhibit B) indicating the intent to implement the City's IPM Policy, and return a signed copy to the City's project manager.
- Contractor shall provide to the City's project manager an annual Report of all pesticide usage in support of City operations including pesticide name, active ingredient(s), target pest(s), the total amounts used and the reasons for any increase in use of any pesticide.
- Contractor shall provide a copy of any current IPM certifications(s) to the City's project manager prior to initiation of the service work.

A copy of the City's IPM Policy may be obtained from the City's project manager and is also on file with the City Clerk.

27. PURCHASES OF MINED MATERIALS REQUIREMENT (NOT USED):

Contractor shall ensure that all purchases of mined materials such as construction aggregate, sand and gravel, crushed stone, road base, fill materials, and any other mineral materials must originate from a surface mining operation identified on the AB3098 List per the Surface Mining and Reclamation Act of 1975 (SMARA).

Within five days of award of contract, Contractor shall submit a report to City which lists the intended suppliers for the above materials and demonstrates that the suppliers are in compliance with the SMARA requirements. The AB3098 List is maintained by the Department of Conservation's Office of Mine Reclamation (OMR) and can be viewed at: www.conservation.ca.gov/OMR/ab_3098_list/index.htm. Note that the list changes periodically and should be reviewed accordingly.

28. TERMINATION:

In the event Contractor fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Contractor shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) business days after receipt by Contractor from the City of written notice of default, specifying the nature of such default and the steps necessary to cure such default, the City may terminate the Agreement forthwith by giving to the Contractor written notice thereof.

The City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Contractor as provided herein. Upon termination of this Agreement, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.

29. ATTORNEY'S FEES:

In the event of the bringing of any action or suit by a party hereto against the other party by reason of any breach of any covenants, conditions, obligation or provision arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses of the action or suit, including reasonable attorneys' fees, experts' fees, all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment).

30. PCC SECTION 9204 SUMMARY - CLAIMS SUBMITTED BETWEEN 01-01-2017 AND 01-01-2027:

Notwithstanding anything else to the contrary stated in the Information For Bidders (IFB) or the Contract Documents, all claims, regardless of dollar amount, submitted between January 1, 2017 and January 1, 2027 shall be governed by PCC Section 9204 and this section.

The following provisions and procedures shall apply:

A. For the purposes of this section, the term "Claim", "Contractor", "mediation", "Public Entity" "Public works project" and "Subcontractor" shall have the meaning provided for in PCC Section 9204.

B. Contractor shall submit each Claim (whether for a time extension, payment for money or damages) in writing and in compliance with PCC Section 9204. Contractor must include reasonable documentation to support each claim.

C. Upon receipt of a Claim, the City shall conduct a reasonable review and respond in writing within 45 days of receipt and shall identify in a written statement what portions of the claim are disputed and undisputed. Undisputed portions of the Claim shall be process and paid within 60 days of the written statement. Undisputed amounts not paid in a timely manner shall bear interest at 7% per annum. The City and Contractor may mutually agree to extend the 45 day response time.

D. If the City needs approval from the City Council to provide a written statement, the 45 days may be extended to 3 days following the next duly noticed public meeting pursuant to PCC Section 9204(d)(1)(C).

E. If the City fails to timely respond to a Claim or if Contractor disputes the City's response, Contractor may submit a written demand for an informal meet and confer conference with the City to settle the issues in dispute. The demand must be sent via registered or certified mail, return receipt requested. Upon receipt, the City shall schedule the conference within 30 days.

F. Within 10 business days following the informal meet and confer conference, the City shall submit to Contractor a written statement describing any issues remaining in dispute and that portion which is undisputed. Undisputed portions of the Claim shall be process and paid within 60 days of the written statement. Undisputed amounts not paid in a timely manner shall bear interest at 7% per annum. The issues remaining in dispute shall be submitted to non-binding mediation. If the City and Contractor mutually agree on a mediator, each party shall pay equal portions of all associated costs. If within 10 business days, the City and Contractor cannot agree on a mediator, each party shall select a mediator (paying all costs associated with their selected mediator), and those mediators shall select a qualified neutral third party to mediate the disputed issues. The City and Contractor shall pay equal portions of all associated costs of such third party mediator.

G. Unless otherwise agreed by the City and Contractor, any mediation conducted hereunder shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has commenced.

H. The City reserves all rights and remedies that it has pursuant to this Agreement, plans and specification, at law or in equity which are not in conflict with PCC 9204.

I. This Section shall be automatically extended if legislation is lawfully passed which extends the terms of Public Contract Code Section 9204 beyond January 1, 2027.

31. CONFLICT OF LAW:

This Agreement shall be interpreted under, and enforced by the laws of the State of California excepting any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.) Any suits brought pursuant to this Agreement shall be filed with the courts of the County of San Mateo, State of California.

32. ADVERTISEMENT:

Contractor shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from the City to do otherwise.

33. WAIVER:

A waiver by City of any breach of any term, covenant, or condition contained herein, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

34. INTEGRATED CONTRACT:

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both the City and Contractor.

35. INSERTED PROVISIONS:

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

36. CAPTIONS:

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

Signatures on next page

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

COMPANY NAME
(A California Corporation, partnership,
sole proprietor, individual)

CITY OF BRISBANE,
a Municipal Corporation

(Name)
(Title)

Clayton Holstine
City Manager

RECOMMENDED FOR APPROVAL

(Name)
(Title)

Randy L. Breault
Director of Public Works

Contractor License No. _____

APPROVED AS TO FORM:

DIR No. _____

Michael H. Roush
Legal Counsel