

RESOLUTION NO. 18-46

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KERMAN
APPROVING AGREEMENT WITH CENTRAL VALLEY SWEEPING LLC**

WHEREAS, the City of Kerman desires to contract for street sweeping services and

WHEREAS, the City of Kerman desires to engage a street sweeping company to provide street sweeping services by reason of its qualifications, equipment and experience for performing such services; and

WHEREAS, Central Valley Sweeping LLC has provided a proposal outlining the scope of services and the cost and conditions for such services.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF KERMAN hereby authorizes the City Manager to execute an agreement with Central Valley Sweeping, LLC. (Exhibit 'A') which incorporates the terms of the proposal.

The foregoing resolution was introduced at a regular meeting of the City Council of the City of Kerman held on the 18th day of July, 2018 and passed at said regular meeting by the following vote:

AYES: Yep, Arvance, Armstrong
NOES: None
ABSENT: Dhaliwal, Sandoval
ABSTAIN: None

The foregoing resolution is hereby adopted.


Rhonda Armstrong
Mayor

ATTEST:


Marci Reyes
City Clerk

"City"

STREET SWEEPING AGREEMENT

This Agreement is effective this 31st day of July, 2018, by and between the City of Kerman, a Municipal Corporation, hereinafter designated and called "City," and Central Valley Sweeping, LLC, a California corporation, hereinafter designated as "Contractor."

RECITALS

- A. The City of Kerman has historically contracted out its City street sweeping services.
- B. Contractor is engaged in the business of furnishing street sweeping services for cities and other public entities.
- C. Contractor hereby represents that it desires to perform and that it is professionally and legally capable of performing the services called for by this Agreement.
- D. This Agreement will be administered for City by the City Manager or City Manager's designee.

AGREEMENT

In consideration of the mutual promises and covenants contained herein including the recitals which are incorporated, City and Contractor agree as follows:

1. SCOPE OF SERVICES.

A. General. Contractor shall provide street sweeping services in the City using Contractor's equipment or equipment provided at the Contractor's expense. The Contractor will use regenerative air or mechanical broom sweepers agreed upon with the City as the type of sweeper that does the best job for the material that it is required to remove from the City streets. All sweepers used shall be PM-10 compliant. Contractor will be responsible for deliver to the City's yard, waste and debris collected during sweeping services.

B. Services Areas. Contractor will perform sweeping services in the service areas as described: the west side of Madera Avenue within the City limits, the east side of Madera Avenue within the City limits, State Route 145 and State Route 180. The residential and commercial areas will be swept once per week and the State Routes will be swept two (2) times per week.

C. Special Areas. Special Areas will be swept one (1) time per week and include:

- City Hall Parking lots
- Kerckhoff Parking lots
- Parking Lot behind Valley West Properties
- Rotary Park parking lot
- Industrial Way cul-de-sac

2. COMPENSATION.

A. Regular Services. City agrees to pay Contractor for services rendered according to the rate of \$7,000.00 per month for the fiscal year 2018-2019 and will pay an adjusted rate each year based upon the United States Department of Labor – Bureau of Labor Statistics – CPI databases. Average Price Data will be used for any such rate increase.

B. Additional Services. Additional services shall be provided at the following rates:

Residential Streets without medians at a rate of \$65 per mile
Residential Streets with medians at a rate of \$75 per mile
Parking lots would be added at \$0.00135 per square foot
Alleys would be added at \$55 per mile

C. New Residential Services. For new residential streets to be added to the schedule, such services shall be pro-rated to the nearest one-tenth mile.

D. Additional Services. Additional sweeping on a one-time basis shall be provided at the rate of \$150 per hour on regularly scheduled work days. If additional non-scheduled (emergency sweeping) is performed on a day other than a regularly scheduled work day, service shall be at the rate of \$200 per hour portal to portal.

E. Payment. Payment shall be made within thirty (30) days of receipt of an invoice for all authorized services.

F. Rate Changes. Beginning July 1, 2019, for the fiscal year 2019-2020 and on each July 1 thereafter for each succeeding year during the life of the contract or any extensions or renewals, rates may be adjusted by a percentage equal to the United States Department of Labor – Bureau of Labor Statistics – CPI databases – Average Price data for the 12 month period ending on May 31 of the just completed fiscal year.

3. MISSED OR DELAYED SERVICE.

A. If Contractor is unable to perform scheduled sweeping due to any cause, Contractor shall be permitted to perform “make-up sweeping” service within four (4) working days without penalty. In the event no make-up service is provided, Contractor shall have \$200 deducted from compensation for each scheduled day of service for which no sweeping was performed.

B. Service missed due to the observance of New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day shall be performed not later than two (2) working days after the holiday.

4. TERM OF AGREEMENT.

The term of this Agreement will be for five (5) years and will commence on August 1, 2018 and end on July 31, 2023. This Agreement may be extended for an additional two (2) year period on the same terms and conditions upon written notice given by the City at least thirty (30) days in advance of the termination date.

5. EARLY TERMINATION OF CONTRACT.

- A. For Breach. If, in the sole judgment of the City, services provided under this Agreement are not satisfactory, City shall notify Contractor in writing that service is unsatisfactory and specify the acts or omissions which are unsatisfactory. Contractor shall have thirty (30) days from receipt of such notice to correct the acts or omissions to the satisfaction of the City. If Contractor's services are not satisfactory to City at the conclusion of the thirty (30) day correction period, City shall notify Contractor that the Agreement shall be terminated in thirty (30) days and City shall have no further obligation for services provided thereafter, or any obligation for early termination.
- B. For Convenience. Either party may terminate this Agreement upon 60 days written notice.

6. INDEMNITY.

The City shall not be liable to the Contractor or to any other person, firm, or corporation whatsoever, for injury or damage that may result to any person or property by or from any cause whatsoever in, on, or about as a result of Contractor's performance of the work or services covered by this Agreement, or any part thereof.

To the furthest extent allowed by law, Contractor shall indemnify, hold harmless, and defend City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, and property damage), and from any and all claims, demands, and actions in law or equity (including reasonable attorney's fees and litigation expense) that arise out of, pertain to, or related to the negligence, recklessness, or willful misconduct of Contractor, its principals, officers, employees, agents, or volunteers in the performance of this Agreement. The obligation under this paragraph is in addition to and is not limited by any insurance which Contractor is otherwise required to maintain under this Agreement.

7. INSURANCE.

Contractor and his subcontractors shall pay for any materials, provisions, and other supplies or items used in, upon, for, or about the performance or the work or services contracted to be done except as expressly set forth in this Agreement, and for any work or labor thereon of any kind and for any work or labor thereon of any kind and for amounts due under the Unemployment Insurance Act of the State of California, with respect to such work or labor, if applicable, and shall file with the City pursuant to section 3800 of the Labor Code a Certificate of Workers' Compensation or other certificate as provided in said section.

Contractor shall provide comprehensive general liability insurance covering all of Contractor's activities in connection with the performance of this Agreement in the amount of \$1,000,000 per accident for bodily injury, and \$1,000,000 per accident for property damage. City shall be named as an additional insured, and proof of such insurance shall be provided to the City in a form acceptable by City prior to commencement of work.

8. NOTICES.

Notices to be provided under this Agreement shall be sent by registered mail, return receipt requested, to the parties at the following addresses:

CITY: Mr. John Kunkel
City of Kerman
850 S. Madera Ave.
Kerman, CA 93630

CONTRACTOR: Mr. Matthey Bawks
P.O. Box 6786
Visalia, CA 93290

9. INDEPENDENT CONTRACTOR.

This Agreement is by and between City and Contractor and is not intended, and shall not be construed to create the relationship of agent, servant, Employee, partnership, joint venture, or association as between City and Contractor. Contractor understands and agrees that all persons furnishing services to City pursuant to this Agreement are for all purposes, including but not limited to workers' compensation and other liability, employees solely of Contractor and not of City.

10. ASSIGNMENT AND MODIFICATION.

No assignment of this Agreement or any duty or obligation of performance hereunder shall be made in whole or any part by Contractor without written consent of City. No modification of this Agreement, of any authorization for additional services shall be valid unless made in writing by the City Manager of City.

11. ATTORNEYS' FEES.

In the event that it becomes necessary for either party to bring action with respect to enforcement of the provisions of the Agreement, the prevailing party in such action shall be awarded reasonable costs and attorneys' fees as may be determined by the Court.

12. COMPLIANCE WITH LAW. In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws of the United States, the State of California, and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted,

issued, or amended during the term of this Agreement. Contractor shall ensure that all employees have requisite licenses for performing work required by this Agreement.

13. WAIVER. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

14. GOVERNING LAW AND VENUE. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

15. HEADINGS. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.

16. SEVERABILITY. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

17. INTERPRETATION. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

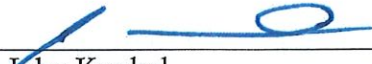
18. AUTHORIZATION. Contractor represents and warrants that the signatory to this Agreement is fully authorized to obligate Central Valley Sweeping, LLC hereunder and that all corporate acts necessary to the execution of this Agreement have been accomplished.

SIGNATURES ON NEXT PAGE

The parties have executed this Agreement on the day and year above first written.

CITY:


CITY OF KERMAN



John Kunkel
City Manager

CONTRACTOR:

CENTRAL VALLEY SWEEPING, LLC




Matthew Bawks
President

ATTEST:



Marci Reyes
City Clerk

APPROVED AS TO FORM:



Hilda Cantú Montoy
City Attorney