

City of Madison, Alabama
Invitation to Bid
#2024-003-ITB | Janitorial Services for City Facilities
Issued February 14, 2024

FIRST AMENDED CONTRACTOR SERVICES AGREEMENT

THIS AGREEMENT for janitorial services is made and entered into by and between the City of Madison, Alabama, a municipal corporation, located at 100 Hughes Road, Madison, Alabama 35758, hereinafter referred to as “City,” and **Jani-King of Huntsville** located at 114 Arlington Drive, Madison, AL 35758, hereinafter referred to as “Contractor.”

WHEREAS, in accordance with the applicable competitive bid laws found in Title 41, Article 3 of the *Code of Alabama*, the City solicited bids for the provision of janitorial services; and

WHEREAS, on March 12, 2024, the City and the Contractor entered an agreement for the Contractor to begin providing janitorial services to City Facilities to include the City’s Community Center on or about August 3, 2024; and

WHEREAS, due to delays in the construction of the City’s Community Center, the City cannot open said Community Center until September 3, 2024; and

WHEREAS, upon being informed of the delay, the Contractor has agreed to amend the original Agreement to provide that the Contractor shall begin janitorial services on for the Community Center on September 3, 2024; and

WHEREAS, Section 3 (A) of the original Agreement requires the parties to memorialize any and all changes to the agreement in writing; and

WHEREAS, the parties seek to only change the date that the janitorial services shall commence at the Community Center and the parties make no other additions or revisions to the original agreement other than this revised September 3, 2024 start date.

NOW, THEREFORE, for and in consideration of mutual covenants and agreements herein set forth, the parties hereto agree to the following Amended Professional Services Agreement:

1. SERVICES TO BE PROVIDED; TERMS AND CONDITIONS.

Contractor shall furnish all labor, equipment, transportation, and material necessary to provide janitorial services to the Community Center as set forth in, and according to the terms and conditions of, the Invitation to Bid, the Bid Packet (including any addenda thereto), and the Bid Specifications as they were each issued in the above-referenced project, each of those documents being included by reference in Contractor’s Bid Submittal, which is, in turn, hereby fully incorporated into this Agreement.

2. COSTS AND PAYMENT.

The parties understand and agree that the pricing submitted by Contractor and accepted by the City includes all costs for all labor, equipment, transportation, and material necessary to provide these services, including any fees, materials costs, chemical costs, and fuel costs associated with Contractor’s provision of the services. Payment shall

be rendered to Contractor on a monthly basis by the City after its receipt and approval of Contractor's unified invoice, terms net thirty (30) days.

3. AMENDMENT TO AGREEMENT.

A. Amendments to Agreement: Unless otherwise specified in this Section 3, no variation or modification of this Agreement, and no waiver of its provisions will be valid unless in writing and signed by duly authorized representatives of the City and the Contractor. Change orders may be allowed only under the following conditions:

1. Minor changes for a total monetary amount less than that required for competitive bidding under Title 41 of the Code of Alabama; or
2. Changes for matters incidental to the original contract necessitated by unforeseeable circumstances arising in the course of work under the Contract; or
3. Changes due to emergencies; or
4. Changes provided for as alternates in this Contract; or
5. Changes of items not contemplated or foreseen when the plans and specifications were prepared and the ITB was advertised, which are in the public interest, and which generally do not exceed ten percent (10%) of the Contract price, subject to Alabama Bid Law exceptions.

It is expected that the Contractor will complete the services as required in the bid packet. However, if a change order condition arises, Contractor shall immediately notify the City Representative in writing. If the change is minor in the opinion of the City Representative and does not involve (1) an increase in Contract price; (2) an extension of performance time; or (3) a material change in the scope of the Work, then the City Representative may authorize the change and the Contractor may then implement it. In the event the change is not minor and/or does involve any one or more of the criteria listed above, the City Council must authorize the Change Order before it becomes effective. In no event is a change order to be executed by Contractor prior to proper written approval, except in the case of emergencies.

4. EFFECTIVE DATE; COMMENCEMENT OF SERVICES; TERM.

This Agreement shall become effective when the appropriate representatives of the parties finally execute and affix their respective signatures hereto in their duly authorized capacities. In the event the signatures are affixed on different dates, the date of the latter signature shall be the effective date.

Services shall be provided by Contractor pursuant to the terms set forth herein for a period of twelve (12) months from the effective date. City reserves the right to extend this Agreement for two (2) additional one (1) year periods, not to exceed a total of three (3) years operating under the terms set forth herein.

No later than thirty (30) days prior to the expiration of any twelve (12) month period properly contracted between the parties, City shall notify Contractor of its decision regarding extension of the Agreement for an additional twelve (12) months. In the event notice is not given, Contractor shall continue to provide services to City under the terms set forth herein on a month-to-month basis, the aggregate term of service not to exceed three (3) years.

5. TERMINATION.

A. If Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workmen or sufficient equipment, or if it should refuse or fail to make prompt payment to persons supplying labor for the Project under the Contract, or persistently disregard instructions of the City Representative, or fail to observe or perform the material provisions of the Contract Documents, or fail

or neglect to promptly prosecute or perform the Project in substantial accordance with the Contract Documents, or otherwise be guilty of a substantial violation of any provision of the Contract Documents, then the City may, on giving at least thirty (30) days' written notice to the Contractor, without prejudice to any other rights or remedies of the City in the premises, terminate the Contractor's employment under the Contract if, in the judgment of the City, the noticed default(s) have not been cured within said thirty (30) days. In such event, the City may take over the Project and prosecute the same to completion, by contract or otherwise, and the Contractor and its sureties shall be liable to the City for any and all excess costs and fees occasioned to the City thereby, including attorney's fees. In the event of such termination, the same shall not relieve the Contractor or any of its sureties of their remaining obligations pursuant to this agreement. In the event it becomes necessary for the City to maintain any legal action against the Contractor, to enforce its rights herein, and City receives a final order in its favor, then the Contractor shall pay the City all expenses, costs, and fees associated therewith including a reasonable attorney's fee.

- B. It is agreed that this Agreement will automatically terminate without notice upon the occurrence of any of the following:
1. an assignment by Contractor for the benefit of creditors;
 2. the institution of voluntary or involuntary proceedings against Contractor in bankruptcy, or under any other insolvency or similar law; or
 3. the dissolution of Contractor as a legal entity.

6. INDEPENDENT CONTRACTOR RELATIONSHIP.

City and Contractor hereby state that it is their mutual intent that an independent contractor relationship be and hereby is established under the terms and conditions of this Agreement. They also state that it is further mutually understood and agreed that employees of the Contractor are not, nor shall they be deemed to be employees of the City and that employees of the City are not, nor shall they be deemed to be employees of the Contractor.

7. INDEMNIFICATION AND INSURANCE.

- A. Contractor shall indemnify and hold harmless the City from all loss or damage forming the basis of any suit, judgment, execution, claim, or demand, including costs and attorney's fees, which arise out of the Contractor's negligence or willful misconduct in the performance of its obligations under this Agreement, except to the extent that such arise out of the City's negligence.
- B. Contractor further agrees to maintain and keep in full force and effect at all times during the term of this Agreement sufficient property damage and personal injury and public liability insurance coverage to protect the City and the Contractor against any such claims, suits, judgments, executions, or demands, such coverage to be of the types and in the amounts set forth in the Bid Packet. The Contractor shall name the City and its employees, agents, and servants as additional insureds in said policy.
- C. All insurance policies as required of the Contractor in this Agreement shall be written by a company or companies authorized and qualified to do business in the State of Alabama. Contractor shall promptly file the certificates of all coverage required hereunder with the Purchasing Division of the Finance Department within ten (10) days of the effective date of this Agreement.
- D. Each insurance policy and certificate shall provide, in effect, that the policy may not be cancelled, non-renewed, or materially changed by the insurer until at least thirty (30) days after the insurer shall have

notified the City of such action in writing by sending the same to the point of contact identified in Section 20.

- E. Each insurance policy and certificate shall provide, in effect, that the policy will be renewed and further renewed unless the insurer shall give the City at least thirty (30) days' notice in writing of the insurer's unwillingness to renew by sending the same to the point of contact identified in Section 20.
- F. This insurance shall provide primary coverage as relates to other insurance carried by the City.

8. CONTRACTOR'S CARE AND DILIGENCE.

Contractor is solely responsible for all property claims and/or environmental cleanups resulting from the Contractor's vehicles, employees, actions, or omissions. Any damages to public or private property such as, but not limited to, curbing, driveways, mailboxes, or yards shall be repaired by the Contractor.

During the entire term of this Agreement, the Contractor shall, at a minimum, provide and maintain the necessary means to perform the services required by this Agreement. Any equipment that Contractor furnishes shall remain Contractor's property. To that end, it is hereby agreed that the Contractor shall adhere to the following standards and regulations in performing the services:

1. Provide all equipment necessary for the effective execution of this Agreement.
2. Keep all equipment safe, clean, neat in appearance and in good repair.
3. Keep all equipment free of excessive noise, odor leakage, or emissions.
4. Clearly identify each piece of equipment with the Contractor's name and vehicle number.
5. Provide adequate back-up equipment and maintain uninterrupted services until the completion of the project.
6. Make sure there are no spills or leaks from Contractor's vehicles or equipment.
7. Maintain equipment sufficient to handle the special requirements of the project.
8. Be responsible for any property damage claims or environmental cleanups caused by the Contractor's vehicle, equipment, and/or employees, except as set forth herein.
9. Contractor shall provide whatever measures necessary to properly protect and maintain all existing utilities encountered in the course of work and will be exclusively responsible to the utility owner for all damages incurred.
10. Obtain and pay for all necessary licenses and permits required by the City of Madison.
11. Safety precautions must be taken and shall be in compliance with all applicable provisions of federal, state, and municipal laws to prevent accidents or injury to person or property at all times.

9. SAFETY.

Contractor shall take all necessary precautions for the safety of the public, City and Library employees, and Contractor's employees and shall comply with all applicable provisions of federal, state, and municipal safety laws and codes to prevent accidents or injury to persons and damage to property on or about or adjacent to any location where the Work is being performed. In the event of personal injury, Contractor should take necessary steps to address the immediate needs of the injured individual, contact emergency personnel, and then notify the City Representative of the injury and the location where it occurred. Contractor shall assume all responsibility for any personal injury to the extent resulting from its negligent performance of the Work and shall indemnify and hold harmless the City and Library and its employees, officers, and agents from liability for the same. In the event of property damage caused by the Contractor, Contractor will assume all responsibility to replace or repair, at the Contractor's expense, any public or private property damaged by Contractor through the acts or omissions of its employees, agents, or subcontractors. In the event of injury or damage of any kind or extent, Contractor must immediately notify the City Representative of the injury/damage and its plan to attend to the needs of the injured and/or to replace or repair the

damaged property. In the event of property damage, Contractor must also allow the City Representative the opportunity to view the damage and the repair/replacement offered prior to the damage being resolved.

10. EQUIPMENT AND ACCESS.

Contractor shall adequately protect the property of the City as well as its own equipment and take all necessary precautions while performing the services contracted hereunder to protect all persons and property from damage or loss. Contractor shall take all necessary precautions for the safety of its employees and the City's employees and shall comply with all applicable provisions of the federal, state, and local safety laws and building codes to prevent accidents and injury to persons on, about, or adjacent to the premises where services are being performed. Contractor shall post all applicable signage and other warning devices necessary to protect against potential hazards resulting from the performance of the services contracted hereunder.

11. EXCUSED PERFORMANCE.

In the event performance of any terms or provisions hereof (other than the payment of monies due and owing) shall be delayed or prevented because of compliance with any law, decree, or order of any governmental agency or authority, whether the same shall be local, state or federal in origin, or because of riots, war, public disturbances, strikes, lockouts, differences with workmen, fires, floods, acts of God, or any other reason which is not within the control of the party whose performance is interfered with and which, by the exercise of reasonable diligence, said party is unable to prevent, the party so suffering may, at its option, suspend, without liability, the performance of its obligations hereunder (other than the payment of monies due and owing) during the period of such suspension of performance of duties hereunder.

12. TIME OF THE ESSENCE.

Time is of the essence in Contractor's performance of services under this Agreement. Except in the case of excused performance addressed in Section 11, if Contractor should fail to provide services according to the schedule in the ITB, then City will be entitled in its sole discretion, to reimburse itself liquidated damages by withholding such amounts from any monies due Contractor under the Agreement. For each day services are not provided according to the schedule, as determined by the City Representative, the City will withhold from Contractor payment at the rate of two hundred dollars (\$200.00) per day in liquidated damages to fairly reimburse the City its costs of replacement cleaning services and related administrative expenses. The City Representative shall provide seven (7) business days' notice and the opportunity to cure to Contractor before withholding liquidated damages.

13. IMMIGRATION LAW COMPLIANCE.

If Bidder employs persons in the State of Alabama, Bidder must provide written certification of compliance with *Ala. Code* § 31-13-9 (1975, as amended) by submitting with your Bid documentation proving your enrollment in the E-Verify program and by signing the "Immigration Law Compliance Statement" which is included in the ITB packet.

Further, the award of any Contract as a result of this ITB shall be conditioned upon the successful Bidder's not knowingly employing, hiring for employment, or continuing to employ an unauthorized alien within the State of Alabama and swearing or affirming that it shall not violate state or federal immigration laws.

Be advised that, upon award of any Contract resulting from this ITB, the successful Bidder and the City shall therein affirm, for the duration of the agreement, that they will not violate state or federal immigration laws or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, either contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

To the fullest extent permitted by law, the successful Bidder shall defend, indemnify, and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Bidder's failure to fulfill its obligations set forth in this paragraph or contained in *Ala. Code § 31-13-1 (1975), et seq.*

14. OPEN TRADE.

By signing this contract, Contractor represents and agrees that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.

15. SEVERABILITY AND WAIVER.

The partial or complete invalidity of any one or more provision of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, condition, or right as respect further performance. It is hereby understood and agreed by the parties that it is their individual and mutual intent to enter into this Contract in full compliance with Title 41 of the Code of Alabama and that, in the event any provision or the absence of any provision in this Contract conflicts therewith, Title 41 shall prevail.

16. ENTIRE AGREEMENT.

The instant document, inclusive of all other Contract Documents which have been incorporated by reference in Section 1, contains the entire Agreement between the parties with respect to the subject matter hereof and nullifies and replaces any previous Agreement or representations, whether oral or written, addressing the same. Any Agreement made hereafter shall be ineffective to modify or terminate this Agreement or constitute a waiver of any provisions hereof unless such Agreement is in writing and signed by the party against whom enforcement is sought.

17. ORDER OF PRECEDENCE.

Should there be a direct conflict between the various elements of the Contract Documents to the extent the same cannot be reconciled to be read *in para materia*, then precedence shall be given to the various component documents in the following order:

1. Change Orders or amendments to Agreement after execution
2. Agreement
3. Addenda (in reverse order of issuance) (if issued)
4. Invitation to Bid and bid specifications
5. Advertisement for Bids

Where more than one document relates to the same matter, if both can be given reasonable effect, then both shall be retained.

18. ASSIGNING OF CONTRACT.

Contractor may not assign, transfer, convey, sell, or otherwise dispose of any portion of this Agreement or any part thereof without duly authorized, written consent of the City.

19. GOVERNING LAW.

The laws of the State of Alabama shall govern this Agreement and the parties agree that proper venue for the resolution of any dispute shall be properly had in the courts of Madison County, Alabama.

20. NOTICES.

**Address all notices to the City
as follows:**

City of Madison
Facilities and Grounds Department
100 Hughes Road
Madison, Alabama 35758

**Address all notices to the Contractor
as follows:**

Jani-King of Huntsville
114 Arlington Drive
Madison, AL 35758

With a copy to:

City of Madison Legal Department
100 Hughes Road
Madison, Alabama 35758

(INTENTIONALLY LEFT BLANK WITH SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the undersigned hereby affirm that they have the authority to execute this Agreement on behalf of their respective entities for the entire term and have hereunto set their hands and seals on the day and year respectively noted.

**City of Madison, Alabama,
a municipal corporation**

Attest:

By: _____
Paul Finley, Mayor

Lisa D. Thomas, City Clerk-Treasurer

Date: _____

STATE OF ALABAMA)
)
COUNTY OF MADISON)

I, the undersigned Notary Public, in and for said County, in said State, hereby certify that Paul Finley and Lisa D. Thomas, whose names as Mayor and the City Clerk-Treasurer, respectively, of the City of Madison, Alabama, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of the City of Madison, Alabama, a municipal corporation.

Given under my hand and official seal this ____ day of _____, 2024.

Notary Public

Jani-King of Huntsville

By: Hayden Bradford

Its: Account Executive

Date: 7/8/24

STATE OF ALABAMA)

)

COUNTY OF MADISON)

I, the undersigned Notary Public, in and for said County, in said State, hereby certify that Hayden Bradford, whose name as Account Executive of **Jani-King of Huntsville**, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 8th day of July, 2024.

Amy Kathleen McWilliams
Notary Public

AMY KATHLEEN MCWILLIAMS
Notary Public, Alabama State at Large
My Commission Expires November 14, 2026