

**FIFTH AMENDMENT TO CONTRACT SERVICES AGREEMENT
TO PROVIDE STREET SWEEPING SERVICES
FOR THE CITY OF CARSON, CALIFORNIA**

This **FIFTH AMENDMENT TO CONTRACT SERVICES AGREEMENT TO PROVIDE STREET SWEEPING SERVICES FOR THE CITY OF CARSON, CALIFORNIA** ("Fifth Amendment") by and between the CITY OF CARSON, a California municipal corporation ("City") and Nationwide Environmental Services, a division of Joe's Sweeping, Inc., a California Corporation ("Contractor"), is effective as of July 1, 2021.

RECITALS

A. City and Contractor entered into that certain "Contract Services Agreement" ("Agreement") dated July 1, 2008, for street sweeping services within the City, which provided for an annual contract sum of \$731,420; and

B. City and Contractor entered into that certain "First Amendment to Contract Services Agreement" ("First Amendment") dated February 1, 2011, for street sweeping services within the City, which made amendments to the provisions of the Agreement relating to Scope of Services, CPI adjustments, Extraordinary Adjustments, Term, and Termination; and

C. City and Contractor entered into that certain "Second Amendment to Contract Services Agreement" ("Second Amendment") dated April 1, 2014, for street sweeping services within the City, which made amendments to the provisions of the Agreement, as amended by the First Amendment, relating to Scope of Services, Term, and Termination, and which amended the Contract Sum provisions of the Agreement to authorize an additional annual sum of \$58,000 for sidewalk sweeping services; and

D. Section 2.3 (Future Adjustments) of the Agreement, as amended by the First Amendment, provides, "[e]ffective July 1, 2009, and on each July 1 thereafter, the compensation paid to the contractor may be adjusted annually to rates that are based upon changes in the Consumer Price Index ("CPI", All Urban Consumers for Los Angeles-Anaheim-Riverside Area, as published by the United States Department of Labor, Bureau of Labor Statistics. The Contractor shall submit to the City, each April, beginning in 2009, information in support of an annual adjustment. The information will include changes in the CPI that have occurred during the preceding calendar year. The City Manager or designee shall review the information submitted by Contractor and will refer the proposed adjustment to City Council for approval, in its reasonable judgment."

E. Between the effective date of the Agreement and the end of 2018, five CPI increases requested by Contractor were approved for budgeting purposes by the City Council, and thereafter paid by the City, in the total amount of \$72,958.44, as follows: (1) CPI increase of 2.2%, effective July 1, 2013; (2) CPI increase of 1.3%, effective July 1, 2015; (3) CPI increase of .91% effective July 1, 2016; (4) CPI increase of 1.89%, effective July 1, 2017; and (5) CPI increase of 2.79%, effective July 1, 2018. City and Contractor ratified the Prior CPI Increases by entering into that certain "Third Amendment to Contract Services Agreement" (Third Amendment) effective July 1, 2019. The Third Amendment also authorized a CPI Increase of 3.8% pursuant to request submitted by Consultant on April 2, 2019, thereby increasing the

contract sum by \$32,770.32 (in addition to the \$72,958.44 reflecting the previous CPI Increases) to \$895,148.76.

F. On April 1, 2020, Contractor submitted a request to the City for a 2.96% cost of living increase pursuant to Section 2.3 of the Agreement, and the City approved of same, resulting in the parties entering into that certain “Fourth Amendment to Contract Services Agreement” (“Fourth Amendment”) effective July 1, 2020, thereby increasing the annual Contract Sum by \$26,496.64, for a total contract sum of \$921,645.48.

G. Also by the Fourth Amendment, pursuant to Section 2.3 of the Agreement, the Parties increased the hourly rates specified in Section C.1(2) of Exhibit “C” of the Agreement, for additional street sweeping services requested by the Contract Officer and not otherwise specified in the Agreement, to reflect the cumulative effects of CPI, as such effects had been identified and determined, with respect to the annual contract sum, by the aforementioned CPI increases.

H. Section 2.4 (“Extraordinary Adjustments”) of the Agreement provides as follows, in part: “... the Contractor or the City may request an adjustment to the compensation paid to the Contractor at times other than those specified in Section 2.3 [CPI adjustments], based upon unusual changes in the cost of providing service under this agreement. The Contractor may request only one such adjustment during any rate year. Unusual changes may include changes in components of the disposal rate, changes in the disposal site requested by the City, changes in state or local government solid waste fees and charges, and changes in the law. The changes do not include inaccurate estimates by the Contractor of its proposed cost of operations. For each request, the Contractor must prepare a schedule documenting the extraordinary costs. The request shall be prepared in a form acceptable to the City with support for all assumptions made by the Contractor in preparing the estimate. The City shall review the Contractor’s request and, in the City’s reasonable judgment, make the final determination on the appropriate amount of the adjustment, if any.”

I. On February 16, 2021, Contractor submitted: (1) a request to the City for a 1.5% cost of living increase pursuant to Section 2.3 of the Agreement (equivalent to an annual contract sum increase of \$13,824.68), effective July 1, 2021; and (2) a request for a monthly rate adjustment of \$4,836.25 pursuant to Section 2.4 of the Agreement based on asserted extraordinary costs resulting from an increase of 77.94% since 2008 in the rates charged by third parties to Contractor for disposal of street sweeping debris pursuant to the Agreement, effective April 1, 2021 (the “Request”). In subsequent correspondence, Contractor provided further supporting documentation for the rate adjustment request pursuant to Section 2.4 of the Agreement and offered an effective date of July 1, 2021 for both rate adjustment components of the Request.

J. The City has reviewed the Request and supporting documentation submitted by the Contractor, and has determined as follows: (1) the requested 1.5% CPI increase is accurate and appropriate pursuant to Section 2.3 of the Agreement, and the City sees fit to approve of same, resulting in an increase of \$13,824.68 to the contract sum per annum; and (2) the requested increase pursuant to Section 2.4 of the Agreement is appropriate, as the City’s understanding of the supporting documentation submitted by Contractor is that the entirety of the aforementioned 77.94% increase in disposal rates that is the subject of this portion of the Request is attributable to unusual or extraordinary causes rather than to inflation, cost of living, usual market forces, or

other usual or ordinary causes or changes, and the City therefore sees fit to approve of same, resulting in an increase of \$58,035 to the contract sum per annum. Adding the two adjustments together results in a total increase of \$71,859.68 to the per-annum contract sum, thereby increasing the per annum contract sum from \$921,645.48 to \$993,505.17.

K. Based on the foregoing, the Parties now wish to amend certain provisions of the Agreement (as amended by the First, Second, Third, and Fourth Amendments, where applicable), through this Fifth Amendment.

TERMS

1. **Contract Amendments.** The Agreement (as amended by the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment, where applicable) is hereby amended only as provided in this Section 1 of this Fourth Amendment (additions shown in ***bold italics***, deletions shown in ~~strike through~~ font), as follows:

A. Section 2.1, Contract Sum, is hereby amended to read in its entirety as follows:

“2.1 Contract Sum. For the services rendered pursuant to this Agreement, the Contractor shall be compensated in accordance with the “Schedule of Compensation” attached hereto as Exhibit “C” and incorporated herein by this reference, but not exceeding the maximum contract amount of ***Nine Hundred Ninety-Three Thousand Five Hundred Five Dollars and Seventeen Cents (\$993,505.17)*** ~~Nine Hundred Twenty-One Thousand Six Hundred Forty-Five Dollars and Forty Cents (\$921,645.40)~~ (“Contract Sum”) per annum, except as provided in Section 1.8. The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with the percentage of completion of services, (iii) payment for time and materials based upon the Contractor’s rates as specified in the Schedule of Compensation, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation. Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expense, transportation expense approved by the Contract Officer in advance, and no other expenses and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City; Contractor shall not be entitled to any additional compensation for attending said meetings.”

B. Section C.1 of Exhibit “C” (Schedule of Compensation) of the Agreement is hereby amended to read as follows:

“C.1. For the services required herein, the Contractor shall be paid the following as the Contract Sum:

1. The annual sum of ***Nine Hundred Twenty Four Thousand Four Hundred Six Dollars and Twenty-Five Cents (\$924,406.25)*** ~~Eight~~

~~Hundred Fifty-Five Thousand Two Hundred Eighty-Three Dollars and Three Cents (\$855,283.03)~~ in twelve (12) monthly installments at the time specified in this Agreement. The Contract Sum shall be adjusted annually, in accordance with section 2.0 Compensation of this Agreement.”

2. Any additional street sweeping services requested by the Contract Officer and not otherwise specified in the Agreement shall be performed by the Contractor at one of the following rates ~~\$112.75~~ ~~\$111.08~~ per hour per sweeper, ~~\$36.30~~ ~~\$35.76~~ per curb mile. The City shall maintain sole discretion in selecting which rate shall apply when additional services are employed. These hourly or curb mile rates shall be adjusted on the anniversary of the Commencement Date in the manner set forth in this Agreement. The hourly rate shall apply whenever special services are requested by the Contract officer. The mileage rate shall apply to any new streets added or deleted from the sweeping schedule.

3. The additional annual sum of ***Sixty-Nine Thousand Ninety Eight Dollars and Ninety-Two Cents (\$69,098.92)*** ~~Sixty-Six Thousand Three Hundred Sixty-Two Dollars and Thirty-Seven Cents (\$66,362.37)~~ for sidewalk sweeping services payable in twelve (12) monthly installments at the time specified in the Agreement. Such sum shall be adjusted annually, in accordance with Section 2.0 Compensation of this Agreement.”

2. **Continuing Effect of Agreement.** Except as expressly amended by this Fifth Amendment in Section 1 above, all other terms, conditions and provisions of the Agreement, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment, shall remain unchanged and are in full force and effect. City and Contractor agree that except as expressly provided in this Fifth Amendment in Section 1 above, no other amendments have been made to the Agreement, the First Amendment, the Second Amendment, the Third Amendment, or the Fourth Amendment. From and after the date of this Fifth Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, and this Fifth Amendment to the Agreement. The Agreement, together with the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, and this Fifth Amendment, contains the entire contract between the City and the Contractor and supersedes all prior negotiations, understandings or agreements.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Contractor each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, and this Fifth Amendment, except as expressly amended by this Fifth Amendment in Section 1 above. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided in the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, and this Fifth Amendment. Each party represents and warrants to the other that the Agreement, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment are currently effective, valid, and binding obligations, except as expressly amended by this Fifth Amendment in Section 1 above.

Contractor represents and warrants to City that, as of the date of this Fifth Amendment, City is not in default of any material term of the Agreement, the First Amendment, the Second Amendment, the Third Amendment, and/or the Fourth Amendment, and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement, the First Amendment, the Second Amendment, the Third Amendment, and/or the Fourth Amendment.

City represents and warrants to Contractor that, as of the date of this Fifth Amendment, Contractor is not in default of any material term of the Agreement, the First Amendment, the Second Amendment, the Third Amendment, and/or the Fourth Amendment and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement, the First Amendment, the Second Amendment, the Third Amendment, and/or the Fourth Amendment.

4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Fifth Amendment.

5. **Authority.** The persons executing this Fifth Amendment on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Fifth Amendment on behalf of said party, (iii) by so executing this Fifth Amendment, such party is formally bound to the provisions of this Fifth Amendment, and (iv) the entering into this Fifth Amendment does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Amendment on the date(s) set forth below, with the express intent that this Fifth Amendment be effective as of July 1, 2021.

CITY:

CITY OF CARSON, a municipal corporation

Lula Davis-Homes, Mayor

ATTEST:

Joy Simargo, Deputy City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[BRJ]

CONTRACTOR:

Nationwide Environmental Services, a division of
Joe's Sweeping, Inc., a California Corporation

By: _____
Name: Ani Samuelian
Title: President

By: _____
Name: Suzy Samuelian
Title: Corporate Secretary
Address: 11914 Front St.
Norwalk, CA 90650

Two corporate officer signatures required when Contractor is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2021 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	
<input type="checkbox"/> CORPORATE OFFICER	
<div style="display: flex; justify-content: space-between;"><div><input type="checkbox"/> PARTNER(S)</div><div><div style="border-bottom: 1px solid black; width: 100px; text-align: center;">TITLE(S)</div><div style="display: flex; justify-content: space-between;"><input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL</div></div></div>	<div style="border-bottom: 1px solid black; width: 100%; text-align: center;">TITLE OR TYPE OF DOCUMENT</div>
<input type="checkbox"/> ATTORNEY-IN-FACT	
<input type="checkbox"/> TRUSTEE(S)	
<input type="checkbox"/> GUARDIAN/CONSERVATOR	<div style="border-bottom: 1px solid black; width: 100%; text-align: center;">NUMBER OF PAGES</div>
<input type="checkbox"/> OTHER _____	
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____	<div style="border-bottom: 1px solid black; width: 100%; text-align: center;">DATE OF DOCUMENT</div>
	<div style="border-bottom: 1px solid black; width: 100%; text-align: center;">SIGNER(S) OTHER THAN NAMED ABOVE</div>