

**RESOLUTION NO. 09/10-54
CITY OF DAYTON, OREGON**

Title: A Resolution Approving Renewal of a Personal Services Agreement for Janitorial Services, July 1, 2010 through December 31, 2010

WHEREAS, the City of Dayton has need for janitorial services for its various public facilities; and

WHEREAS, an Invitation for Bids was released in May 2007, inviting interested companies to submit proposals for the work; and

WHEREAS, on June 25, 2007, the work was awarded to ABM Janitorial Services; and

WHEREAS, the City wishes to renew the Agreement for an six months with no increase in hourly or monthly rates and no changes in terms;

The City of Dayton resolves as follows:

- 1) **THAT** the Personal Services Agreement between the City of Dayton and ABM Janitorial Services (attached hereto as Exhibit A and by this reference made a part hereof) is hereby approved and the City Manager is hereby authorized to execute the agreement; and
- 2) **THAT** the effective date of the Agreement shall be July 1, 2010; and
- 3) **THAT** this resolution shall become effective immediately upon adoption.

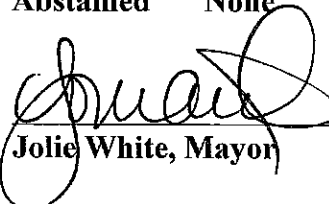
ADOPTED this 21st day of **June, 2010**

In Favor **Dickson, Frank, White, Wytoski**

Opposed **None**

Absent **Blackburn, Evers, Hensley**

Abstained **None**

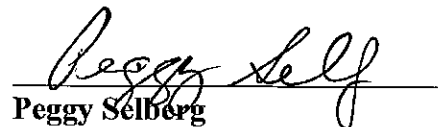


Jolie White, Mayor

6/24/10

Date of Signing

ATTESTED BY:



**Peggy Selberg
City Recorder**

6/21/10

Date of Enactment

Attachment - Exhibit A

AGREEMENT FOR JANITORIAL SERVICES FOR FY 2010/11
City of Dayton, Oregon

A **CONTRACT** between the **CITY OF DAYTON, OREGON** (hereinafter called "City"), and **ABM Janitorial Services** (hereinafter called "Provider").

WHEREAS, the City and Provider believe it is in their mutual interest to enter into a written contract setting out their understandings concerning Provider's provision of services of JANITORIAL SERVICES to the City.

1. **Term:** The term of this contract shall be from July 1, 2010 through December 31, 2010, unless sooner terminated under the provisions of this contract.
2. **Renewal:** At the discretion of the City, contract may be renewed annually for up to three (3) additional years. The City, upon written justification from contractor, may consider an annual increase based upon the latest Portland CPI-W as of the end of the quarter prior to the date of renewal, or 3%, whichever is lower.
3. **Provider's Services:** The scope of the Provider's services and time of performance under this contract are set forth in Exhibit A. All provisions and covenants contained in said Attachment are hereby incorporated by reference and shall become a part of this contract as if fully set forth. Any conflict between this written contract and Provider's Proposal (if any) set forth in Exhibit B shall be resolved first in favor of this written contract. Provider will, in the rendering of its services to the City, use its best efforts and due diligence and provide such personnel as are necessary to successfully provide the services covered by this contract and Exhibits A and B.
4. **Provider Identification:** Provider shall furnish to City Provider's Employer Identification Number (EIN), as designated by the Internal Revenue Service, or, if the Internal Revenue Service has designated no EIN, Provider's Social Security Number.
5. **Compensation:** City agrees to pay Provider at the times and in the amount(s) set out in, and in accordance with, this contract and Exhibits A and B.
6. **Contract Managers:** City's Contract Manager is the City Clerk, Dolly Owens; Contractor's Contract Manager is ~~Alyson Hewitt~~ ^{Alyson Hewitt}. Each party shall give the other written notification of any change in their respective Contract Managers.
7. **Confidentiality of Information:** Provider agrees to assure that employees assigned to work on City premises shall not release any information regarding City projects, contracts, customers, or employees, officers, and elected or appointed officials that may be acquired during the course of their work. No information, news, or press releases related to the contract shall be made to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior authorization of the Contract Manager.
8. **Duty to Inform:** Provider shall give prompt written notice to City's Contract Manager if, at any time during the performance of this contract, Provider becomes aware of actual or potential problems, faults, or defects in any City facility in which services are provided, or any

nonconformity with the contract, or with any federal, state, or local law, rule, or regulation, or has any objection to any decision or order made by City Contract Manager. Any delay or failure on the part of City to provide a written response to Provider shall constitute neither agreement with nor acquiescence in Provider's statement or claim, and shall not constitute a waiver of any of City's rights.

9. **Provider is Independent Contractor:** Provider is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this contract. Provider hereby expressly acknowledges that as an independent contractor, Provider is not entitled to indemnification by the City or the provision of defense by the City under the terms of ORS 30.285.

10. **Overtime:** Any person employed on work under this contract, other than a person subject to being excluded from the payment of overtime pursuant to ORS 653.010 to 653.261 or 29USC§201 to 209, shall be paid at least time and a half for all overtime worked in excess of forty (40) hours in any one week.

11. **Indemnity & Insurance:**
 - a. **Indemnity:** Provider acknowledges responsibility for any and all liability arising out of the performance of this contract and shall hold City harmless from, indemnify and defend City for any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Provider's acts, omissions, activities or services in the course of performing this contract.

 - b. **Liability Insurance:** Provider shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of Provider, the City, its officers, agents, and employees. Coverage shall include personal injury, bodily injury (including death) and broad form property damage, including loss of use of property, occurring in the course of, or in any way related to, Provider's operations, in an amount not less than \$2,000,000 combined single limit per occurrence. Such insurance shall name City, its officers, agents and employees, as additional insured.

 - c. **Workers Compensation Coverage:** Provider certifies that Provider has qualified for State of Oregon Workers Compensation coverage for all Provider's employees who are subject to Oregon Workers Compensation statute, either as a carrier-insured employer as provided by ORS 656.407, or as a self-insured employer. Provider shall provide to City a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers Compensation statutes issued by an insurance company satisfactory to City, if applicable.

 - d. **Certificates of Insurance & Notice of Cancellation:** Provider shall furnish the City certificates of insurance evidencing the date, amount, and type of insurance required by this contract within ten (10) days of Notice of Award and prior to beginning work under this contract. All policies must provide for not less than thirty (30) days' written notice to the City before they may be canceled.

 - e. **Primary Coverage:** The coverage provided by insurance required under this contract shall be primary, and any other insurance carried by the City shall be excess.

12. **Law of Oregon:** This contract shall be governed by the laws of the State of Oregon. Venue shall be in Yamhill County, Oregon.
13. **Successors and Assignments:**
- a. Provider shall retain all books, documents, papers and records that are directly pertinent to this contract for at least three (3) years after the City makes final payment on this contract and all other pending matters are closed.
 - b. Provider shall allow the City, or any of its authorized representatives, to audit, examine, copy, take excerpts from, or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirements.
14. **Subcontracting:** Provider shall not subcontract for any services covered by this contract without the prior, written approval of the City.
15. **Breach of Contract:**
- a. Provider shall remedy any breach of this contract within the shortest reasonable time after Provider first has actual notice of the breach or the City notifies the Provider of the breach, whichever is earlier. If Provider fails to remedy a breach in accordance with this paragraph, the City may terminate that part of the contract affected by the breach upon written notice to Provider, may obtain substitute services in a reasonable manner, and may recover from Provider the amount by which the price for those substitute services exceeds the price for the same services under this contract.
 - a. If the breach is material and Provider fails to remedy the breach in accordance with this paragraph, the City may declare Provider in default and pursue any remedy available for a default.
 - b. Pending a decision to terminate all or part of this contract, the City unilaterally may order Provider to suspend all or part of the services under this contract. If the City terminates all or part of the contract pursuant to this paragraph, Provider shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after the City ordered suspension of those services. If the City suspends certain services under this contract and later orders Provider to resume those services, Provider shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.
 - c. To recover amounts due under this paragraph, the City may withhold from any amounts owed by the City to Provider, including but not limited to amounts owed under this or any other contract between Provider and the City.
16. **Mediation:** Should any dispute arise between the parties to this contract, it is agreed that such dispute will be submitted to a mediator prior to any litigation, and the parties hereby expressly agree that no claim or dispute arising under the terms of this contract shall be resolved other than first through mediation and, only in the event said mediation efforts fail, through litigation. Mediation will be conducted in Yamhill County unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to

respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Yamhill County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.

17. **Termination for Convenience:** The City may terminate all or part of this contract at any time for its own convenience by written notice to Provider. Upon termination under this paragraph, Provider shall be entitled to compensation for all services rendered prior to actual notice of the termination or the receipt of the City's written notice of termination, whichever is earlier, plus Provider's reasonable costs actually incurred in closing out the contract.
18. **Intellectual Property:** The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this contract shall vest in the City. Provider shall execute any assignment or other documents necessary to effect this paragraph. Provider may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Provider shall transfer to the City any data or other tangible property generated by Provider under this contract and necessary for the beneficial use of intellectual property covered by this paragraph.
19. **Payments for Labor or Material:** Provider shall make payment promptly, as due, to all persons supplying to Provider labor or material for the prosecution of the work provided for in this contract. ORS 279B.220(1)
20. **Contributions to the Industrial Accident Fund:** Provider shall pay all contributions or amounts due the Industrial Accident Fund from Provider incurred in the performance of this contract, and shall ensure that all subcontractors pay those amounts due from the subcontractors. ORS 279B.220(2)
21. **Income Tax Withholding:** Provider shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
22. **Payment of Claims by the City:** If Provider fails, neglects, or refuses to make prompt payment of any claim for labor, material or services furnished to Provider or a subcontractor by any person in connection with this contract as the claim becomes due, the City may pay the claim to the person furnishing the labor, material or services and charge the amount of the payment against funds due or to become due to Provider pursuant to this contract. The City's payment of a claim under this Section shall not relieve Provider or Provider's surety, if any, from responsibility for those claims.
23. **Workers Compensation:** Provider is a subject employer that will comply with ORS 656.017. Provider warrants that all persons engaged in contract work and subject to the Oregon workers compensation law are covered by a workers compensation plan or insurance policy that fully complies with Oregon law. Provider shall indemnify the City for any liability incurred by the City as a result of Provider's breach of the warranty under this Section. (ORS 279B.320)
24. **Medical Care for Employees:** Provider shall make payments of all sums to any person, co-partnership, association or corporation furnishing medical, surgical or hospital care incident to the sickness or injury of Provider's employee(s), all sums which Provider agrees to pay for such services and all moneys and sums which Provider collected or deducted from the wages of

employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. (ORS 279B.320)

25. **Drug-Testing Program:** Provider shall demonstrate at the request of the City that it has, at the time of the execution of this contract, a drug-testing program in place.
26. **Modification:** Any modification of the provisions of this contract shall be reduced to writing and signed by the parties.
27. **No Waiver of Legal Rights:** A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.
28. **Integration:** This contract contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.
29. **Attorneys Fees:** In any dispute between the parties to this contract that results in a court proceeding, the prevailing party shall be entitled to recover its costs and disbursements incurred as well as of the action or suit and reasonable attorney's fees as determined by the arbitrator or court be that at a hearing, trial or on appeal.

PROVIDER

CITY OF DAYTON, OREGON



ALYSON HEARN, ABM Janitorial Services



Christy Ellis, City Manager

Date: 7-6-2010

Date: 6/22/10

Attachments:
Exhibit A - IFB Scope of Work
Exhibit B - ABM Response to IFB