

# CONTRACT FOR JANITORIAL SERVICES

THIS CONTRACT is made and entered into this 21st day of May 2002, by and between the CITY OF OVERLAND PARK, KANSAS, hereinafter referred to as City, and ACE JANITORIAL, INC., hereinafter referred to as Contractor. It is the intention of the City to use the services of Contractor to provide janitorial services for City facilities as outlined in this CONTRACT.

## SECTION I - SCOPE OF WORK

Contractor shall furnish janitorial services for the following facilities:

1. Antioch Justice Center, 8500 Antioch.
3. City Hall, 8500 Santa Fe Drive.
3. Public Works/Shawnee Mission, 11300 W. 91<sup>st</sup> Street.
4. Overland Park Community Center, 6300 W. 87<sup>th</sup> Street.
5. Parks & Recreation, 8101 W. 119<sup>th</sup> Street.
6. Public Works/Blue Valley, 6869 W. 153<sup>rd</sup> Street.
7. W. Jack Sanders Justice Center, 12400 Foster
8. Westgate Police Station, 11900 Westgate

The janitorial services shall consist of the work as set forth in Section C – Scope Of Work of the Request For Proposals For Janitorial Services dated April 15, 2002, (hereinafter, the “Services”). Contractor agrees to provide a minimum of 365 hours of work per week, with the exception of weeks that contain holidays, for the eight facilities listed above, to include the work of custodians and supervisors.

## SECTION II - COMPENSATION

The City agrees to pay Contractor the sum of \$ 15,650 per month for twenty four (24) months for the Services specified under this CONTRACT. Thereafter, Contractor may increase the monthly amount by not more than four percent (4%) above the previous monthly amount for the following twenty four (24) months, if such increase is justified to the City and approved by the City’s Information Technology Director. Thereafter, Contractor may increase the monthly amount by not more than four percent (4%) above the previous monthly amount for the following twelve (12) months, if such increase is justified to the City by Contractor and approved by the City’s Information Technology Director.

Contractor shall submit an invoice by the 10<sup>th</sup> of each month for Services performed during the immediate past month. City agrees to remit payment for each valid invoice received and approved by the Information Technology Director or his/her designee within thirty (30) days of receipt of invoice.

City may request that Contractor perform work beyond, outside of or in addition to the scope of work specified in this CONTRACT and such work shall be designated “Additional Services.” City and Contractor shall negotiate a scope of work and compensation for such Additional Services, and the scope of work and compensation shall be approved by the City’s Information Technology Director. The terms and conditions of this CONTRACT shall apply to any Additional Services approved by the Information Technology Director.

# **CONTRACT FOR JANITORIAL SERVICES**

Contractor shall submit an invoice for approved Additional Services by the 10<sup>th</sup> of the month following the month during which the Additional Services were performed.

## **SECTION III - CONTRACT TERM**

The term of this CONTRACT shall be five (5) years beginning June 1, 2002 and ending May 31, 2007.

## **SECTION IV - TERMINATION FOR CONVENIENCE**

Notwithstanding the provisions of Section III herein, the City may, at any time, terminate this CONTRACT in whole or in part for the convenience of the City. City shall give written notice at least thirty (30) days in advance of the termination to Contractor specifying that the CONTRACT or a designated part thereof shall be terminated and when termination becomes effective. Contractor shall incur no further obligations to the City in connection with the termination of Services. On the date set forth in the written notice, Contractor shall stop Services on behalf of the City to the extent specified and shall invoice the City for Services provided to that date. The City shall thereafter have no further obligation to Contractor. Contractor does not have the right to terminate this CONTRACT in whole or in part for the convenience of Contractor.

## **SECTION V - TERMINATION FOR CAUSE**

If either party is violating any of the conditions of this CONTRACT, the other party may serve written notice of its intention to terminate the CONTRACT. Unless within thirty (30) days after the serving of the notice a satisfactory arrangement has been made, this CONTRACT shall terminate. The City retains the right to withhold the payment or any portion thereof for damages incurred as a result of Contractor's breach of this CONTRACT.

## **SECTION VI - DISPUTE RESOLUTION**

City and Contractor agree that disputes relative to the Services performed should first be addressed by good faith negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute Contractor shall proceed with the Services as per this CONTRACT as if no dispute existed; and provided further that no dispute will be submitted to arbitration without the parties' express written consent.

## **SECTION VII - INDEPENDENT CONTRACTOR**

Contractor is an independent contractor and as such neither Contractor nor its personnel are agents or employees of the City. Contractor is responsible for payment of any and all federal, state and local taxes.

## **SECTION VIII - SUBCONTRACTORS**

Contractor shall have the right to subcontract, in part, the Services to be provided under this CONTRACT, but shall not be relieved of its liability hereunder thereby. Services performed by any subcontractor hired by Contractor will not result in any additional cost to City. Contractor must notify the City of any proposed subcontractor(s) and the City shall have the right of approval thereof; however, such approval shall not be unreasonably withheld or delayed. Contractor agrees to the insurance requirements concerning the use of subcontractors as specified in Section X.

# CONTRACT FOR JANITORIAL SERVICES

## SECTION IX - INDEMNIFICATION

Contractor agrees to defend, indemnify and hold harmless the CITY OF OVERLAND PARK and its agents and/or employees from any and all claims, settlements, and judgements for bodily injury, physical property damage and/or death arising out of Contractor's or any of its agents, servants, employees' or subcontractors negligent acts, and for failure to act in the performance of this CONTRACT. Neither acceptance of the completed Services nor payment therefore shall release Contractor of its obligation under this paragraph.

## SECTION X - INSURANCE REQUIREMENTS

- (a) General -  
The Contractor shall secure and maintain, throughout the duration of this contract, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Contractor shall provide certificates of insurance and renewals thereof on forms provided by the City. The City shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.
- (b) Notice of Claim Reduction of Policy Limits -  
The Contractor, upon receipt of notice of any claim in connection with the contract, shall promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability.

The Contractor shall promptly notify the City of any reduction in limits of protection afforded under any policy listed in the Certificate (or otherwise required by the contract) in excess of \$10,000.00, whether or not such impairment came about as a result of this CONTRACT.

In the event the City shall determine that the Contractor's aggregate limits of protection shall have been impaired or reduced to such extent that the City shall determine such limits inadequate for the balance of the project, the Contractor shall, upon notice from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City.

- (c) General Liability -  
The Commercial General Liability insurance coverage that is to be provided by Contractor shall comply with appropriate section. Such insurance shall specifically insure the contractual liability assumed by the Contractor under SECTION IX of this CONTRACT.

### MINIMUM INSURANCE REQUIREMENTS

#### COMMERCIAL GENERAL LIABILITY POLICY

(Complete Certificate "Form B")

General Aggregate:	\$ 500,000
Products-Completed Operations Aggregate:	\$ 500,000
Personal & Advertising Injury:	\$ 500,000
Each Occurrence:	\$ 500,000

# CONTRACT FOR JANITORIAL SERVICES

Policy must include the following conditions:

- a) Broad Form Contractual/Contractually Assumed Liability
- b) Independent Contractors
- c) Broad Form Property Damage
  
- (d) Automobile Liability -  
Policy shall protect the Contractor against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicles and must include protection for either:
  - (A) Any Auto
  
  - OR
  
  - (B) All Owned Autos;  
Hired Autos; and  
Non-Owned Autos.

Limits of liability protection required are the SAME as the limits for the Commercial General Liability section. Policy shall insure the contractual liability assumed by the Contractor.

- (e) Workers' Compensation and Employer's Liability -  
This insurance shall protect the Contractor against all claims under applicable state Workers' Compensation laws. The Contractor shall also be protected against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a Workers' Compensation law. The policy shall include liability limits not less than the following:

<u>Workers' Compensation:</u>	Statutory
<u>Employer's Liability:</u>	
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

- (f) Industry Ratings –

The City will only accept coverage from an insurance carrier who offers proof that it:

- (1) Is licensed to do business in the State of Kansas;
- (2) Carries a Best's policy holder rating of B+ or better; and
- (3) Carries at least a Class X financial rating.

OR

Is a company mutually agreed upon by the City and Contractor.

# CONTRACT FOR JANITORIAL SERVICES

(g) Subcontractors' Insurance - If part of the CONTRACT is to be sublet, Contractor shall either:

\*Cover all subcontractors in its insurance policies, or

\*Require each subcontractor not so covered to secure insurance which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, Contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its subcontractors.

## SECTION XI – BUSINESS SERVICES BOND

Contractor shall furnish the City with a Business Services Bond, or bond of similar type, in the amount of \$25,000 given upon good and satisfactory surety, providing coverage to the City for dishonest acts of the Contractor, its employees or agents. The bond must waive any applicable conviction clause.

## SECTION XII - NON-DISCRIMINATION AND OTHER LAWS

A. The Contractor agrees that:

1. the Contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of Services under the present contract because of race, religion, color, sex, disability, national origin ancestry or age;
2. in all solicitations or advertisements for employees, the Contractor shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
3. if the Contractor fails to comply with the manner in which the Contractor reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
4. if the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
5. the Contractor shall include the provisions of subsections (A)(1) through (4) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered into by a Contractor:

- (a) who employs fewer than four employees during the term of such contract; or
- (b) whose contracts with the City cumulatively total \$5,000 or less during the fiscal year of the City.

## **CONTRACT FOR JANITORIAL SERVICES**

- B. The Contractor further agrees that the Contractor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

### **SECTION XIII - PROHIBITION AGAINST CONTINGENT FEES**

Contractor warrants that it has not employed or retained any person, firm, or corporation, other than a bona fide employee working solely for Contractor, to solicit or secure the awarding of this CONTRACT based upon an arrangement that the person, firm or corporation would receive any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award of this CONTRACT. For the breach or violation of the foregoing provision, the City shall have the right to terminate the CONTRACT without liability and, at its discretion to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

### **SECTION IVX - ASSIGNMENT**

Parties hereto agree that neither shall assign, sublet or transfer their interest in this CONTRACT without the written consent of the other and further agree that this CONTRACT binds the parties, their successors, trustees, assignees and legal representatives.

### **SECTION VX - PRIOR VERBAL OR WRITTEN STATEMENTS NOT BINDING**

It is understood and agreed that the written terms and provisions of this CONTRACT shall supersede all prior verbal and written statements of any and every official and/or other representative of the City and Contractor and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, the written CONTRACT. In the event that the City issues a purchase order, work order, invoice or similar document relating to services performed, such purchase order or similar document shall be for the City's administrative purposes only and will not supplement, supersede, modify or affect any of the terms and conditions set forth herein.

### **SECTION XVI - APPLICABLE LAW, NONWAIVER**

This CONTRACT is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas. The waiver of or failure to enforce any term or condition of this CONTRACT shall not be construed as a waiver of any other term or condition. If any provision is held to be unenforceable by a court or other tribunal, the enforceability of the other provisions shall not be affected.

### **TITLE XVII - SEVERABILITY CLAUSE**

Should any provision of this CONTRACT be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this CONTRACT shall be unaffected thereby and shall continue to be valid and enforceable.

### **SECTION XVIII – ENTIRE CONTRACT**

The terms and conditions contained herein, the Request For Proposals (RFP) For Janitorial Services, dated April 15, 2002, and the Contractor's response to the RFP constitute the entire and exclusive CONTRACT

## **CONTRACT FOR JANITORIAL SERVICES**

between the Parties. The Request For Proposals (RFP) For Janitorial Services and the Contractor's response to the RFP are hereby full incorporated by reference and made a part of this CONTRACT. In the event of a conflict between any terms or conditions in this CONTRACT, the RFP or the response to the RFP, the terms and conditions of the CONTRACT shall take precedence.





## **CONTRACT FOR JANITORIAL SERVICES**

My Appointment Expires \_\_\_\_\_

(If the Contract is not executed by the president of the corporation or general partner of the partnership, please provide documentation which authorizes the signatory to bind the corporation or partnership.)