

Contracting Agreement

June 13, 2023

This agreement is executed by Hillcrest Business Association, a California not for profit corporation (hereinafter referred to as "HBA") whose address is 1601 University Ave., San Diego, CA 92103 and Clean City (hereinafter referred to as "Contractor"), whose address is 4492 Camino de la Plaza apt 1657, San Diego, CA 92173.

The City of San Diego, though not a party to this agreement, is referred to in this agreement as "the City".

The signatories to this agreement shall be collectively referred to as, "the parties".

Definitions

A. Pressure Washing and Cleaning. The term "Pressure Washing" shall mean any type of deep cleaning of the sidewalk designed to remove grime, grease, gum, or other micro debris adhered to the sidewalk surface. This could include high pressure water, hot water, rotary scrubbing, hot water treatment, or other such cleaning methods.

The term "Clean" shall be a standard of Pressure Washing sufficient to remove urine and excrement stains; chewing gum; gum stains from the sidewalk; and other similar micro debris.

B. Maintenance Assessment District. The term "Maintenance Assessment District" or "MAD" shall mean the existing Hillcrest Commercial Maintenance Assessment District established by the City of San Diego in existing ordinances.

C. Sidewalk. The term "sidewalk" shall mean the pedestrian walkway in the commercial areas of Hillcrest between the private propertyline and the gutter.

D. Block and Block Face. The term "Block" shall mean a city block including the sidewalks from gutter to property line on all four sides of the block. City Blocks are not necessarily symmetrical.

The term "Block Face" shall mean the sidewalk on one side of a City Block including the surface area of the sidewalk from property line to gutter and extending from gutter to gutter on the adjacent sides of the Block.

The term "Double Sized Blocks" shall refer to the longer Block Faces on University Ave. between 10th and Normal Street including the south and north sides of 1000, 1200, 1400, and 1600 University Ave.

Recitals

The HBA is seeking a private contractor to provide pressure washing services in the Hillcrest commercial MAD and at locations throughout the neighborhood of Hillcrest San Diego.

WHEREAS, the HBA desires to engage the services of Contractor for the above stated purposes;

WHEREAS,

NOW, therefore, in consideration of the above recitals, and the mutual promises and conditions contained in herein, the Parties, intending to be legally bound, hereby agree as follows:

Agreement

Acknowledgment of Relationships.

The Parties hereby acknowledge that the HBA does not own any real property and is only able to authorize the agreement as a result of existing relationships and agreements with the City of San Diego.

Governing Law and Assignment.

The Parties acknowledge and expressly agree and understand that the laws of the State of California shall govern this agreement and any disputes arising therefrom.

This contract cannot be assigned or transferred without the express written consent of the HBA.

Independent contractor status

Contractor is an independent contractor and not an employee of the City or HBA. All staff and volunteer costs relating to the project must be borne by the Contractor. Contractor shall have no authority to bind the City or HBA in any manner or to incur any obligation, debt, or liability of any kind, on behalf of or against the City or HBA. Signing this agreement does not assign any rights, obligations, and/or duties of Hillcrest Business Association under this agreement to any third party. This agreement does not create a contractual relationship between the City or HBA and any third party.

Agreements with third parties

Prior to signing this agreement the Contractor shall disclose and provide copies of all agreements with third parties relating to this agreement including rental agreements, service contracts, entertainment agreements, verbal agreements, sponsorships, in-kind donations, special payments, and mutual benefit arrangements.

Contractor hereby acknowledges other agreements exist between HBA, the City of San Diego, and other third parties that relate to this agreement including but not limited to fabrication, installation and permitting.

No joint venture or partnership.

This agreement shall not be construed or interpreted to create or establish any joint venture or partnership between the parties.

Supplies and Equipment.

Contractor agrees to provide all labor (paid or volunteer) and related elements required to meet the terms of the agreement.

Supervision.

Contractor shall provide supervision adequate to ensure that the services rendered pursuant to this agreement are of high quality.

Rights, Warranties, and Declarations of Insurance.

HBA hereby represents and warrants that it has at present in force comprehensive public liability insurance.

HBA hereby represents and warrants that at the time this contract is entered into, it carries worker's compensation insurance to the extent required by the appropriate statutes, and Public Liability Insurance including errors and omissions.

All insurance required by the terms of this agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements. If the City is made a party to any judicial or administrative proceeding to resolve the dispute between HBA and Contractor, Contractor shall defend and indemnify the City as described herein.

HBA shall not be held responsible for acts of God, riot or civil turmoil, hurricanes, or war if the event is beyond its reasonable control.

Mutual Benefit

It is expressly understood and agreed that this contract is entered into solely for the mutual benefit of the parties herein and that no benefits, rights, duties, or obligations are intended or created by this contract as to third parties not a signatory hereto.

Duration of and Termination of Agreement.

It's agreed upon by the parties that this contract shall be in full force and effect until the terms of the contract have been satisfied..

Termination shall be effective only when notice in writing to discontinue is sent to either party by certified United States mail, with return receipt, postage prepaid and addressed to the other party hereto shown on this Agreement, at least thirty (30) days prior to the expiration of the term.

Ownership

The parties acknowledge that Hillcrest Taste 'n Tinis, Hillcrest CityFest, the Taste of Hillcrest, the Hillcrest Sign logo, The Fabulous Hillcrest logo, Hillcrest Sunday Funday, Pride of Hillcrest Block Party, Hillcrest Farmers Market, The Amazing High Heel Race, Hillcrest Hoedown, Walk in ART, and the related marks are, and always have been, the property of the HBA. HBA retains the exclusive rights to sell any HBA related merchandise and tickets and to conduct promotions for any business relating to Hillcrest and the HBA.

Confidentiality.

Contractor agrees not to use or disclose any information it receives from the HBA under this Agreement that has been identified as confidential or believed to be confidential in nature.

Miscellaneous.

It is agreed by and between the parties that if any of the terms of provisions of this Agreement shall be determined to be invalid or inoperative, all the remaining terms and provisions shall remain in full force and effect.

The parties, both, hereby acknowledge that each has read, understands, accepts, and will abide by each and every provision and sub provision contained herein.

The Parties agree that any third parties to legal action, both current and previous, organizations or individuals, resolved or unresolved, will not engage with HBA owned property or enter HBA owned or controlled facilities. This provision shall include any facilities governed by agreements between the City of San Diego and HBA.

Services to be provided

Contractor agrees to provide the services as described in attachment A.

Conflict of interest

Contractor shall comply with all federal, state, and local laws, including conflict of interest laws, statutes, ordinances, regulations, and policies of the City related to public contracts and procurement practices to the extent applicable. HBA and Contractor are unaware of any financial or economic interest of any public officer or employee of the City relating to this agreement. Contractor have been made aware of the HBA's Conflict of Interest policy (attachment B).

Payment

HBA shall pay the Contractor as described in Attachment A.

Equal employment and nondiscriminatory provisions

Contractor shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Contractor's activities pursuant to this agreement, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment. Contractor shall comply with City Council Ordinance No.18173 (San Diego Municipal Code sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this agreement. Contractor is individually responsible to abide by its contents. Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor may be required to comply, and require each of its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance. It is the responsibility of the Contractor to determine if compliance is required. Contractor is required where applicable to comply with the Americans with Disabilities Act, the City of San Diego Drug Free Workplace requirements, and Storm Water Management and Discharge Control Ordinance.

Arbitration. If a dispute arises out of or relates to this agreement, or the breach thereof, the parties agree first to try in good faith to resolve the dispute by mediation administered by the American Arbitration Association under its rules, before resorting to arbitration. Thereafter, any unresolved controversy or claim arising out of or relating to this agreement, or breach thereof, shall be resolved by arbitration administered by the American Arbitration Association in accordance with its Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof pursuant to applicable law.

Court Proceedings in Case of Breach of this Agreement or Other and Remedies.

In addition to any and all legal rights a party may have by law, if either party to this Agreement defaults by failing to substantially perform any provision, term, or condition of this Agreement (including without limitation the failure to make monetary payment when due), the other party may terminate this agreement by providing a written notice by certified mail to the defaulting party.

IN WITNESS WHEREOF, the parties have executed this agreement

on _____, at _____, California.

HILLCREST BUSINESS ASSOCIATION

Contractor

By:

By:

Attachment A: Scope of Work

Contractor agrees to provide the following:

- Pressure Wash the sidewalks at the block faces for the addresses listed below.
- Pressure Wash the HBA's 30 trash cans at locations indicated on the attached map throughout the neighborhood of Hillcrest.
- Provide water to conduct the activities described.
- Dispose of wastewater in a manner in accordance with state and local laws.
- Implementation Best Management Practices (BMP) as required by the City of San Diego Stormwater Division and the HBA Stormwater Best Management Practices (Attachment D).

Hours and Location of Service.

The total number of Block Faces and dates the Block Faces will be cleaned each month shall be identified in a Cleaning Schedule memo. Within the last week of each month, the HBA will provide, in writing, a monthly Cleaning Schedule memo updating the Block Faces to be cleaned. The memo will include: an updated list of blocks to be cleaned within the following month and an indication of the agreed upon billing for the month.

The parties agree that the months of July, October, January, and April will be assigned to the agreed upon cleaning of the MAD area identified in Attachment C. These block faces and the related billing shall be described in the Cleaning Schedule memo. Additionally, in the case that an additional blocks are added by the HBA, these blocks and the related billing will be identified in the Cleaning Schedule memo.

Initial addresses to be included:

- 100, 300, 400, and 500 block University Ave. north and south sides
- 3700 Sixth Ave. east and west sides
- 425-499 Robinson Ave. north and south side (half block face)
- 500 block Robinson Ave. north side
- 500 block Pennsylvania north and south side
- 3700 and 3800 Fifth Ave. east and west side
- 3900 Fifth Ave. west side

HBA agrees to provide the following:

- Door hangers to be distributed as described.
- Payment shall occur within 30 days for the services described in the Cleaning Schedule memo and the invoice from the Contractor. The memo and invoice shall match.
 - Payment shall be based on the blocks cleaned as described in the Cleaning Schedule memo. The per block fee shall be \$550.
 - Double Block Faces, as identified in this agreement, shall be identified for cleaning, cleaned, and billed for each half of the block as though the half was a full block. These halves shall be identified as west and east blocks.
 - Payment shall be made monthly.

Attachment B: Conflict of interest policy

- No contract may be entered into by the Hillcrest Business Association if one of its officers, members, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:
- The material facts as to the contract or transaction and as to the party's interest are fully disclosed or known to the member, board or committee voting on the matter;
- The contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties;
- The interested party or parties abstains from voting on the matter;
- The contract or transaction is just and reasonable to the Hillcrest Business Association at the time it was authorized, approved or ratified;
- The interested party or parties shall not actively participate in the decision about the contract or transaction, except to answer questions or provide a broad explanation;
- The action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.

A violation of any provision of this policy shall be grounds for removal of the officers, directors, members, committee members, staff members or volunteers from their positions with the HBA. A contract or transaction entered into in violation of this Conflict of Interest Policy shall be void and unenforceable.

Attachment C: Cleaning area:



Cleaning area / Hillcrest Commercial MAD shown in orange.