

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: The Honorable City Council

FROM: Dave Klotzle, Interim City Engineer/Public Works Director
Prepared By: Shaun Kroes, Senior Management Analyst 

DATE: December 3, 2010 (CC Meeting of 12/15/10)

SUBJECT: Consider Amendment No. 3 to Agreement for Street Sweeping Services

BACKGROUND/DISCUSSION

On January 5, 2000, the City entered into an Agreement with Pacific Sweep for street sweeping services. Pacific Sweep sweeps City-owned streets, the Metrolink parking lots, and Caltrans' streets that are within the city limits (Los Angeles Avenue, Moorpark Avenue, and Walnut Canyon Road). The City receives reimbursement from Caltrans for State streets swept by Pacific Sweep.

The Agreement has been amended twice. The first amendment was on October 10, 2005, when the Agreement's term was extended from December 31, 2005, to December 31, 2010. The second amendment was on April 8, 2010, when Pacific Sweep's name was changed from Pacific Sweep to David S. Hopkins doing business as Pacific Sweep.

The current Agreement with Pacific Sweep is set to expire on December 31, 2010. Future street sweeping service administration may be transferred from the City to the City's franchise solid waste haulers. On December 1, 2010, the City Council approved extending the City's existing solid waste Franchise Agreements to June 30, 2011, while transition discussions continue. Consequently, the street sweeping Agreement should be extended for another six months to match the City's solid waste Franchise Agreements.

In addition to the term extension, Amendment No. 3 would permit the street sweeper to store one street sweeping vehicle at the City's Public Services Facility at 627 Fitch Avenue. Storage of the sweeper on City premises enables the street sweeper to efficiently complete the street sweeping routes and respond quickly to emergency call-outs or special service requests. Amendment No. 3 also updates required indemnification and insurance language.

FISCAL IMPACT

The proposed Amendment No. 3 would extend the existing street sweeping Agreement an additional six months. The current curb-mile-rate of \$17.98 remains unchanged during the Agreement extension. The City has sufficient funds budgeted for continued street sweeping services for Fiscal Year 2010/11.

STAFF RECOMMENDATION

Authorize the City Manager to sign Amendment No. 3 to the Agreement for Street Sweeping Services, subject to final language approval of the City Manager and City Attorney.

Attachment:

Draft Amendment No. 3 for Street Sweeping Services

AMENDMENT NO. 3

AGREEMENT BETWEEN THE CITY OF MOORPARK AND DAVID S. HOPKINS
DOING BUSINESS AS PACIFIC SWEEP FOR STREET SWEEPING SERVICES

THIS AMENDMENT TO AGREEMENT, made and entered into this ____ day of _____, 2010, by and between the City of Moorpark, a municipal corporation located in the County of Ventura, State of California, hereinafter referred to as ("City") and David S. Hopkins doing business as Pacific Sweep, hereinafter referred to as ("Contractor").

WITNESSETH

Whereas, on January 5, 2000, the City and Contractor entered into an Agreement for certain street sweeping services to be provided to City by Contractor; and

Whereas, on October 10, 2005, Amendment No. 1 to the Agreement was approved, extending the Term to December 31, 2010; and

Whereas, on April 8, 2010, Amendment No. 2 to the Agreement was approved, changing Contractor's name from Pacific Sweep to David S. Hopkins doing business as Pacific Sweep; and

Whereas, the City desires to extend the Agreement from December 31, 2010 to June 30, 2011; and

Whereas, it has been determined to be beneficial to both the City and Contractor for Contractor to store one (1) street sweeping vehicle at the City's Moorpark Public Services Facility located at 627 Fitch Avenue; and

Whereas, Contractor shall submit payment in the amount of One Dollar (\$1.00) per month for storage of the street sweeping vehicle at the City's Moorpark Public Services Facility; and

Whereas, both City and Contractor agree to the adjustments to the Agreement and now wish to document said Agreement by jointly approving this Amendment No. 3 to the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and premises herein stated, the parties hereto agree to amend the aforesaid Agreement as follows:

I. TERM

The term of the Agreement is extended to June 30, 2011.

II. STORAGE OF STREET SWEEPING VEHICLE

Section I.I is hereby added to the Agreement and reads:

“SECTION I.I. STORAGE OF STREET SWEEPING VEHICLE

- A. Parking Spot. Contractor shall be permitted to store up to one (1) street sweeping vehicle in a parking spot at the City’s Moorpark Public Services Facility located at 627 Fitch Avenue, Moorpark, California 93021 (“Premises”). The parking spot shall be approved by the City Manager or his designee.
- B. Access to Premises. Contractor shall be permitted to access the Premises during hours agreed upon by the City Manager or his designee. Contractor shall access the Premises for purposes solely related to providing street sweeping services for the City. Contractor shall ensure the Premises are secure upon leaving. Contractor’s subcontractors shall not access the Premises.
- C. Damages. The City shall not be obligated to insure Contractor for any personal injury or property damage. Contractor hereby and forever waives all rights to claim or recover damages from the City in any amount as a result of any damage to the Premises or any injury to any person upon the Premises.
- D. Repairs. Contractor shall not perform any repairs, maintenance, cleaning, or modifications to the street sweeping vehicle on the Premises.
- E. Gate Locks. Contractor shall provide a keyed lock to be installed on the Premises’ front gate located at Fitch Avenue. Contractor shall provide a keyed lock to be installed on the Premises’ back gate located at the east end of the Premises where the street sweeping vehicle shall be parked. The keyed locks shall be attached to other City locks so as not to hinder the City’s ability to access any portion of the Premises. One (1) key shall open both keyed locks. Contractor shall provide the City with three (3) duplicate keys for the keyed lock. Contractor shall not provide keys to any employee not directly related to operation of the street sweeping vehicle.

- F. Security Access Code. City shall provide Contractor with a security access code to enter through the secondary gate system. Contractor shall not provide the security access code to any person not directly employed by the Contractor. Contractor shall not provide the security access code to any employee not directly related to operation of the street sweeping vehicle. Contractor shall only be permitted to enter through the secondary gate system between the hours of 7:00 a.m. through 4:30 p.m., Monday through Friday.
- G. Violations. If the City determines that Contractor has violated any portion of Section I.I Parts A through F, without prior written authorization from the City Manager, the City may immediately, without prior notification, and without prejudice to any other remedies the City may have, suspend Contractor's ability to store Contractor's street sweeping vehicle on the City's Premises. The City may also terminate its Agreement with Contractor pursuant to Section IV Part 24 of the Agreement."

III. COMPENSATION

Section III Part E is hereby added to the Agreement and reads:

- "E. Street Sweeping Vehicle Storage Fee. Contractor agrees to pay the City a monthly fee of One Dollar (\$1.00) for each month that Contractor stores a street sweeping vehicle on the City's Premises. The Contractor shall make payments by deducting \$1.00 from the City's monthly invoice for street sweeping services."

IV. INDEMNIFICATION

Section IV Part 13 of the Agreement is hereby replaced with the following language:

- "13.1 INDEMNIFICATION FOR SERVICES. Contractor shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Contractor or by any individual or entity for which

Contractor is legally liable, including but not limited to officers, agents, employees or subcontractors of Contractor.

13.2 INDEMNIFICATION AND HOLD HARMLESS FOR VEHICLE STORAGE. To the fullest extent permitted by law, Contractor shall, at Contractor's sole expense and with counsel reasonably acceptable to the City, defend, indemnify, and hold harmless the City and the City's officers, employees, and agents from and against all claims (including demands, losses, actions, causes of action, damages, liabilities, expenses, charges, assessments, fines or penalties of any kind, and costs including consultant and expert fees, court costs, and attorneys' fees) from any cause, arising out of or relating (directly or indirectly) to this Agreement, or the Premises, including without limitation:

- 1) The use of occupancy, or manner of use or occupancy, of the Premises by the Contractor;
- 2) Any act, error, omission, or negligence of Contractor or of any subcontractor, invitee, guest, contractor or licensee of Contractor or any subcontractor in, on, or about the Premises;
- 3) Contractor's conducting of its business;
- 4) Any alterations, activities, work, or things done, omitted, permitted, allowed, or suffered by Contractor in, at, or about the Premises, including the violation of or failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, decrees, or judgments in existence on the Agreement Commencement Date or enacted, promulgated, or issued after the date of this Agreement;
- 5) Any breach or default in performance of any obligation on Contractor's part to be performed under this Agreement, whether before or during the Agreement Term or after its expiration or earlier termination; and
- 6) This indemnification extends to and includes, without limitation, claims for:
 - a. Injury to any persons (including death at any time resulting from that injury);
 - b. Loss of, injury or damage to, or destruction of property (including loss of use at any time resulting from that loss, injury, damage, or destruction); and
 - c. All economic losses and consequential or resulting damage or any kind.

Contractor's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until all claims against the City involving any of the indemnified matters are fully, finally, and absolutely barred by the applicable statutes of limitations.

The City does not and shall not waive any rights that it may have against Contractor by this Section, because of the acceptance by the City, or deposit with the City, of any insurance policy or certificate required pursuant to this Agreement.”

- 13.3 HAZARDOUS MATERIALS INDEMNITY. Contractor shall indemnify, defend with legal counsel selected by the City and hold harmless the City and its officers, employees, servants and agents from and against any and all claims, actions, liabilities, losses, damages, costs, attorneys' fees and other expenses of any nature (a) including, without limitation, all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the presence, use, generation, storage, release or disposal of Hazardous Materials on the Premises by Contractor and its officers, employees, servants and agents, and customers of the Contractor, or arising out of the presence or use of any underground tanks presently or hereafter located on the Premises, and (b) including, without limitation, the cost of any required or necessary repair, cleanup, or detoxification, and the preparation of any response, remedial, closure or other required plans, to the full extent that such action is attributable, directly or indirectly, to the presence, use, generation, storage, release, or disposal of Hazardous Materials on the Premises during the term of this Agreement.

As used in this section, Hazardous Materials means any substance, product, waste or other material that is or becomes listed, regulated or addressed pursuant to: (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq.; the Substances Control Act, 15 U.S.C., Section 2601, et seq.; the Clean Water Act, 33 U.S.C. Section 1251, et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100, et seq.; the California Hazardous Substance Account Act, Health and Safety Code Section 25330, et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5, et seq.; California Health and Safety Code Section 25280, et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and safety Code Section 25170.1, et seq.; California Health and Safety Code Section 25501, et seq. (Hazardous Materials Response Plans and Inventory); or the Porter-Cologne Water Quality Control Act, Water Code Section 13000, et seq., all as amended, (2) other federal or state law or local

law regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, and (3) any rule or regulation adopted or promulgated pursuant to any of said laws.”

V. LIABILITY INSURANCE

Section IV Part 14 is hereby replaced with the following language:

“14. INSURANCE. The Contractor shall maintain prior to the beginning of and for the duration of this Agreement, insurance coverage as specified in Attachment 1, attached to and made part of this Agreement.”

VI. Remaining Provisions

All other provisions of the aforesaid Agreement shall remain in full force and effect.

CITY OF MOORPARK:

DAVID S HOPKINS, DBA PACIFIC
SWEEP:

Steven Kueny, City Manager

David S. Hopkins, Owner

Date _____

Date _____

ATTEST:

Maureen Benson, City Clerk

ATTACHMENT 1

Insurance Requirements

Prior to the beginning of and throughout the duration of Work, Contractor will maintain insurance in conformance with the requirements set forth below. Contractor will use existing coverage to comply with these requirements. If that existing coverage does not meet requirements set forth here, Contractor agrees to amend, supplement or endorse the existing coverage to do so. Contractor acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to the City in excess of the limits and coverage required in this Agreement and which is applicable to a given loss, will be available to the City.

Contractor shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office (ISO) "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The actual coverage available to the additional insured shall be the fully policy limits to the named insured.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Contractor owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Contractor or Contractor's employees will use personal autos in any way on this project, Contractor shall provide evidence of personal auto liability for each such person.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to the City for injury to employees of Contractor, subcontractors or others involved in the Work. The scope of coverage provided is subject to approval by the City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size of VII.

General conditions pertaining to provision of insurance coverage by Contractor. Contractor and the City agree to the following with respect to insurance provided by Contractor:

1. Contractor agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City, its officials, employees and agents, and independent contractors ("Indemnified Parties"), using standard ISO endorsement CG 2010 with an edition prior to 1992. Contractor also agrees to require all contractors and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right to subrogation prior to a loss. Contractor agrees to waive subrogation rights against the City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operation limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include limiting endorsement of any kind that has not been first submitted to the City and approved of in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect the City's protection without the City's prior written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Contractor's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, the City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other Agreement and to pay the premium. Any premium so paid by the City shall be charged to and promptly paid by Contractor or deducted from sums due Contractor, at the City's option.
8. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Contractor agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Contractor or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to the City.
10. Contractor agrees to ensure that subcontractors, and any other party involved with the project, who is brought onto or involved in the Work by Contractor, provide the same minimum insurance coverage required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.
11. Contractor agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to the City. If Contractor's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time, the City shall review options with the Contractor, which may include reduction or elimination of the deductible of self-insured retention, substitution of other coverage, or other solutions.
12. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor ninety (90)

days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate additional compensation proportional to the increased benefit to the City.

13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
14. Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with an insurance requirement in no way imposes any additional obligations to the City nor does it waive any rights hereunder in this or any other regard.
15. Contractor will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until the City executes a written statement to that effect.
16. Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. As coverage binder or letter from Contractor's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to the City within five days of the expiration of coverage.
17. The provisions of any Workers' Compensation or similar act will not limit the obligations of Contractor under this Agreement. Contractor expressly agrees not to use any statutory immunity defenses under such laws with respect to the City, its employees, officials and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
19. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.

20. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts or impairs the provisions of this Section.
21. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge the City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the City. It is not the intent of the City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the City for payment of premiums or other amounts with respect thereto.
22. Contractor agrees to provide immediate notice to City of any claim or loss against Contractor arising out of the work performed under this Agreement. The City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.