



CUSTODIAL SERVICES CONTRACT

1. PARTIES

This contract ("Contract") is made by and between the City of Cupertino ("City"), and IMPEC Group, Inc., ("Contractor") for City Wide Custodial Services, and is effective on the last date signed below ("Effective Date").

2. SCOPE OF WORK

Contractor will perform and provide all labor, materials, equipment, supplies, transportation and any other items or work necessary to perform and complete the work required for the Project ("Work"), as required in the Scope of Work, attached here and incorporated as Exhibit A, and in accordance with the terms and conditions of this Contract.

3. TIME FOR COMPLETION

3.1 Term. This Contract begins on the Effective Date. The term of this agreement shall be three (3) years from the Effective Date ("Contract Time").

3.2 Extensions and Compensation Adjustment. The City shall retain the option to extend the Contract Time on a year-to-year basis not exceeding two (2) years from the expiration of the original term, for a possible total of five (5) years. Any such renewal after the first three years shall be accomplished by the City providing a written notice of renewal to the Contractor at least 30 days prior to expiration of the term. Any such renewal shall contain the same provisions as this original contract, including an increase or decrease in compensation paid to the Contractor. Any increase or decrease in the previous contract price shall be based on the annual percentage change in the Consumer Price Index (CPI) as of June of the year the adjustment is being made. The CPI shall be the San Francisco/Oakland Consumer Price Index for all urban wage earners. There will be no CPI adjustment during the first three-year term of the agreement.

3.3 Time is of the essence for Contractor's performance and completion of the Work. Contractor must have sufficient time, resources, and qualified staff to deliver the work on time.

3.4 Liquidated damages of \$150.00 will be charged for each day of missed services, or City may deduct the amount from Contractor's payments. Liquidated damages are based on reasonably foreseeable consequences of delay and may include intangible losses which the Parties agree may be difficult to ascertain, such as loss of public confidence in City and its contractors, interference or loss of use of public facilities, and extended disruption to the public.

4. COMPENSATION

4.1 Maximum Compensation. City will pay Contractor for satisfactory performance of the Work an amount that will be based on actual costs but that will be capped so as not to exceed \$1,062,364.61 ("Contract Price"), for all of Contractor's direct and indirect costs, including all labor, materials, supplies, equipment, taxes, insurance, bonds, and all overhead costs, based upon the budget and rates included in **Exhibit B**, Compensation, attached and incorporated here. No extra work or payment is permitted without prior written approval of City.

4.2 Invoices and Payments. Contractor must submit an invoice on the first day of each month, describing the Work performed during the preceding month, itemizing labor, materials, equipment and any incidental costs incurred. Contractor will be paid within thirty (30) days after City receives a properly submitted invoice.

5. INDEPENDENT CONTRACTOR

5.1 Status. Contractor is an independent contractor and not an employee of City. Contractor is solely responsible for the means and methods of performing the Work and for the persons under this employment. Contractor is not entitled to worker's compensation or any other City benefits.

5.2 Contractor's Qualifications. Contractor warrants on behalf of itself and its subcontractors that they have the qualifications and skills to perform the Work in a competent and professional manner and according to the highest standards and best practices in the industry.

5.3 Permits and Licenses. Contractor warrants on behalf of itself and its subcontractors that they are properly licensed, registered, and/or certified to perform the Work as required by law, and have procured a City Business License, if required by the Cupertino Municipal Code.

5.4 Subcontractors. Only Contractor's employees are authorized to work under this Contract. Prior written approval from City is required for any subcontractor, and the terms and conditions of this Contract will apply to any approved subcontractor.

5.5 Tools, Materials, and Equipment. Contractor will supply all tools, materials and equipment required to perform the Work under this Contract unless otherwise provided in **Exhibit A**, Scope of Work.

5.6 Payment of Benefits and Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. Contractor and any of its employees, agents, and subcontractors shall not have any claim under this Agreement or otherwise against City for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance, medical care, hospital care, insurance benefits, social security, disability, unemployment, workers compensation or employee benefits of any kind. Contractor shall be solely liable for and obligated to pay directly all applicable taxes, fees, contributions, or charges applicable to Contractor's business including, but not limited to, federal and state income taxes. City shall have no obligation whatsoever to pay or withhold any taxes or benefits on behalf of Contractor. Should any court, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS), the Internal Revenue Service or the State Employment Development

Division, determine that Contractor, or any of its employees, agents, or subcontractors, is an employee for any purpose, then Contractor agrees to a reduction in amounts payable under this Agreement, or to promptly remit to City any payments due by the City as a result of such determination, so that the City's total expenses under this Agreement are not greater than they would have been had the determination not been made.

6. CHANGE ORDERS

Amendments and change orders must be in writing and signed by City and Contractor. Contractor's request for a change order must specify the proposed changes in the Work, Contract Price, and Contract Time. Each request must include all the supporting documentation, including but not limited to detailed cost estimates and impacts on schedule.

7. ASSIGNMENTS: SUCCESSORS

Contractor shall not assign, hypothecate, or transfer this Contract or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of City. Any attempt to do so will be null and void. Any changes related to the financial control or business nature of Contractor as a legal entity is considered an assignment of the Contract and subject to City approval, which shall not be unreasonably withheld. Control means fifty percent (50%) or more of the voting power of the business entity. This Contract is binding on Contractor, its heirs, successors, and permitted assigns.

8. INDEMNIFICATION

8.1 To the fullest extent allowed by law, and except for losses caused by the sole and active negligence or willful misconduct of City personnel, Contractor shall indemnify, defend, and hold harmless City, its City Council, boards and commissions, officers, officials, employees, agents, servants, volunteers and consultants ("Indemnitees"), through legal counsel acceptable to City, from and against any and all liability, damages, claims, stop notices, actions, causes of action, demands, charges, losses and expenses (including attorney fees, legal costs, and expenses related to litigation and dispute resolution proceedings), of every nature arising directly or indirectly from this Contract or in any manner relating to any of the following:

- (a) Breach of contract, obligations, representations or warranties;
- (b) Performance or nonperformance of the Work or of any obligations under the Contract by Contractor, its employees, agents, servants, subcontractors or sub-subcontractors;
- (c) Payment or nonpayment by Contractor or its subcontractors or sub-subcontractors for Work performed on or off the Project Site; and
- (d) Personal injury, property damage, or economic loss resulting from the work or performance of Contractor or its subcontractors or sub-subcontractors.

8.2 Contractor must pay the costs City incurs in enforcing this provision. Contractor must accept tender of defense upon receiving notice from City of a third-party claim. At City's request, Contractor will assist City in the defense of a claim, dispute, or lawsuit arising out of this Contract.

8.3 Contractor's duties under this entire Section 8 are not limited to Contract Price, Workers' Compensation, or other employee benefits, or the insurance and bond coverage required in this Contract. Nothing in the Contract shall be construed to give rise to any implied right of indemnity in favor of

Contractor against City or any other Indemnitee.

8.4 Contractor's payments may be deducted or offset to cover any money the City lost due to a claim or counterclaim arising out of this Contract, a purchase order or other transaction.

8.5 Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 8 from each and every subcontractor, or any other person or entity involved by, for, with, or on behalf of Contractor in the performance of this Agreement. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

8.6 This Section 8 shall survive termination of the Contract.

9. INSURANCE

Contractor shall comply with the Insurance Requirements, attached and incorporated here as **Exhibit C**. Contractor must provide satisfactory proof of insurance and maintain it for the Contract Time or longer as required by City. City will not execute the Contract until City has approved receipt of satisfactory certificates of insurance and endorsements evidencing the type, amount, class of operations covered, and the effective and expiration dates of coverage. Failure to comply with this provision may result in City, at its sole discretion and without notice, purchasing insurance at Contractor's expense, deducting the costs from Contractor's compensation, or terminating the Contract.

10. COMPLIANCE WITH LAWS

10.1 General Laws. Contractor shall comply with all laws and regulations applicable to this Contract. Contractor will promptly notify City of changes in the law or other conditions that may affect the Project or Contractor's ability to perform. Contractor is responsible for verifying the employment status of employees performing the Work, as required by the Immigration Reform and Control Act.

10.2 Labor Laws. Contractor shall comply with all labor laws applicable to this Agreement. If the Scope of Services includes a "public works" component, Contractor is required to comply with prevailing wage laws under Labor Code Section 1720 and other labor laws.

10.3 Discrimination Laws. Contractor shall not discriminate on the basis of race, religious creed, color, ancestry, national origin, ethnicity, handicap, disability, marital status, pregnancy, age, sex, gender, sexual orientation, gender identity, Acquired-Immune Deficiency Syndrome (AIDS), or any other protected classification. Contractor shall comply with all anti-discrimination laws, including Government Code Sections 12900 and 11135, and Labor Code Sections 1735, 1777, and 3077.5. Consistent with City policy prohibiting harassment and discrimination, Contractor understands that harassment and discrimination directed toward a job applicant, an employee, a City employee, or any other person, by Contractor or Contractor's employees or sub-contractors will not be tolerated. Contractor agrees to provide records and documentation to the City on request necessary to monitor compliance with this provision.

10.4 Conflicts of Interest. Contractor, its employees, subcontractors, servants and agents, may not have, maintain or acquire a conflict of interest in relation to this Contract in violation of law, including

Government Code section 1090 and Government Code section 81000 and their accompanying regulations. No officer, official, employee, consultant, or other agent of the City (“City Representative”) may have, maintain, or acquire a “financial interest” in the Contract, as that term is defined by state law, or in violation of a City ordinance or policy while serving as a City Representative or for one year thereafter. Contractor, its employees, subcontractors, servants, and agents warrant they are not employees of City nor do they have any relationship with City officials, officers, or employees that creates a conflict of interest. Contractor may be required to file a conflict of interest form if it makes certain governmental decisions or serves in a staff capacity, as defined in Section 18700 of Title 2 of the California Code of Regulations. Contractor agrees to abide by City rules governing gifts to public officials and employees.

10.5 Remedies. Any violation of Section 13 constitutes a material breach and may result in City suspending payments, requiring reimbursement, or terminating the Contract. City reserves all rights and remedies under the law and this Contract, including seeking indemnification.

11. PAYMENT BOND

Contractor must obtain a payment bond in the penal sum of 100% of the Contract Price, using the Bond Form attached and incorporated here as **Exhibit D**. The bond must be issued by a surety admitted in California, with a financial rating from A.M. Best Company of Class A- or higher, or as otherwise acceptable to City. If an issuing surety cancels a bond or becomes insolvent, Contractor must provide a substitute bond from a surety acceptable to City within seven (7) calendar days after written notice from City. If Contractor fails to do so, City may in its sole discretion and without prior notice, purchase bonds at Contractor’s expense, deduct the cost from payments due Contractor, or terminate the Contract. City will not execute the Contract nor issue the NTP until the required bonds are submitted.

12. PROJECT COORDINATION

City Project Manager. City assigns Ken Tanase as the City representative for all purposes under this Contract, with authority to require compliance with the Scope of Work. City may substitute Project Managers at any time and without prior notice to Contractor.

Contractor Project Manager. Subject to City approval, Contractor assigns Joe Cigolini as its single representative for all purposes under this Contract, with the responsibility to ensure progress with the Work. Contractor’s Project Manager is responsible for coordinating and scheduling the Work and must regularly update the City Project Manager about the status and any delays with the Work, consistent with the Scope of Work. Any substitutions must be approved in writing by City.

13. ABANDONMENT, SUSPENSION, AND TERMINATION

13.1 City may abandon or postpone the Work or parts thereof at any time. Contractor will be compensated for satisfactory Work performed through the date of abandonment and will be given reasonable time to close out the Work. With City’s pre-approval in writing, the time spent in closing out the Work will be compensated up to ten percent (10%) of the total time expended in performing the Work.

13.2 City may terminate the Contract for cause or without cause at any time. Contractor will be paid for satisfactory Work rendered through the termination date and will be given reasonable time to close out the Work.

13.3 The City shall have the authority to suspend this Contract, wholly or in part, for such period as deems necessary due to unfavorable conditions or to the failure on the part of the Contractor to perform any provisions of this Contract.

14. GOVERNING LAW, VENUE AND DISPUTE RESOLUTION

This Contract is governed by the laws of State of California. Venue for any legal action shall be the Superior Court of the County of Santa Clara, California. The dispute resolution procedures of Public Contract Code Section 20104, et seq., incorporated here by reference, apply to this Contract and Contractor is required to continue the Work pending resolution of any dispute. Prior to filing a lawsuit, Contractor must comply with the claim filing requirements of the California Government Code. If the Parties elect arbitration, the arbitrator's award must be supported by law and substantial evidence and include detailed written findings of law and fact.

15. ATTORNEY FEES

If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceedings to enforce its rights or a judgment in connection with this Contract, the prevailing party will be entitled to reasonable attorney fees and costs.

16. SIGNS/ADVERTISEMENT

No signs may be displayed on or about City's property, except signage which is required by law or by the Contract, without City's prior written approval as to size, design and location.

17. THIRD PARTY BENEFICIARIES

There are no intended third party beneficiaries of this Contract.

18. WAIVER

Neither acceptance of the Work nor payment thereof shall constitute a waiver of any contract provision. City waiver of any breach shall not constitute waiver of another provision or breach.

19. ENTIRE CONTRACT

This Contract and the attachments, documents, and statutes attached, referenced, or expressly incorporated herein, including authorized amendments or change orders constitute the final and complete contract between City and Contractor with respect to the Work and the Project. No oral contract or implied covenant will be enforceable against City. If there is any inconsistency between any term, clause, or provision of the main Contract and any term, clause, or provision of the attachments or exhibits thereto, the terms of the main Contract shall prevail and be controlling.

20. SEVERABILITY/PARTIAL INVALIDITY

If a court finds any term or provision of this Contract to be illegal, invalid, or unenforceable, the legal portion of said provision and all other contract provisions will remain in full force and effect.

21. SURVIVAL

The contract provisions which by their nature should survive the Contract or Completion of Project, including without limitation all provisions regarding warranties, indemnities, payment obligations, insurance, and bonds, shall remain in full force and effect after the Work is completed or Contract ends.

22. INSERTED PROVISIONS

Each provision and clause required by law to be inserted in this Contract will be deemed to be included and will be inferred herein. Either party may request an amendment to cure mistaken insertions or omissions of required provisions.

23. CAPTIONS

The captions, titles, and headings in this Contract are for convenience only and may not be used in the construction or interpretation of the Contract or for any other purpose.

24. COUNTERPARTS

This Contract may be executed in counterparts, each of which is an original and all of which taken together shall form one single document.

25. NOTICES

All notices, requests, and approvals must be sent in writing to the persons below and will be considered effective on the date of personal delivery, the date confirmed by a reputable overnight delivery service, on the fifth (5th) calendar day after deposit in the United States Mail, postage prepaid, registered or certified, or the next business day following electronic submission:

To City of Cupertino: Office of the City Manager 10300 Torre Ave. Cupertino CA 95014 cc: Representative/Coordinator: Jimmy Tan Email: jimmyt@cupertino.org	To Contractor: IMPEC Group, Inc. 3350 Scott Blvd. Santa Clara, CA 95054 cc: Representative/Coordinator: Richard Peterson Email: rpeterson@impecgroup.com
---	---

26. EXECUTION

The persons signing below warrant they have the authority to enter into this Contract and to legally bind their respective Parties. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code Section 313.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed as of the Execution Date first above written.

CITY OF CUPERTINO, a Municipal Corporation By: _____ Title: _____ Signature Date: _____	IMPEC GROUP, INC. By: _____ Title: _____ Signature Date: _____
--	--

APPROVED AS TO FORM:

By: _____
CHRISTOPHER JENSEN
Cupertino City Attorney

ATTEST:

By: _____
KIRSTEN SQUARCIA
City Clerk

Date: _____