

## MEMORANDUM

To: Members of the City Commission

From: Lisa Agnor, City Manager

Date: December 4, 2015

Subject: Approval of an extension of a contract for pick-up and removal of litter from specified highways or street rights-of-way within the corporate city limits of Marshall

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Ben Harber has requested an extension to the current contract for pick-up and removal of litter from specified highways or street rights-of-way within the corporate city limits of Marshall. The initial contract approved on January 22, 2015, allows for two one-year extensions.

Please note that an amendment has been made to the contract to reflect the addition of an expanded service coverage area, which was approved by the City Commission in the meeting of August 13, 2015. The additional service coverage area of approximately 3 miles includes South Washington (from Pinecrest Drive to Beth Ann Drive); and the Interstate 20 exit ramps onto Highway 59 (both east and west sides of I-20). The addition of this service coverage area increases the monthly cost from \$3,500 to \$3,850. Copies of the contract and the contract amendment are attached.

### **Recommendation**

It is my recommendation that the Commission approve this contract extension request from Ben Harber of Marshall, Texas to furnish the pick-up and removal of litter from specified highways or street rights-of-ways within the corporate city limits of Marshall, at a cost of \$3,850 per month. This extension will be effective from January 1, 2016 to December 31, 2016.

**AMENDMENT AND EXTENSION OF THE LITTER REMOVAL  
AGREEMENT BETWEEN THE CITY OF MARSHALL  
AND BEN HARBER**

THIS AMENDMENT AND EXTENSION OF THE LITTER REMOVAL AGREEMENT between the City of Marshall, Texas, "City" and BEN HARBER, an individual providing services to the City, hereinafter called "Contractor", is made and entered into to establish and amend certain terms and conditions of the Agreement.

By and in consideration of mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Pursuant to paragraph V, "Term of Contract", of the original Agreement, the Agreement is extended for an additional twelve months, the extend term to begin on January 1, 2016 and end on December 31, 2016.

2. The Agreement is amended by adding the following streets or highways to the specified list of areas for litter removal performed by Contractor:

- A. South Washington Street: area between Pinecrest Drive to Beth Ann Drive.
- B. Interstate 20 off ramps onto Highway 59 – East and West sides.

3. The Agreement is amended with regard to paragraph III and IV to provide for an increase in the payment for Contractor's services. Contractor shall now be paid \$3,850.00 a month for a total annual payment of \$46,200.00.

4. Except as modified and extended herein, all of the other terms and provisions of the Agreement are hereby continued in full force and effect.

5. This agreement may not be modified further except in writing, signed by the parties.

IN WITNESS WHEREOF, the parties have caused this Contract and Agreement to be executed by their respective and appropriate officials on this the \_\_\_\_\_ day of \_\_\_\_\_, 2015, to be effective on the date for the terms herein provided.

ATTEST:

THE CITY OF MARSHALL, TEXAS

\_\_\_\_\_  
Acting City Secretary

\_\_\_\_\_  
Lisa Agnor, City Manager

Contractor  
BEN HARBER

\_\_\_\_\_  
Ben Harber, Owner

**AGREEMENT BETWEEN THE CITY OF MARSHALL, TEXAS  
and BEN HARBER  
(Bid No. 2014-LITTER CONTROL)  
EXTENSION #1**

**STATE OF TEXAS:**

**KNOW ALL MEN BY THESE PRESENTS**

**COUNTY OF HARRISON:**

THIS CONTRACT is made and entered into on this the 1st day of January, 2016 by and between the City of Marshall, (hereinafter referred to as "CITY") and Ben Harber (hereinafter referred to as "CONTRACTOR"). In consideration of the mutual covenants hereinafter set forth, the CITY and CONTRACTOR agree as follows:

**I. Statement of Services to be performed.**

The Contractor shall pick up and remove all litter on a twice per month basis from specified highway or street right-of-ways within the corporate limits of the City in accordance with the attached highway and/or street list (Attachment A) or as revised by addendum listings. The Contractor shall perform the twice monthly litter removal in a cycle which will allow each specified highway or street to be serviced in the first two weeks of the month and then a second time in the third or fourth week of the month. The Contractor shall be responsible for the proper disposal of all litter.

The Contractor will be responsible for all necessary safety precautions including posting and erection of all signing necessary to comply with the attached signing requirements set by the State Department of Highways and Public Transportation.

The Contractor will not be responsible for removal or disposal of dead animals. The Contractor shall contact the Animal Control Division of the City to assure that the City will remove dead animals discovered by the Contractor.

All work shall be performed as specified or indicated in the Proposal (Attachment A), and, at the Contractor's own cost and expense. The Contractor shall furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services as may be necessary in order to complete the work, as described above and in accordance with the Proposal unless otherwise agreed to by the City.

**II. Signage, Equipment, and Safety.**

In order to insure safety of the traveling public, Contractor shall coordinate all work within the City and shall place warning signs in accordance with the Texas Manual on Uniform Traffic Control Devices. Signs, sign stands and safety flags, or other safety

material or devices as may be required to protect and warn the traveling public, must be furnished by the Contractor.

The Contractor agrees to accept full responsibility for any and all damages, including damage to City of State right-of-ways, as a result of their operations thereon. The Contractor further agrees to promptly repair any such damage in accordance with the City or State's instructions.

All equipment operating on City of State right-of-way shall be licensed in accordance with the laws of the State of Texas.

### **III. Contract Amount**

The total amount of this contract during this extended term shall not exceed \$46,200.00 (see amendment to contract).

### **IV. Payment for Services**

The City shall pay Contractor for services performed upon receipt of a proper invoice presented to the City Finance Department within thirty (30) days from receipt of same.

Payment for services performed shall be billed at a rate of \$3,850.00/month (see amendment to contract).

### **V. Term of Contract**

The term of this contract shall be a period of twelve (12) months, beginning January 01, 2016 and ending December 31, 2016. Contract may be extended for a third annual period beginning January 1, 2017, provided both parties agree to such extension not less than thirty (30) days prior to the end of each annual period and approved by the City Manager. It is additionally conditioned that any annual increase is not higher than the Consumer Price Index for the previous twelve (12) months as interpreted by the City Finance Director

### **VI. Additional Requirements of Contractor**

The Contractor shall provide monthly reports to the City which demonstrates work performed during the previous month. Such reports shall identify locations worked along with dates and times when work was performed.

All operations must meet the approval of the City. The City Manager or his designee shall have the right throughout the duration of this agreement, to verify the Contractor's compliance with the terms of this agreement. Failure by the Contractor to satisfactorily perform the work herein specified shall be cause for immediate suspension of the work and possible cancellation of the agreement or declaration of default.

## **VII. Insurance**

Contractor shall maintain insurance coverage during the entire term of this Contract in accordance with insurance requirements set forth in section 8 of the Bid Specifications contained in the Proposal. Contractor shall not commence work under this Contract until Contractor has obtained at Contractor's expense all insurance required by this Contract and such insurance has been approved by the City Manager or the City Manager's designee. Contractor shall not allow any subcontractor to commence work on any subcontract for the performance of work under this Contract until the subcontractor has obtained insurance that complies with all of the requirements of this Contract and such insurance has been approved. Nothing contained in the insurance requirements of this Contract shall be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from Contractor's operations.

## **VIII. Compliance with Laws**

The Contractor Party shall comply with all Federal, State, and local laws, statutes, and ordinances applicable to the performance of this Contract, including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, Contractor shall furnish City with satisfactory proof of its compliance therewith.

## **IX. No Third-party Beneficiaries**

Nothing under this Contract shall be construed to give any rights or benefits in this Contract to anyone other than the City and Contractor, and all duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the City and Contractor and not for the benefit of any other party.

## **X. Special Provisions**

As to the contractual relationship between Contractor and the City, Contractor is and shall be considered in all things an independent contractor.

## **XI. Entire Contract**

This Contract, together with the attachments identified herein, constitute the entire Contract between the City and Contractor and supersede all prior or oral understandings.

## **XII. Severability**

The invalidity of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract.

**XIII. Effect of Authorship on Construction of Contract**

The parties agree that this Contract shall not be construed in favor of or against any party on the basis that the party did or did not authorize this Contract.

**Executed on behalf of the Contractor by its owner shown below, and on behalf of the City by its City Manager, or authorized representative, this agreement will be effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2016.**

CITY OF MARSHALL  
PO Box 698  
Marshall, Texas 75671

CONTRACTOR:  
Ben Harber  
PO Box 1573  
Marshall, Texas 75671

By: \_\_\_\_\_  
Lisa Agnor  
City Manager

By: \_\_\_\_\_  
Ben Harber  
Owner