|  |  |
| --- | --- |
| 120 Main Ave., Suite B, Sacramento, CA 95838 | (916) 878-1751 |

**SERVICE AGREEMENT**

This Service Agreement (the “Agreement”) shall be effective as of October 24, 2024 (the “Effective Date”), and is entered into on behalf of Scorpion Cleaning Service, Inc. (“SCS”) on the one hand, and Acme Supermarket Inc. (“Customer”) on the other. SCS and Customer may collectively be referred to in this Agreement as the “Parties,” or individually as a “Party.”

**Customer Properties**. SCS shall perform its below-defined Services for Customer at the following locations:

**Property #1**

23456 Main Street

Pleasanton, CA 94588

**Property #2**

45987 2nd Street

Pleasanton, CA 94588

(collectively, the “Properties”). The term “Project” shall refer to: (a) the comprehensive scope of work encompassing the below-defined Services to be performed by SCS at the Property under this Agreement; and (b) when and if applicable, any additional Services that the Parties may subsequently agree to in writing.

**Term & Termination**. Unless otherwise terminated by a Party in the manner set forth below, this Agreement shall commence on the above-referenced Effective Date and continue for two years (the “Initial Term”). Notwithstanding the two-year Initial Term for this Agreement, this Agreement may terminate prior to the end of the Initial Term, or prior to the end of any below-defined Renewal Term(s), as follows: (a) SCS may terminate this Agreement at any time without prior notice if Customer is more than 30 calendar days’ late on any payment owed to SCS under this Agreement; (b) either Party may terminate this Agreement if the other Party fails to cure a default under this Agreement (other than for non-payment) within 30 calendar days’ written notice from the non-breaching Party; or (c) either Party may terminate this Agreement for any reason upon providing the other Party with at least 60 calendar days’ written notice of its decision to terminate. The written notice referenced in “(b)” shall contain a clear description of the breach(es) that the breaching Party is alleged to have committed. During the notice period referenced in “(c),” the Parties shall continue performing their respective obligations under this Agreement. Upon termination of this Agreement, SCS shall be entitled to compensation for all Services performed through the date of termination.

**Auto-Renewal**. Unless otherwise terminated in the manner set forth above, this Agreement shall renew automatically for additional one-year terms (“Renewal Term(s)”) unless either Party provides written notice of termination to the other Party not less than 30 calendar days’ prior to the end of the then-current Term or Renewal Term. The Initial Term and Renewal Term(s) shall collectively be referred to in this Agreement as the “Term.” Scorpion will provide Customer with written notification of the impending auto-renewal of this Agreement approximately 45 calendar days prior to the end of the Term. Customer may terminate this Agreement within the 30 calendar days’ permitted by sending written notice to SCS via: (a) certified mail, return receipt requested; (b) a nationally recognized delivery service (e.g., FedEx, UPS, etc.) requiring a signature upon delivery; or (c) via email addressed to: *jose@jrpmech.com.* This auto-renewal provision is intended to comply with Business and Professions Code section 17600 et seq.

**Services**. During the Term, SCS will provide Customer with power washing services to the following areas/elements of the Properties, where applicable (collectively, the “Services”):

— Parking Areas (excluding indoor parking garages/structures).

— Pavers/Walkways/Sidewalks

— Concrete/Stucco

— Roofs

— Equipment

— Hazmat/Bio Hazard Rooms/Areas

— Driveways

— Loading Docks

— Eaves

— HVAC units

**Scope of Services**. Within the areas/elements identified above, SCS’s Services shall address each of the following:

— Oil/Grease Stains and Residue

— Food Residue (including oils/grease)

— Plant Material

— Graffiti Removal

— Mold/Mildew (outdoor only; no indoor washing or remediation of any kind)

— Moss

— Algae

— Chewing Gum

— Rust

— Chemicals (excluding hazardous chemicals that require a license to transport or remediate)

— Bio-Hazards (e.g., human waste, blood, saliva, semen, etc.)

**Scheduling of Services**. SCS will perform the Services for Customer at each of the Properties as follows: (a) Property #1—on a weekly basis; and (b) Property #2—once every two weeks. Prior to commencing its Services with Customer, SCS will send Customer a schedule containing more specific details (e.g., date and/or time) as to when the Services at each of the Properties will actually be performed. SCS does, however, reserve the right to alter such schedules as it deems necessary. In such cases, SCS will provide written notice to Customer of the change in scheduling.

**Additional Property Visits**. In addition to the scheduled Services agreed to above, on occasion Customer may wish to have SCS perform all or some of the Services on additional occasions throughout the year. SCS will work in good faith to accommodate Customer’s request.

**Access to the Property**. Customer shall make the the Properties sufficiently available to SCS to allow it to perform all of its Services, including, as necessary, the provision of keys, access codes, and/or other access-granting devices. If SCS is, at any time, unable to gain access to any of the Properties sufficient to permit SCS to perform the scheduled Services, Customer shall pay SCS the below-defined Flat Rate notwithstanding the fact that SCS was unable to perform the Services as scheduled. If Customer wishes to have SCS perform the missed Services on a different date, Customer shall pay SCS its normal Flat Rate for that visit as well.

**Water Source & Runoff**. At its own expense, Customer shall provide SCS with access to water, which SCS will use to perform the Services. SCS has protocols in place to capture and filter runoff water. Upon Customer’s request, SCS will expel the captured and filtered water over Customer’s plants. Otherwise, SCS will utilize Customer’s existing drains to dispel the runoff after it has been filtered.

**Obstacles and Debris**. Customer shall ensure that the Properties are free of any obstacles or debris that inhibit or prevent SCS from performing the Services. If SCS must clear, remove, or relocate any obstacles or debris so that SCS can provide the Services, Customer agrees to pay SCS $150 per hour per person to remove such obstacles or debris.

**Fees**. Except as otherwise set forth in this Agreement, SCS shall charge Customer a flat rate of:

**$180**

(the “Flat Rate”).

Customer will pay the Flat Rate every time SCS performs its Services at one of Customer’s Properties.

**Annual Flat-Rate Increase**. The Flat Rate shall increase automatically by 5% on the one-year anniversary of the Effective Date, and on each subsequent year after that.

**Rates Subject to Additional Increase Upon Commencement of Renewal Term**. If SCS wishes to increase the Flat Rate beyond the automatic annual 5% increase described above, SCS shall provide Customer with at least 45 calendar days’ written notice, and such increase shall only become effective upon the commencement of a Renewal Term.

**Invoices & Payment**. SCS will invoice Customer for all Services-related fees performed during the period of time reflected in the invoice. Customer shall deliver full payment due under each invoice within 30 calendar days of the date SCS sends an invoice to Customer. If SCS does not receive full payment on an invoice within the requisite 30-day period, Customer shall pay a late fee of 15% of the sum then remaining past-due.

**Late Payments**. Interest shall accrue on all sums due to SCS that remain unpaid for 30 or more calendar days at the maximum legal rate, or 10%, whichever is less.

**Returned Checks**. Customer agrees to pay a processing fee of $25, or the maximum legal amount, whichever is greater, for all returned or cancelled checks.

**Credit Cards**. While SCS accepts all major credit cards (e.g., American Express, Visa, Mastercard, and Discover), a surcharge of 3.5% will be added to any sum paid to SCS via credit card. If Customer disputes any charge(s) on a credit card provided to SCS to pay any sum due under this Agreement, and if SCS ultimately prevails in supporting the disputed charge(s), in addition to the amount in dispute, Customer shall pay to SCS an additional $150 per hour, in minimum increments of 30 minutes, for all time SCS spent in resolving the dispute with its merchant processor/bank.

**Cancellation/Rescheduling**. Customer may *request* that SCS postpone a scheduled Services visit if it provides SCS with at least 48 hours’ advance written notice. In such cases, SCS will make a good faith effort to reschedule the Services visit, and Customer will be invoiced as usual after SCS completes the rescheduled Services visit. If, however, SCS cannot reasonably accommodate the postponement, Customer agrees to pay the Flat Rate for the missed Services visit.

**Insurance**. At all times while performing the Services, SCS shall maintain at least $2,000,000 in general liability insurance, as well as an umbrella policy of at least $4,000,000. SCS shall also maintain worker’s compensation coverage as required by California law.

**Independent Contractor**. At all times while performing the Services, SCS shall be and remain an independent contractor within the meaning of California law.

**SCS’s Limited Warranty**. SCS warrants and represents that it will perform the Services in a professional manner, in accordance with reasonable industry standards, and in conformance with the explicit specifications contained in this Agreement. THIS WARRANTY SHALL BE THE EXCLUSIVE WARRANTY AVAILABLE TO CUSTOMER. SCS MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED.

**Warranty Exclusions**. Notwithstanding the limited warranties set forth above, SCS makes no warranties as to any of the following:

**Damage to Property**. While SCS shall endeavor, in conformance with reasonable industry standards, to prevent damage to Customer’s Property (e.g., pavers, walkways, decking, stonework, brickwork, awnings, window casings, stucco, etc.), Customer acknowledges that there is an inherent risk in utilizing a power washer on such elements, and that a certain amount of cracking, chipping, stripping, checking, raising, settling, or discoloration may occur as a result of SCS’s Services. Customer therefore agrees that as long as SCS performed the Services in accordance with reasonable industry standards, SCS shall not be responsible for any damage to Customer’s Properties arising out of SCS’s Services.

**Defects Caused by Others**. SCS shall not be liable for loss or damage that results from any negligent work or defective materials caused or installed by others.

**SCS’s Indemnity to Customer**. SCS shall indemnify and hold Customer harmless from any personal injury claims arising out of SCS’s negligent performance of the Services.

**Force Majeure**. Subject to the limitations contained in this provision, neither Party shall be held liable or responsible for any failure or delay in the performance of their obligations under this Agreement if any of the following events or circumstances occurs: (i) acts of God; (ii) fire; (iii) flood; (iv) earthquake; (v) war; (vi) terrorism; (vii) civil unrest; or (viii) governmental actions, such as declarations of states of emergency (collectively, “Force Majeure Events”). A Force Majeure Event shall *not* excuse a Party’s timely performance under this Agreement unless: (a) the Force Majeure Event renders the affected Party’s performance impossible or impracticable; and (b) the affected Party had no role in causing or exacerbating the Force Majeure Event. If a Force Majeure Event occurs, the affected Party shall promptly notify the other Party in writing and provide reasonable details of the event and its anticipated impact on the performance of their obligations. The affected Party shall use commercially reasonable efforts to minimize the impact of the Force Majeure Event on the performance of its obligations, and the time for performance shall be extended for a period equal to the duration of the Force Majeure Event. If, however, the Force Majeure Event continues for a period of more than 90 calendar days, either Party may terminate this Agreement upon written notice to the other Party, without any liability, except for payment obligations accrued up to the date of termination.

**Limitation on Damages**. Customer acknowledges and agrees that its exclusive remedy for all damages, suits, losses, costs, expenses, liabilities, judgments, and/or causes of action (including attorneys’ fees and costs) arising from or related to SCS’s Services shall not exceed the amount of compensation that SCS has received, requested, or would be entitled to receive or request under this Agreement. If a court of competent jurisdiction or an arbitrator deems this provision unenforceable, the court or arbitrator shall determine that the Parties’ intent was to limit such damages as much as the law will permit. Customer further acknowledges and agrees that Customer shall not, under any circumstances, hold SCS or any of SCS’s officers, agents, or anyone else involved in the performance of the Services liable for any direct, indirect, incidental, special, or consequential damages that result from any mistakes, omissions, or alleged wrongdoing committed by SCS.

**General Provisions**. In addition to the foregoing, the Parties agree as follows:

**Assignment**. This Agreement is personal to the Parties, and neither Party may, therefore, assign any of their rights or obligations under this Agreement to any third party without the other Party’s express written consent.

**Notices**. All notices required under this Agreement shall be in writing and shall be delivered as set forth below (or at any subsequent address provided in writing by a Party) via: (i) certified mail, return receipt requested; (ii) personal delivery if accompanied by proof of delivery; (iii) a nationally recognized delivery service (e.g., Federal Express, United Parcel Service, etc.) requiring proof of delivery; or (iv) electronic mail.

Notice to SCS

c/o Jose Padilla

120 Main Ave., Suite B

Sacramento, CA 95838

jose@jrpmech.com

Notice to Customer

c/o Bob Smith

23456 Main Street

Pleasanton, CA 94588

bsmith@acme.com

**Right to Contract**. The Parties represent that each has the requisite authority and legal right to enter into this Agreement, and that their signing of and performance of their obligations under this Agreement will not: (i) conflict with, violate, result in a breach of, result in a termination or cancellation of, or constitute a default in or under any other agreement to which either is party, or by which they or any of their assets may be bound; (ii) violate any order, writ, injunction, decree, judgment, or ruling of any court or governmental authority; or (iii) violate any federal, state, or local laws, ordinances, regulations, or rules.

**Waiver**. No breach of any provision(s) in this Agreement can be waived unless done so in writing and signed by the Parties. Waiver of any one provision of this Agreement shall not be deemed to be a waiver of any other provision, nor shall a waiver of a specific provision on any particular occasion be deemed a permanent waiver of that provision.

**Headings**. The section headings that appear throughout this Agreement have been provided solely for the convenience of the Parties, and do not define or limit the scope of any provision. Consequently, the headings shall not be considered when interpreting this Agreement.

**Interpretation/Arm’s Length**. The Parties acknowledge and agree that they entered into this Agreement knowingly and voluntarily, at arms’ length, and with a full understanding of the legal significance and ramifications for doing so. The Parties therefore agree that any rule of law or legal decision that would require interpretation of this Agreement against the Party that drafted it, including Civil Code section 1654, shall not be applicable, and in fact is irrevocably and unconditionally waived.

**Attorneys’ Fees**. If any legal action is brought to enforce and/or interpret this Agreement, the prevailing party shall be entitled to recover his/her/its reasonable attorneys’ fees and costs incurred in that action.

**Applicable Law/Jurisdiction and Venue**. This Agreement shall be governed by and construed in accordance with the laws of the State of California with venue in the County of Sacramento.

**Severability**. If all or part of any provision in this Agreement becomes or is declared by a court/arbitrator of competent jurisdiction to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without such language. If, however, the absence of such language materially alters the rights, limitations, or obligations of the Parties, the above-referenced court/arbitrator shall determine each Party’s rights, limitations, and obligations according to the intent of this Agreement when considered as a whole.

**No Third-Party Beneficiary**. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties and their permitted respective successors and assigns. No provision of this Agreement shall give any third parties any right of subrogation or action over or against the Parties.

**Entire Agreement**. This Agreement constitutes the entire agreement between the Parties concerning the subject matter set forth in this Agreement, and supersedes all previous agreements, either written or oral, concerning such subject matter. The Parties acknowledge that no Party has made any representations, warranties, agreements, or covenants that are not expressly set forth in this Agreement, and that this Agreement may only be amended or modified by a written document signed by the Parties.

**Counterparts** This Agreement may be signed in counterparts, any of which may be signed and transmitted electronically, each of which shall be deemed an original, and all of which shall, when taken together, constitute a single document.

The Parties have entered into this Agreement as of the Effective Date.

|  |  |
| --- | --- |
| **SCORPION CLEANING SERVICE, INC.**  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Jose Padilla, President | **ACME SUPERMARKET INC.**  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Bob Smith, Manager |