

City of Middleburg Heights, Ohio

Ordinance No. 2024- 60

Introduced by: Mr. Bortolotto, Mr. Meany, and Mr. Ference

**AN ORDINANCE
AUTHORIZING THE MAYOR AND FINANCE DIRECTOR
TO ENTER INTO A CONTRACT WITH
REILLY SWEEPING, INC.
AND DECLARING AN EMERGENCY**

WHEREAS, the City's purchasing policy requires City Council approval on any single purchase of products or services exceeding \$25,000 or any professional service contract exceeding \$10,000, with the exception of items purchased through or at an amount equal to an approved cooperative purchasing agreement; and

WHEREAS, the City desires to retain the services of a competent and qualified contractor to provide certain products/services to the City; and

WHEREAS, Reilly Sweeping, Inc. is competent and qualified to furnish products and/or services to the City and has provided a responsive and responsible proposal, and desires to provide Street Sweeping Services.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, CUYAHOGA COUNTY, STATE OF OHIO:

Section 1. That the Mayor and Finance Director is hereby authorized to enter into a contract with Reilly Sweeping, Inc. to provide certain products and/or services to the City, a copy of which is attached hereto and marked "Exhibit A".

Section 2. That it is hereby found and determined that all formal actions of this council concerning and relating to the passage of this ordinance were adopted in an open meeting of this council, and that all deliberations of this council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements including chapter 107 of the Codified Ordinances and section 121.22 of Ohio Revised Code.

Section 3. That this ordinance is hereby declared to be an emergency measure, immediately necessary for the preservation of the public peace, health and safety of the citizens of the City of Middleburg Heights, Ohio. Therefore, this ordinance shall take effect and be in force immediately upon its passage and approval by the Mayor.

PASSED 9/10/24

David Bortolotto
PRESIDENT OF COUNCIL

ATTEST:
M Mecla
CLERK OF COUNCIL

PRESENTED TO MAYOR 9/11/24

APPROVED ON: 9-11-24

	YEAS	NAYS
BORTOLOTTA	<u>X</u>	_____
ALI	<u>X</u>	_____
SAGE	<u>X</u>	_____
MEANY	<u>X</u>	_____
MCGREGOR	<u>ABSENT</u>	_____
FERENCE	<u>X</u>	_____
ZAKEL	<u>X</u>	_____

Matthew Castelli
MAYOR

I, Mary Ann Mecla Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Ord. 2024-60 adopted by the Council of the City of Middleburg Hts., on 9/10/24 was posted for a period of fifteen days, beginning 9/12/24 and remained so posted for fifteen days at the two posting places as designated by Charter.

Mary Ann Mecla
Clerk

CERTIFICATE

I, Mary Ann Mecla Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ord. 2024-60 passed on the 10th day of September 20 24 by said Council.

Mary Ann Mecla
Clerk of Council



Service Agreement

Reilly Sweeping, LLC OH (Company) agrees to perform the work described in this service agreement according to the specific terms and conditions contained herein.

Property Location

Billing Info

Name: **City of Middleburg Heights**

Name: **City of Middleburg Heights**

Street: **Various Curbed Streets Throughout the City**

Street: **15700 Bagley Road**

City: **Middleburg Heights** State: **OH** Zip Code: **44130**

City: **Middleburg Heights** State: **OH** Zip Code: **44130**

Phone: **(440) 234-2216** Fax: **N/A**

Phone: **(440) 234-2216** Fax: **N/A**

Property Contact: **Jim Herron**

Ordered By: **Jim Herron**

Email: **Jherron@middleburgheights.com**

Email: **Mruggiero@middleburgheights.com**

Phone: **(440) 234-2216**

Phone: **(440) 234-2216**

Service Details and Fees

Hourly Sweeping Service

Scheduled Sweeping Service

Per Hour: **\$ 175.00**

Service Frequency: **Monthly**

Hour Minimum: **One (1)**

Sweeps Per Term: **Eight (8)**

Portal to Portal: **Yes**

Per Sweep: **\$ 7,200.00**

OT Per Hour: **\$ 34.00**

OT Per Hour: **N/A**

Per Curb Mile Sweeping Service

Additional Fees

Per Curb Mile: **N/A**

Disposal Fee: **N/A**

Per Cycle: **N/A**

Variable Energy Charge (VEC)*: **None**

Miles Per Cycle: **N/A**

Contract Term: **12 Months**

Environmental, Health & Safety Charge (EHSC)*: **None**

Start Date: **September 01, 2024**

Mobilization Fee: **N/A**

*For details, please visit www.sweepingcorp.com/vec/ or www.sweepingcorp.com/ehsc/

The Company shall provide equipment, labor, fuel, and any other materials necessary to complete the required work. The Company will clean an area seven (7) ft. wide from the curb, barrier or paved shoulder edge. No cleaning operation shall be conducted when there are climatic conditions present or forecast that would make such an operation ineffectual or dangerous. Company's service is based on removal of a regular day-to-day build-up of material and debris. Any excessive, out of the ordinary, or unusual build-up or residue of any dirt, debris or material is not covered by the price quoted in this agreement under the hourly rate.

Special Instructions / Comments - Additional Space on Last Page, if Needed

Water Fill Location
Customer shall provide and secure a water source for sweeper dual control at the customer's sole cost in addition to the price in this agreement. Customer agrees to hold harmless and indemnify the company, including the payment of reasonable attorney fees and costs, should company incur costs, expenses, damages and/or be held legally responsible for water charges used or incurred in conjunction with this agreement.

Dumpster Location
Customer shall provide and secure, at the sole cost in addition to the price in this agreement, for the disposal of waste and/or debris. Waste and/or debris swept or collected from the designated work area by company shall remain the waste of the customer. Under no circumstances shall the waste be deemed to be the waste of the company. The company shall dispose of all waste within the customer dumpster and/or at a dumpster chosen by the customer. Customer hereby authorizes the use of the dumpster by the company. Customer agrees to hold harmless and indemnify the company, including the payment of reasonable attorney fees and costs, should company incur costs, damages and/or be held legally responsible for disposal costs incurred in conjunction with this agreement.

Authorized Signatures

The undersigned individual signing this Service Agreement on behalf of the Customer acknowledges that he or she has read and understands the terms and conditions of this Agreement and that he or she has the authority to execute this Agreement on behalf of the Customer.

Customer

Signature

Print Name

Title

Date

Company Representative

Signature

Print Name

Title

Date

Terms and Conditions

NOTICE: ANY ACCEPTANCE OF COMPANY'S OFFER IS EXPRESSLY LIMITED TO ACCEPTANCE OF THESE TERMS AND CONDITIONS AND COMPANY EXPRESSLY OBJECTS TO ANY ADDITIONAL OR CHANGED TERMS PROPOSED BY CUSTOMER. NO OTHER TERMS AND CONDITIONS OF ANY FORM SHALL MODIFY THESE, EVEN IF SIGNED BY COMPANY. ANY ORDER TO PERFORM WORK OR COMPANY'S PERFORMANCE OF THE WORK SHALL EXPLICITLY CONSTITUTE CUSTOMER'S AGREEMENT TO THESE TERMS AND CONDITIONS. PLEASE REFER TO WEBSITE AT <https://www.sweepingcorp.com/> FOR THE LATEST GOVERNING TERMS AND CONDITIONS.

- 1) Definitions.** "Customer" means the entity to which the Company is providing Services under the Agreement. "Agreement" means either a) the contract or agreement signed by both parties for the Services, or (ii) the purchase order signed by Customer and accepted by Company in writing, together with these Terms and Conditions. "Company" means the Sweeping Corporation of America entity providing Services under the Agreement.
- 2) Services Rendered.** Customer grants exclusive rights to Company, for the term of the Agreement, to furnish all labor, equipment and services necessary for the performance of the service ("Service") in conformance with the standards of service set forth in this Agreement and Customer agrees to make payments as provided in the Agreement.
- 3) Coverage and Term of Agreement.** This Agreement shall control and govern all Services provided by Company as of its effective date. The effective date and initial term of this Agreement shall start on the date on which Service under this Agreement commences and shall continue for a term of thirty-six (36) months. Thereafter, it shall automatically renew for successive twelve (12) month terms, unless either party gives written notice of termination to the other at least ninety (90) days before the end of the then current term.
- 4) Standards of Service.** Services shall be performed in accordance with best management practices of the Company. Obstructions or debris including but not limited to accumulations of leaves, silt, compacted dirt, and similar debris will be removed as part of the customary and ordinary service under this Agreement. If the Company at its sole discretion determines that such removal constitutes extra work from that contemplated under this Agreement, the Company shall, for additional compensation, perform extra services as may be required. Services shall be performed to prevent litter, leaves, sand, dirt and debris from being swept into any street side drainage inlets contiguous to or within the designated work area. Customer represents and warrants that all materials to be collected by Company are nonhazardous waste and recyclables. Nothing in this Agreement shall convey to the Company the status of "generator." Any waste swept and collected from the designated work area by Company shall remain the waste of the Customer and it is agreed that Company under no circumstances shall be deemed to have generated the waste or to own the waste. The Company shall dispose of all waste within the Customer's dumpster and Customer hereby authorizes the use of its dumpster for that purpose, unless otherwise stated on the front of this Agreement. Any waste that cannot be disposed of in the Customer's dumpster shall be disposed of in accordance with the Service Details and Fees.
- 5) Warranties.** Except as otherwise provided herein, Company makes no express or implied warranties, including but not limited to, implied warranties of merchantability or fitness for a service for a particular purpose. Such warranties are all expressly disclaimed.
- 6) Time and Performance.** Upon acceptance by Customer, Company shall commence performance within the time frame specified by Company as Start Date, or, in the absence of a specified time frame, shall commence work within a reasonable time and pursue such with reasonable diligence until completed. If a scheduled sweeping is not possible due to inclement weather or other unforeseen occurrences, Company shall endeavor to perform the services when the weather or circumstances permit.
- 7) Equipment Removal.** Company agrees to remove from the Customer's premises any Company equipment, upon termination of the Agreement or once all Services have been completed.
- 8) Payment.** Customer shall pay Company for Services rendered monthly in accordance with the Service Details and Fees and invoice received. Unless otherwise agreed by the parties in writing, Customer shall pay Company for Services within ten (10) days from the invoice date. Company shall charge late fees, including a one-time \$60.00 administration fee, and on a monthly basis, an additional late payment fee of 2.99% of the total overdue amount. Customer acknowledges that such late fee is not to be considered as interest or debt on a finance charge, but rather is a reasonable charge for the anticipated loss and cost to Company for the late payment.
- 9) Suspension.** If any amount due from Customer is not paid within sixty (60) days of the date of Company's invoice, Company may, with or without notice, suspend service without terminating the contract until Customer has paid all amounts owed to Company.

- 10) Rate Adjustments. Customer agrees that it shall pay Company for any increase in costs due to an escalation in energy costs. These surcharges shall be referred to as "Variable Energy Charge" on the invoice. <https://www.sweepingcorp.com/vet/> Customer also agrees that it shall pay Company for increased rates due to increases in Company's costs because of disposal, Consumer Price Index changes, changes in local, state or federal law, rules, ordinances or regulations applicable to Company's operations or services or because of increases in taxes, fees, costs or other governmental charges. These charges shall be referred to as "environmental" on the invoice.
- 11) Damage to Pavement. Company shall not be responsible for any damages to the Customer's pavement or accompanying subsurface, curbing or other driving surfaces resulting from the Company's Services.
- 12) Independent Contractor. Nothing contained in this Agreement shall be construed to constitute Customer as a partner, employee, or agent of Company, nor shall either party have any authority to bind the other in any respect. It is intended that Company shall, in all instances, be and remain an independent contractor responsible for its own actions and for its own agents, employees and representatives.
- 13) Indemnity. Customer shall defend, hold harmless and indemnify the Company, its officers, directors, members, affiliates, employees, or contractors from and against any and all damage to persons, property or both (including death) or other liabilities (including, but not limited to, investigation and reasonable legal expenses) resulting from the Customer's (or its employees, invitees or subcontractors) negligence or misconduct, actions or omissions, including, but not limited to, Company's, violation of law or breach of this Agreement.
- 14) Termination. This Agreement may only be terminated by the Customer by providing written notice of Company's breach of the Agreement and, only after providing a right to cure the breach and, Company fails to cure the breach within 60 days' of written notice. Except as otherwise provided in this Agreement, the termination shall have no effect upon the rights of the parties prior or existing transactions and any liabilities. Upon termination, Company shall wind down its work in progress in a safe manner, protective of Customer and Company owned or operated property, and Customer and Company shall work in good faith to close out any service in an expeditious manner.
- 15) Assignability. This agreement is binding and shall inure to the benefit of all successors and assigns. This Agreement, and any duties hereunder and any retention of Company subject to this Agreement may be assigned by the Company, in whole or in part, without the mutual written consent of the parties to this Agreement.
- 16) Notice. Any notice to be given under this Agreement by either party to the other shall be in writing and personally delivered or mailed to the other party or by email delivery with confirmation of receipt, at its address as set forth above or to such successor addresses as the parties may designate by notice pursuant to this provision.
- 17) Entire Agreement. This Agreement shall constitute the entire agreement between the parties and shall govern the relationship of the parties notwithstanding any previous written agreement and/or any previous or subsequent oral understandings or agreements.
- 18) No Waiver. No waiver of any provision or condition of this Agreement shall be implied or imputed by reason of a party's failure to complain or to seek remedies because of any previous breach or violation.
- 19) Severability. If any clause or provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the balance of the Agreement shall be enforced as the written agreement of the parties.
- 20) Credit History. Customer represents and warrants that it has the financial means to meet its obligations under this Agreement, and Customer hereby agrees that Company may, at any time, investigate the credit history of Customer. Company may terminate this Agreement if it determines, in its sole discretion, that Customer may not be able to perform its duties and obligations hereunder.
- 21) Disputes, Remedies. Except for claims by the Company for collection of fees, the parties' knowingly and voluntarily agree that the any controversy arising between them shall be resolved by binding arbitration under the rules of the American Arbitration Association, and judgment on the award may be entered by any court having jurisdiction. The parties acknowledge the Services impact and affect interstate commerce and agree that any dispute regarding the enforceability, legality, or scope of the arbitration agreement set forth herein shall be decided exclusively by the arbitrator. The parties' mutual promises contained herein, including the promise to arbitrate disagreements rather than litigate them before courts or other bodies, provide consideration for each other for this entire clause. Under no circumstances shall either party be liable to the other for loss of profits or revenues, or for any indirect, special, incidental, consequential or punitive damages, whether in contract, tort and any theory of liability. WHETHER IN ARBITRATION OR OTHERWISE, NO CLAIMS UNDER THIS AGREEMENT MAY BE BROUGHT AS A CLASS ACTION, ON A CONSOLIDATED BASIS, OR IN ANY OTHER COLLECTIVE OR REPRESENTATIVE PROCEEDING.
- 22) Attorneys' fees, Jury Waiver and Jurisdiction and Venue. The parties agree that if Company files a lawsuit to collect any money due and payable under this Agreement, in any suit brought, Company shall be entitled to recover its reasonable costs and attorneys' fees. Each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or relating to this Agreement. Customer and Company agree to personal jurisdiction and venue in Cuyahoga County, Ohio and neither Company nor Customer shall object or oppose personal jurisdiction or venue if the lawsuit is filed in Cuyahoga County, Ohio.
- 23) Excused Performance. Neither party to this Agreement shall be liable for its failure to perform or delay in performance due to contingencies beyond its reasonable control, including but not limited to unsafe conditions, weather, strikes, riots, compliance with laws or governmental orders, fires, or acts of God.
- 24) Taxes. The fees set forth herein are exclusive of taxes. Customer will be responsible for, and agrees to pay, all sales, use, value added, personal property, or similar taxes, tariffs or government charges, excepting taxes based on the income of the Company.

Special Instructions / Comments Continued...

Special instructions / Comments Continued...

The City of Middleburg Heights Will receive a total of 8 sweeps.

(1) September 2024	\$ 7,200.00	
(2) October 2024	\$ 7,200.00	
(3) December 2024	\$ 7,200.00	(Weather permitting)
(4) March 2025	\$ 7,200.00	
(5) April 2025	\$ 7,200.00	
(6) June 2025	\$ 7,200.00	
(7) July 2025	\$ 7,200.00	
(8) August 2025	\$ 7,200.00	
Total	\$ 57,600.00	

Any call out work, such as parades ect. will be an hourly rate at \$175.00 per hour per truck and will be charged port to port.