

**CITY OF GAINESVILLE – AGREEMENT FOR SERVICES
Pressure Wash and Paint Services**

THIS AGREEMENT (“Agreement”) made and entered into as of the last signature date affixed hereto (“Effective Date”) by and between the CITY OF GAINESVILLE, a Florida municipal corporation, with offices located at 2153 SE Hawthorne Road, Suite 223, Gainesville, Florida 32641, and whose mailing address is Post Office Box 490, Station 48, Gainesville, Florida 32627 (“City”), and Elite Sandblasting & Painting, Inc., a Florida corporation with a principal address of 1100 Candlebark Drive, Jacksonville, Florida 32225 (“Contractor”), jointly referred to as the “Parties”.

WHEREAS, City desires the services of Contractor as described and provided in this Agreement; and

WHEREAS, Contractor is willing and capable of performing such services.

NOW THEREFORE, in consideration of the mutual covenants as set forth below, the Parties agree as follows:

1. **Recitals.** The recitals above comprise a material part of this Agreement and are hereby incorporated by reference.
2. **Term.** This Agreement will become effective on the Effective Date and will remain in effect until the earliest occurrence of the following: 1) three (3) years after the Effective Date; or 2) this Agreement is terminated as provided herein. The Parties may agree in writing to extend the term of this Agreement for two (2) additional one-year periods.
3. **Contract Documents.** This Agreement consists of the following documents, whether attached to this Agreement or incorporated by reference (collectively the “Contract Documents”):
 - a) Any Amendments to this Agreement, including any exhibits.
 - b) This Agreement, including any exhibits.
 - c) City of Gainesville Request for Proposal RFP No. CRAX-220025-GD issued 11/08/21.
 - d) Proposal from Contractor dated 12/06/21.

The Contract Documents constitute the entire agreement between the Parties. In the event of conflict or inconsistency between the Contract Documents, the order of precedence for interpretation shall be the order in which the Contract Documents are listed above. Conflict or inconsistency within a particular Contract Document will be resolved by having the more specific reference to the matter prevail.

4. Scope of Services.

This Agreement provides for the performance of Pressure Wash and Paint Services authorized by the City. The specific scope of services to be provided by Contractor for individual projects will be mutually agreed to by the Parties in separate Task Assignments, Purchase Orders, or Notices to Proceed. All related Task Assignments, Purchase Orders, or Notices to Proceed will become part of this Agreement. Services performed at the City's request beyond those identified in the Task Assignment shall constitute a change of scope which will be documented by a Change Order to be approved in writing by both Parties before services are performed.

Contractor shall staff the projects with the team members identified in its Proposal as well as such other qualified individuals at Contractor's own expense as required to carry out and perform the Scope of Services of this Agreement. In the event any such personnel discontinue employment with Contractor, Contractor shall promptly replace such personnel with individuals approved by City, in writing, which approval will not be unreasonably withheld. Contractor's project team members may not be employees of or have any personal fiscal relationship with any employees or officials of the City. Failure of Contractor for any reason to staff projects under this Agreement with qualified personnel to the extent necessary to perform the services required skillfully and promptly will be cause for termination of this Agreement. Contractor shall perform all the services, and none of the work or services under this Agreement may be subcontracted without prior written approval of the City. It is understood that subcontractors presented as part of a team in Contractor's Proposal or for any individual project, as applicable, are considered approved by the City. The City, for any reason, may request the removal of an individual from Contractor's project team. Any changes in personnel require mutual written consent of the Parties.

Nothing in this Agreement may be construed to prohibit the City from awarding, authorizing, or directing work to be

performed, whether identified in this Agreement or otherwise, to firms other than Contractor.

5. Compensation.

The City will compensate Contractor for services performed under this Agreement based on the rates in Contractor's Proposal dated 12/06/2021. The Parties, based upon such rates, may agree to payment for services on a lump sum or "not to exceed" basis. The City shall pay Contractor for services performed upon verified invoice within 45 days of receipt, as may be further specified in the Purchase Order.

The acceptance by Contractor of final payment due on termination of this Agreement will constitute a full and complete release of City from any and all claims, demands, and causes of action whatsoever which Contractor, its successors, or assigns have or may have against City under the provisions of this Agreement.

6. Covenants and Representations. Contractor covenants and represents and warrants to the City that the following are true and correct in all material respects:

- a) Contractor shall timely fulfill all the conditions herein that are in the control of Contractor and are the responsibility of Contractor.
- b) During the period in which the obligations of Contractor pursuant to this Agreement are in effect, Contractor shall cause to occur and to continue to be in effect those instruments, documents, certificates, and events contemplated by this Agreement that are applicable to, and the responsibility of, Contractor.
- c) Contractor is a validly existing legal entity, authorized to do business in the State of Florida. Contractor has all requisite power and authority to carry on its business as now conducted and to enter into and perform its obligations of this Agreement and each instrument required to be executed by Contractor pursuant to this Agreement, and has consented to service of process in the State of Florida.
- d) This Agreement and each document required to be executed by Contractor pursuant to this Agreement has been duly authorized by all necessary action on the part of, and has been or will be duly executed and delivered by, Contractor and neither the execution and delivery nor the compliance with the terms and provisions thereof: (i) requires the approval of any other party, except as has been obtained or noted herein; (ii) contravenes any law, judgment, governmental rule, regulations, or order binding on Contractor; or (iii) results in any default under or creates any lien upon any property of Contractor.
- e) This Agreement and each document to be executed by Contractor pursuant to this Agreement constitutes a legal, valid, and binding obligation of Contractor, enforceable against Contractor, in accordance with the Agreement's terms except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws which affect creditor's rights generally and subject to usual equitable principles if equitable remedies are invoked.
- f) There are no pending or, to the best knowledge of Contractor, threatened actions before any court or administrative agency against Contractor that: (i) question the validity of this Agreement; or (ii) are likely to materially adversely affect this Agreement or the financial condition of Contractor.

7. Subject to Appropriations. The obligations of the City as to any funding required pursuant to this Agreement is limited in any given year to legally available funds, after monies for essential City services have been budgeted and appropriated. Notwithstanding the foregoing, the City may pledge any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the City pursuant to this Agreement.

8. Insurance. Prior to commencement of work to be performed Contractor shall purchase and maintain the following types and amounts of insurance with an insurer rated A- or better by A.M. Best:

- a) Commercial General Liability Insurance coverage consisting of broad form comprehensive general liability including contractual coverage in the minimum amount of \$1,000,000.00 for bodily injury (or death), and \$1,000,000.00 property damage;
- b) Professional Liability Insurance in the minimum amount of \$1,000,000 per occurrence combined single limit for bodily injury and property damage;
- c) Full and complete Workers' Compensation Insurance Coverage as required by State of Florida law.
- d) Automobile Liability Insurance coverage in the minimum amount of \$500,000.00 per occurrence for BI/PD,

including hired/non-owned vehicles regardless of number of passengers transported.

- e) The City must be named as an additional insured on all insurance policies required hereunder, except Worker's Compensation coverage. Contractor shall provide the City with a certificate of insurance evidencing the required coverage and shall furnish City evidence of renewals of each such policy no less than thirty (30) days prior to the expiration of the applicable policy.

9. Indemnification. Contractor agrees to indemnify and hold harmless the City, its elected and appointed officials, employees, and agents from and against any and all liability, losses, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions, and cost of actions, including reasonable attorneys' fees for trial and on appeal, of any kind and nature arising or growing out of or in any way connected with the Contractor's or its agents', employees', partners', or subcontractors' performance of or obligations under this Agreement, whether caused by any act or omission of Contractor or its agents, employees, partners, or subcontractors including the negligence, recklessness, or intentional wrongful conduct of the Contractor or its agents, employees, partners, or subcontractors. This section will survive the termination or expiration of this Agreement.

10. Default and Right to Terminate.

- a) **Contractor's Default.** Either City's or Contractor's failure to comply with their respective obligations contained in this Agreement will be a material breach of this Agreement ("Default"; a Default following any applicable notice of cure period is referred to herein as an "Event Default"). The non-defaulting party shall provide written notice of Default to the defaulting party ("Notice of Default"). The defaulting party will have ten (10) calendar days from the date of receipt of the Notice of Default to cure such Default ("Initial Cure Period"). In the event the nature of the "Default" is such that it cannot reasonably be cured within such Initial Cure Period, then the cure period will be extended, so long as the defaulting party has commenced to cure such Default within said Initial Cure Period and the defaulting party diligently undertakes and pursues such cure to completion ("Extended Cure Period"). The defaulting party must provide the non-defaulting party with documentation evidencing that the defaulting party is diligently undertaking and pursuing such cure to completion. The foregoing notwithstanding, all monetary Defaults will be deemed capable of cure within ten (10) days. During the Initial Cure Period or any Extended Cure Period where the Contractor is the defaulting party, the City may suspend any reimbursement otherwise payable pursuant to this Agreement until the Default has been cured. Upon the defaulting party's failure to cure such Default within the Initial Cure Period or any Extended Cure Period, as applicable, the non-defaulting party may choose to immediately terminate this Agreement without prejudice to any other rights or remedies the non-defaulting party may have pursuant to law or equity.
- b) **Without Cause.** The City may terminate this Agreement, in whole or in part, without cause upon ten (10) days' written notice to Contractor. In the event of such termination, the City will compensate Contractor for any services rendered through the effective date of the termination, and Contractor will not be entitled to any other or further recovery against the City. Termination of the Agreement or a portion thereof will neither relieve Contractor of its responsibilities for completed work nor relieve any surety of its obligation for and concerning any just claim arising out of work performed.

11. Successors and Assigns. The Parties to this Agreement may not assign or transfer any interest in this Agreement without the prior written consent of the other Parties, which shall not be unreasonably withheld. The Parties each bind the others and their respective successors and assigns in all respects to all the terms, conditions, covenants, and provisions of this Agreement.

12. Bankruptcy. In the event: (a) an order or decree is entered appointing a receiver of Contractor or its assets, which is not appealed (or if appealed is determined adverse to Contractor by such appeal); or (b) a petition is filed by Contractor for relief under federal bankruptcy laws or any other similar law or statute of the United States, which action is not dismissed, vacated, or discharged within ninety (90) days after the filing thereof, such event will not affect the City's rights under this Agreement and the City shall have the right to immediately terminate this Agreement.

13. Limitation on Liability. The City and Contractor each hereby acknowledges and agrees that it is sophisticated and prudent in business transactions and proceeds at its own risk under advice of its own counsel and advisors and without reliance on the other party. To the fullest extent permitted by law, City shall not be liable to Contractor for any incidental, consequential, punitive, exemplary, or indirect damages, lost profits, revenue, or other business interruption damages.

14. **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or unenforceable will be severable and may not be construed to render the remainder of this Agreement to be invalid, illegal, or unenforceable.
15. **Relationship.** In the performance of this Agreement, Contractor will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venture, or associate of the City. Contractor cannot create any obligation or responsibility on behalf of the City or bind City in any manner. The City cannot create any obligation or responsibility on behalf of Contractor or bind Contractor in any manner. Policies and decisions of the Contractor, which are used in its performance of this Agreement, shall not be construed to be the policies or decisions of the City. Each party is acting for its own account and has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that none of the other parties hereto is acting as a fiduciary for or an adviser to it in respect of this Agreement or any responsibility or obligation contemplated herein. Contractor further represents and acknowledges that no one was paid a fee, commission, gift, or other consideration by Contractor as an inducement to entering into this Agreement. Contractor shall be considered an independent contractor and as such shall not be entitled to any right or benefit to which City employees are or may be entitled to by reason of employment. Contractor shall be solely responsible for the means, method, techniques, sequences, and procedures used by Contractor in the full performance of this Agreement.
16. **Personal Liability.** No provision of this Agreement is intended, nor may any be construed, as a covenant of any official (either elected or appointed), officer, director, manager, employee, or agent of City or Contractor in an individual capacity and neither may any such individuals be subject to personal liability by reason of any covenant or obligation of City or Contractor hereunder.
17. **Applicable Law and Venue; Attorneys' Fees; Waiver of Right to Jury Trial.** This Agreement is governed by and must be construed in accordance with the laws of the State of Florida, notwithstanding any Florida conflict of law provision to the contrary. Each party submits to the jurisdiction of the State of Florida, Alachua County and the courts thereof and to the jurisdiction of the United States District Court for the Northern District of Florida, for the purposes of any suit, action, or other proceeding relating to this Agreement and agrees not to assert by way of a motion or a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.
- In the event of any legal proceedings arising from or related to this Agreement: (1) each Party shall bear its own attorneys' fees except to the extent that Contractor agrees to indemnify City as described in this Agreement, including any appeals; and (2) for civil proceedings, the Parties hereby waive the right to jury trial.
18. **Amendments, Modification, and Waiver.** This Agreement may only be amended, modified, or waived in writing signed by all the Parties. No course of dealing may be deemed a waiver of rights or a modification of this Agreement. The failure of any party to exercise any right in this Agreement may not be considered a waiver of such right. No waiver of a provision of this Agreement will apply to any other portion of this Agreement. A waiver on one occasion may not be deemed to be a waiver on other occasions.
19. **Compliance with Laws.** Contractor shall at all times be in compliance with all applicable federal, state, and local laws, statutes, rules, and regulations with respect to any Contractor obligations under this Agreement.
20. **No Contract Zoning; No Contracting of Police Powers.** Nothing contained in this Agreement may be interpreted or construed as an approval, waiver, or agreement to approve or waive any development order, development permit, rezoning, comprehensive plan amendment, or any other governmental requirement that the City may have jurisdiction over in its regulatory capacity. Nothing contained in this Agreement may be interpreted or construed as contracting away the exercise of the police powers of the City.
21. **Release.** No recourse may be had for any damages or claims based upon any representation, obligations, covenant, or agreement in this Agreement against any past, present, or future officer, member, legal counsel, employee, director, or agent of the City, either directly or through the City, under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of the City and any such officers, members, legal counsels, employees, directors, or agents of the City is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. This section will survive the termination or expiration of this Agreement.
22. **Force Majeure.** Delays in any performance due to: fire, flood, earthquake, windstorm, or sinkhole; war, declaration

of hostilities, revolt, civil strife, altercation, or commotion; strike or labor dispute; epidemic; archaeological excavation; or because of an act of God are deemed to be events of Force Majeure and such delays are excused in the manner herein provided. If such party is delayed for any of the events of Force Majeure, the date required for actions required will be extended by the number of calendar days equal to the total number of calendar days, if any, that such party is actually delayed. The party seeking excuse for nonperformance on the basis of Force Majeure shall give written notice to the other party specifying the cause of the anticipated delay, giving its actual or anticipated duration, and weekly thereafter, if such delay is continuing, written notice stating whether the condition continues and giving its actual or then anticipated duration. Each party seeking excuse from nonperformance on the basis of Force Majeure shall use its best efforts to rectify conditions causing a delay and will cooperate with the other party, except for the occurrence of unreasonable additional costs and expenses, to overcome any loss of time that has resulted.

23. **Time.** In computing time periods of fifteen (15) days or less, Saturdays, Sundays, and state or national legal holidays are excluded. Time periods of more than fifteen (15) days will be computed based on calendar days. Whenever a notice or performance is to be done on a Saturday or Sunday or on a legal holiday observed by the City, it will be postponed to the next business day.
24. **Sovereign Immunity.** The Parties agree that nothing in this Agreement may be interpreted as a waiver of the City's sovereign immunity, as provided in Section 768.28, Florida Statutes, or otherwise.
25. **Captions.** The captions and headings of sections or paragraphs used in this Agreement are for convenient reference only and will not limit, define, or otherwise affect the substance or construction of provisions of this Agreement.
26. **E-Verify Requirement.** The Contractor shall: 1) utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this Agreement; and 2) expressly require any subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement.
27. **Living Wage.** The definitions, terms, and conditions of the City's living wage requirements set forth in Division 2 of Article IX of Chapter 2 of the City's Code of Ordinances shall apply to this Agreement. These requirements include that the Contractor: shall pay a living wage to each covered employee during the term of this Agreement, including any extension(s) to this Agreement; shall maintain records sufficient to demonstrate compliance with the living wage requirements; shall not discharge, reduce the compensation of, or otherwise retaliate against any covered employee for filing a complaint, participating in any proceedings or otherwise asserting the requirement to pay a living wage; shall cooperate with any City audit or investigation concerning compliance with or a reported violation of the living wage requirements, including providing all requested documentation. The Living Wage is updated every year in October. Contractor shall pay each covered employee the updated rate beginning on each respective anniversary date of this Agreement. Failure to comply with the City's living wage requirements shall be a material breach of this Agreement, enforceable by the City through all rights and remedies at law and equity.
28. **Anti-Discrimination.** Contractor shall not discriminate on the basis of race, color, religion, gender, national origin, marital status, sexual orientation, age, disability, or gender identity, or undertake any other unlawful forms of discrimination in the performance of this Agreement. Contractor understands and agrees that a violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
29. **Construction.** This Agreement may not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the Parties. It is recognized that both Parties have substantially contributed to the preparation of this Agreement.
30. **Third Party Beneficiaries.** This Agreement does not create any relationship with, or any rights in favor of, any third party.
31. **Counterparts.** This Agreement may be executed by the Parties on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

32. **Right to Audit.** The Contractor shall keep accurate and complete records and accounts pertaining to the performance of services under this Agreement, including: 1) Financial records and reports relating to use of funding; 2) Books, records, documents, invoices, and other evidence and accounting procedures and practices such as will permit the Contractor to sufficiently and properly reflect all direct costs of any nature associated with this Agreement; and 3) Records sufficient to document its performance under this Agreement.

These records shall be subject at all reasonable times to review, inspection, copy, and audit by persons duly authorized by the City. These records shall be kept for a minimum of five (5) years after termination of the Agreement. Records that relate to any litigation, appeals, or settlements of claims arising from performance under this Agreement shall be made available until a final disposition has been made of such litigation, appeals, or claims. This right to audit and inspect includes a right to interview any employees and clients of the Contractor to be assured of satisfactory performance of the terms and conditions of this Agreement.

33. **Public Records.** Florida has a very broad public records law and certain records of the Contractor may be subject to the Florida Public Records Act (Chapter 119, Florida Statutes). By entering into this Agreement with the City, the Contractor acknowledges that it will comply with this section and that failure by Contractor to comply with this section is a breach of this Agreement and the City may pursue all available remedies. A request to inspect or copy any public records, as defined in Section 119.011(12), Florida Statutes, relating to this Agreement must be made directly to the City. If the City does not possess the requested public records, the City shall immediately notify the Contractor of the request and the Contractor shall, within a reasonable duration of time, either provide the records to the City or allow the records to be inspected or copied. In addition, the Contractor shall:

- a) Keep and maintain all public records required by the City to perform the service;
- b) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law;
- c) Ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following termination of this Agreement if the Contractor does not transfer the records to the City; and
- d) Upon termination of this Agreement, transfer to the City at no cost to the City all public records in possession of the Contractor or keep and maintain the public records required by the City to perform the service. If the Contractor transfers all public records to the City upon termination of this Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon termination of this Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically shall be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

Attention: Monica Deel
City Manager's Office, Mail Station 48
Post Office Box 490
Gainesville, Florida 32627-0490
Phone: 352-393-8212
Email: DeelML@cityofgainesville.org

34. **Notices.** The Parties designate the following persons as the primary contact point for purposes of the day-to-day management of this Agreement, including without limitation, the receipt of Invoices, scheduling of meetings, and questions regarding this Agreement. The Parties understand and acknowledge that the below persons may not be the persons authorized to bind the Party with respect to this Agreement. For any notice(s) required to be provided pursuant to this Agreement, the parties shall provide such notice to the persons listed below. Any notices required to be given pursuant to this Agreement shall be effective upon being sent by either facsimile, e-mail, hand-delivery, by certified or registered mail (return receipt requested), or via overnight delivery service to the following addresses:

To the City:

Attn: Chelsea Bakaitis
City of Gainesville
P.O. Box 490, Station 48
Gainesville, FL 32627

To the Contractor:


Attn: Shane Cabe
Elite Sandblasting & Painting, Inc.
1100 Candlebark Drive
Jacksonville, FL 32225

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by duly authorized officials on the dates written below.

Approved as to Form & Legality


Sean McDermott (Apr 18, 2022 15:11 EDT)
City Attorney

CITY OF GAINESVILLE

By: 
Cynthia Curry (Apr 18, 2022 20:01 EDT)
Print Name: Cynthia Curry
Title: City Manager
Date: Apr 18, 2022

CONTRACTOR

By: 
Endrit Zykaj (Apr 18, 2022 11:35 EDT)
Print Name: Endrit Zykaj
Title: Owner
Date: Apr 18, 2022