

CONTRACT FOR EXTERIOR MAINTENANCE SERVICES DOWNTOWN GAINESVILLE

THIS CONTRACT ("Contract") is entered into on the ____ day of _____, 2021 between the CITY OF GAINESVILLE, a Florida municipal corporation ("City"), and CONTRACTORS ENTERPRISES INC., a Florida corporation ("Contractor"), taken together shall be known as "Parties."

WHEREAS, the City requires exterior maintenance services to clean and maintain our downtown sidewalks and other specified areas.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein, the Parties agree as follows:

1. EFFECTIVE DATE AND TERM OF CONTRACT.

This Contract shall be effective upon execution and will terminate on September 30, 2022, unless earlier terminated in accordance with paragraph 10, below. However, upon satisfactory and faithful performance of this Contract by the Contractor, the parties may agree to extend the term of this Contract for a 12 month period with a maximum of four (4) such extensions.

2. SCOPE OF SERVICES, CONTRACT DOCUMENTS.

It is the intent of these specifications to obtain exterior maintenance services to clean and maintain Downtown sidewalks as follows and as further described in the Contract Documents. The Contract consists of the following documents, whether attached to this Contract or incorporated by reference (collectively the 'Contract Documents'):

- i. This Contract;
- ii. Addendum No. 1 dated August 25, 2021;
- iii. Invitation to Bid (ITB) #PWDA-210056-MS dated August 2, 2021; and
- iv. Contractor's Bid dated August 12, 2021 and Revised Bid Price Form dated September 30, 2021).

The Contract Documents constitute the entire contract between the City and Contractor. 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 shall be resolved by having the more specific reference to the matter prevail.

3. COMPENSATION/PAYMENT.

City will pay Contractor One Hundred Ten Thousand Dollars (\$110,000.00) for the term of the contract subject to the appropriation of funds each fiscal year. If the contract start date is after October 1 of the current fiscal year, compensation for the initial year of the contract term will be prorated accordingly. Payment shall be based upon receipt of monthly invoice no sooner than the last day of the service month. City shall make payments in accordance with the Local Government Prompt Payment Act, Sections 218.70, et. seq. Florida Statutes.

4. INDEMNIFICATION.

Contractor shall indemnify the City, its officials, agents and employees, and hold it harmless from suits, actions, damages, liability, expenses, losses and costs, including, but not limited to reasonable attorney's fees in connection with loss of life, bodily or personal injury, or property damage arising from or occasioned by any act or omission or negligence or intentional wrongdoing on the part of the Contractor and other persons employed or utilized by the Contractor.

5. 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 other unlawful forms of discrimination in the performance of this Contract. Contractor understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of the Contract. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

6. INSURANCE.

A. During the term of this Contract, Contractor shall maintain insurance as follows:

Workers' Compensation insurance	providing coverage in compliance with Florida Statutes
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Public Liability insurance (other than automobile) consisting of broad form comprehensive general liability insurance including contractual coverage	\$1,000,000 per occurrence combined single limit for bodily injury and property damage
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Automobile Liability insurance	\$500,000 per occurrence combined single limit for bodily injury and property damage
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B. Prior to the effective date of this Contract, Contractor shall provide to City a certificate of insurance certifying such insurance and naming City as additional insured and that City will be notified in writing at least thirty (30) days before any such insurance is canceled or materially changed.

C. Insurance must be written by a company licensed to do business in the State of Florida and satisfactory to City.

7. SOVEREIGN IMMUNITY.

Nothing in the Contract Documents shall be interpreted as a waiver of the City's sovereign immunity as granted under Section 768.28, Florida Statutes.

8. 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 Contract. These requirements include that the service contractor/subcontractor: shall pay a living wage to each covered employee during the term of this Contract, including any extension(s) to this Contract; 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. Failure to comply with the City's living wage requirements shall be a material breach of this Contract, enforceable by the City through all rights and remedies at law and equity.

9. E-Verify

Section 448.095, Florida Statutes states the statute shall be construed in a manner so as to be fully consistent with any applicable federal laws or regulations. 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 Contract; and (2) shall expressly require any subcontractors performing work or providing services pursuant to the Contract 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 contract term. Alternatively, Contractor shall provide proof that one of the exceptions to the E-Verify federal contractor rule applies.

10. TERMINATION.

A. If the Contractor fails to observe or perform in accordance with the Contract Document (a "Default"), then the City, after providing at least ten (10) days written notice to the Contractor of the Default and the City's intent to terminate if such Default continues unremedied during the ten (10) day period, may terminate this Contract without prejudice to any other rights or remedies the City may have under this Contract and Florida law.

B. This Contract may be terminated by the City, without cause, upon thirty (30) days written notice to the Contractor. In the event this Contract is so terminated, the Contractor shall be compensated for services rendered through the effective date of the termination.

11. MULTI-YEAR CONTRACT.

The obligations of the City as to any funding required pursuant to this Contract shall be limited to an obligation in any given year to budget and appropriate from legally available funds, after monies for essential City services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the City shall not be prohibited from pledging 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 Contract. In the event no funds are appropriated for this Contract, the City has the right in any given fiscal year or in any future fiscal year, to terminate this Contract without penalty.

12. INDEPENDENT CONTRACTOR.

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. Except as specifically noted in the Contract Documents, Contractor shall be solely responsible for the means, method, techniques, sequences, and procedures utilized by the Contractor for the full performance of the Contract Documents.

13. RECORDS AND RIGHT-TO-AUDIT.

Contractor shall maintain records sufficient to document completion of the scope of services established by the Contract Documents. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the City. These records shall be kept for a minimum of three (3) years after termination of the Contract. Records that relate to any litigation, appeals or settlements of claims arising from performance under this Contract shall be made available until a final disposition has been made of such litigation, appeals, or claims.

14. CONTRACTOR'S ASSURANCES.

Contractor warrants that the services supplied to the City pursuant to this Contract shall at all times fully conform to the specifications set forth in the Invitation to Bid #PWDA-210056-MS and be of the highest quality. In the event the City, in the City's sole discretion, determines that any product or services supplied pursuant to this Contract is defective or does not conform to the specifications set forth in the Invitation to Bid, the City reserves the right unilaterally to cancel this Contract upon written notice to the Contractor, and reduce commensurately any amount of money due the Contractor.

15. PUBLIC RECORDS.

Florida has a very broad public records law and certain records of a contractor may be considered public records. Accordingly, by entering into an agreement with the City, contractor must:

1. Keep and maintain public records required by the public agency to perform the service.

2. Upon request from the public agency's custodian of public records, provide the public agency 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 in this chapter or as otherwise provided by law.
3. Ensure that 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 the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, 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 completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (LambertTR@cityofgainesville.org).

16. DISPUTE RESOLUTION.

Except as otherwise provided in this Contract, any dispute concerning a question of fact or of interpretation of a requirement of the Contract which is not disposed of by mutual consent between the parties shall be decided by the City Manager or designee, who shall reduce the decision to writing and furnish a copy thereof to the parties. In connection with any dispute proceeding under this clause each party shall be afforded an opportunity to be heard and to offer evidence in support of its version of the facts and interpretation of the Contract. The City Manager or designee shall make such explanation as may be necessary to complete, explain or make definite the provisions of this Contract and the findings and conclusions shall be final and binding on both parties. Pending the final decisions of a dispute hereunder, Contractor shall proceed diligently with its performance of the Contract in accordance with the preliminary directions of the City Manager or designee.

17. ATTORNEY'S FEES AND COSTS.

The prevailing party to any litigation filed in state or federal court, shall be entitled to attorney's fees and costs, including any attorney's fees and costs incurred on appeal.

18. FORCE MAJEURE.

If the performance of the Contract is delayed by fire, lightning, earthquake, cyclone, or other such cause completely beyond the control of either the City or the Contractor, then the time for completion of the Contract shall be extended for a period equivalent to the time lost by reason of any of the aforesaid causes.

19. APPLICABLE LAW AND VENUE.

This Contract shall be governed by and construed in accordance with the laws of the State of Florida, notwithstanding any Florida conflict of law provision to the contrary. In the event of any legal action under this Contract, venue shall be in Alachua County, Florida.

20. DEFAULT AND REMEDIES.

The non-breaching party shall have available all remedies at law.

21. NOTICES.

Any notices from either party to the other party must be in writing and sent by certified mail, return requested, overnight courier service or delivered in person with receipt to the following:

CITY:
City of Gainesville
Public Works Department
405 NW 39th Avenue
Gainesville, FL 32609
Attn: Jeff Norman
normanjm@cityofgainesville.org

CONTRACTOR:
Contractors Enterprises Inc.
1903 High Road
Tallahassee, FL 32303
Attn: Nicoliss Johnson
Nicoliss_johnson62@yahoo.com

22. SEVERABILITY.

If any provision of this Contract is declared void by a court of law, all other provisions will remain in full force and effect.

23. INTEGRATION/MERGER.

This Contract, together with the attached bid documents, contains the entire contract and understanding of the Parties regarding the matters set forth herein and supersedes all previous negotiations, discussions, and understandings, whether oral or written, regarding such matters. The Parties acknowledge that they have not relied on any promise, inducement, representation, or other statement made in connection with this agreement that is not expressly contained in this Contract. The terms of this Contract are contractual and not merely recital.

24. MODIFICATION AND WAIVER.

The provisions of this Contract may only be modified or waived in writing signed by all the Parties. No course of dealing shall be deemed a waiver of rights or a modification of this Contract. The failure of any party to exercise any right in this contract shall not be considered a waiver of such right. No waiver of a provision of the Contract shall apply to any other portion of the Contract. A waiver on one occasion shall not be deemed to be a waiver on other occasions.

25. CAPTIONS AND SECTION HEADINGS.

Captions and section headings used herein are for convenience only and shall not be used in construing this Contract.

26. ASSIGNMENT OF INTEREST.

Neither party will assign or transfer any interest in the Contract without prior written consent of the other party.

27. SUCCESSORS AND ASSIGNS.

The Parties each bind the other and their respective successors and assigns in all respects to all the terms, conditions, covenants, and provisions of this Contract.

28. THIRD PARTY BENEFICIARIES.

This Contract does not create any relationship with, or any rights in favor of, any third party.

29. CONSTRUCTION.

This Contract shall 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 Contract.

30. COUNTERPARTS.

This Contract may be executed in any number of and by the different Parties hereto 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.

31. EXHIBITS.

All exhibits attached to this Contract are incorporated into and made part of this Contract by reference.

32. APPRENTICE AND DISADVANTAGED WORKER REQUIREMENTS.

Contractor shall comply with the requirements of the Apprentice and Disadvantaged Worker Ordinance, Article XI, Chapter 2, Gainesville Code of Ordinances. Failure of the Contractor to comply with the ordinance may result in termination of the Contract.

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IN WITNESS WHEREOF, the Parties hereto have executed this Contract, or caused to be executed by their duly authorized officials, on the day and year first written above.

CONTRACTORS ENTERPRISES INC.:

CITY OF GAINESVILLE:

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to Form and Legality

City Attorney