

1st Reading:
2nd Reading:

SPONSOR:

ORDINANCE NO. ____

BILL NO. 23-44

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH ELITE PROPERTIES AND LANDSCAPE CONSTRUCTION L.L.C. TO PROVIDE THE CITY ON-CALL, AS-NEEDED RESTORATION AND ABATEMENT SERVICES.

WHEREAS, the City has searched and reached out to various companies to locate a company to provide the City on call, as-needed restoration and abatement services for nuisance and other properties within the City; and

WHEREAS, Elite Properties and Landscape Construction L.L.C. has performed such abatement and restoration services for the City, and the City was pleased with the services and work provided; and

WHEREAS, Elite Properties and Landscape Construction L.L.C. was the only company willing to provide all of the required abatement and restoration services on an as-needed and on-call basis; and

WHEREAS, City Staff asked Elite Properties and Landscape Construction L.L.C. to submit a proposal for on-call, as-needed restoration and abatement services; and

WHEREAS, City Staff has reviewed the proposal submitted and, based on the City's experience with similar services provided, Staff finds the proposal meets the City's needs; and

WHEREAS, the Board of Aldermen finds the City's purchasing policies have been followed and that entering into an on-call, as-needed contract with Elite Properties and Landscape Construction L.L.C. to provide the City needed restoration and abatement services on specific properties throughout the City is in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF FENTON, MISSOURI, AS FOLLOWS:

ORD. NO. ____

ORD. NO. ____

Section 1. The Board of Aldermen hereby authorizes the Mayor to execute on behalf of the City a contract for on-call, as-needed restoration and abatement services with Elite Properties and Landscape Construction L.L.C., substantially in the form of Exhibit 1 attached hereto and incorporated herein by reference (the “Contract”), and further grants the City Administrator and Mayor the authority to execute such work orders and documents as may be reasonably necessary or convenient to carry out the intent of this ordinance and the Contract.

Section 2. To the extent applicable to any work undertaken as part of the Contract, the requirements of Section 292.675 RSMo. and the OSHA requirements and obligations and penalties in the Contract are hereby incorporated herein by reference and made a part of this ordinance for all purposes.

Section 3. This ordinance shall be in full force and effect after the date of its passage and approval.

PASSED this 1st day of June, 2023.

JOE MAURATH, MAYOR

APPROVED this 1st day of June, 2023.

JOE MAURATH, MAYOR

ATTEST:

Jane Hungler, City Clerk

Motion to approve. Roll Call vote:

Ayes:

Abstain:

Nays:

Absent:

ORD. NO. ____

EXHIBIT 1

**City of Fenton, Missouri
CONSULTANT PROFESSIONAL SERVICES CONTRACT**

THIS AGREEMENT, made and effective as of the date of the date of the last signature below, by and between the **City of Fenton**, a Missouri municipal corporation, hereinafter referred to as City, and Elite Properties and Landscape Construction, L.L.C., with business address of 524 Marshall Rd., Valley Park, MO 63088 hereinafter referred to as "CONSULTANT or CONTRACTOR."

WITNESSETH: That the parties hereto, for the considerations hereinafter set forth, agree as follows:

I. SCOPE OF SERVICES

Contractor services are necessary for the following Project of City: On-call, as-needed restoration and abatement services.

Except as expressly specified herein, Consultant hereby agrees to provide all of the supervision, labor, technical services, facilities, materials, tools, equipment, and apparatus, and to perform all the services and do all the things necessary for the proper completion of the consultant services which are particularly described as on-call, as-needed individual projects for abatement and restoration services on various properties throughout the City only as directed by the City Administrator and/or Mayor (and as more specifically set forth in the attached Exhibit A incorporated herein). Consultant shall be responsible for any damage to property as a result of the Work.

The above services (hereinafter referred to as the Work) shall be provided by the Consultant in accordance with all the attached **City of Fenton General Conditions** for the project that are incorporated herein by reference, and which terms shall prevail over any conflicting terms that may otherwise be adopted herein as part of any exhibit. This Contract including all attachments hereto shall be considered the "Contract Documents." Contractor shall perform the Work at the highest standard of the industry.

II. COMPENSATION

A. Basic Compensation. The City hereby agrees to pay the Consultant, as full compensation for the complete and satisfactory performance of the contract, and all expenses and costs related thereto:

a sum not to exceed _____.

or (if above box is not checked):

such amount as is set forth on an attached Exhibit A. (the "Contract Sum")

B. Additional Compensation. Any cost not specifically allowed the Consultant pursuant to this paragraph B dealing with additional compensation is included in Basic Compensation. If City directs in writing additional services not included in this Agreement, Consultant shall be paid as follows: Only as agreed-to in writing by both Parties.

III. TIME AND MANNER OF PAYMENTS

All invoices complete with necessary support documentation shall be submitted in triplicate to the City and payment shall be made by City in a lump sum within thirty (30) days of receipt of an invoice received after satisfactory performance, completion, and inspection of the Work for the fees, prices, rates, or schedule of values set forth above. Invoices shall be submitted to the City for payment within thirty (30) days of the completion of the project.

IV. CONTRACT SCHEDULE

This Agreement shall commence upon full execution by all parties and continue in full force and effect for a term of one (1) year. The Parties may mutually agree to renew the Agreement for additional terms. Consultant understands that for each project time is of the essence for the Work.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the effective date of Contract first above written.

CONSULTANT

CITY OF FENTON, MISSOURI

By: _____

By: _____

JOE MAURATH, MAYOR

Title: _____

DATED: _____

DATED: _____

ATTEST:

**CITY OF FENTON CITY
CONSULTANT/PROFESSIONAL SERVICES AGREEMENT
GENERAL CONDITIONS**

Independent Consultant. The Consultant shall be and operate as an independent Consultant in the performance of this Contract. The Consultant shall have complete charge of the personnel engaged in the performance of the Work, and all persons employed by the Consultant shall be employees of said Consultant and not employees of the City in any respect.

Compliance with Laws. The Consultant shall comply with all applicable City ordinances and other laws and regulations, Federal, State, and any political subdivision thereof, including but not limited to, Title VI, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Contract. If applicable to any Work undertaken as part of this Contract, Consultant and any subcontractor shall require all on-site employees to complete the ten-hour training program required under § 292.675.2 RSMo. such employees must hold documentation of prior completion of the program and shall be subject to such penalties as provided in § 292.675.4 RSMo. Consultant further agrees, to the extent applicable to any Work undertaken as part of this Contract, to pay not less than the prevailing hourly wage of wages to all workers performing any such applicable work under this Contract. The Consultant will forfeit a penalty to the City of \$100 per day for each worker that is paid less than the prevailing rate for any work done under the Contract by the Consultant or subcontractor that required payment of prevailing wage under state law. In the event of a conflict between laws, codes, and regulations of various governmental entities having jurisdiction over the Work, the Consultant shall notify the City of the nature and impact of such conflict. The City agrees to cooperate with the Consultant in an effort to resolve any such conflict.

Subcontracts. The Consultant shall not subcontract any of the Work to be performed by it hereunder without the express written consent of the City Administrator. In addition, this Contract shall not be assigned by the Consultant.

Taxes. The City is exempt from federal excise tax and Missouri sales tax and the Contractor shall not charge the same to the City and shall comply in all respects with the Special Sales Tax Provisions of the General Conditions.

Indemnification. To the fullest extent permitted by law, the Consultant agrees to defend with counsel selected by the City, and indemnify and hold harmless the City, its officers, engineers, representatives, agents and employees from and against any and all liabilities, damages, losses, claims or suits, including costs and attorneys' fees, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the City or others, arising from breach of the Contract or out of the Work and services and operations performed hereunder by the Consultant, or claims relating thereto, and including but not limited to the City's reliance on or use of the services or products provided by the Consultant under the terms of this Agreement. The Consultant shall not be liable for any loss or damage attributable to the sole negligence of the City. To the extent required by law to enforce this provision, Consultant agrees that this indemnification requires Consultant to obtain insurance in amounts specified herein and that Consultant has had the opportunity to recover the costs of such insurance in the Compensation set forth in this Agreement.

Attorney Fees' and Costs. The Contractor shall reimburse to the City any costs and attorneys' fees that the City may reasonably incur in pursuit of any remedies at law or equity or enforcement of any rights established in this Agreement, which may result from the Contractor's breach of the Agreement, the Contractor's failure to perform any obligation or requirement contained herein, or the City's enforcement of this Agreement

Insurance. Consultant maintain for its own benefit and shall furnish the City the certificates of insurance for workers' compensation, public liability, and property damage, including automobile coverage in the amounts specified by the City in the request for proposals, if any, otherwise in the amounts stated on **Exhibit A**, if any, but in no event less than the maximum amounts of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions. The policies of insurance shall be in such form and shall be issued by such company or companies as may be satisfactory to the City. In addition to the foregoing, the Consultant shall maintain Professional Liability "errors and omissions" insurance in the form for the coverages satisfactory to City as indicated in the request for proposals, if any, otherwise as stated on attached **Exhibit A**, if any, but in no event less than the maximum amounts of liability set forth in Chapter 537.610 RSMo. applicable to political subdivisions. Each such certificate shall show the City, and such other governmental agencies as may be required by the City to be insured by underlying grant or contract relating to the Project, as an additional insured, and shall bear an endorsement precluding cancellation of or change in coverage without at least thirty (30) days written notice to the City provided nothing herein shall be deemed a purchase of insurance for the City for which it has sovereign immunity. Any self-insurance or deductible above \$50,000.00 is not permitted. The City and Consultant waive all rights against each other for damages caused by fire or other perils to the extent covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance; provided that nothing herein shall be deemed to permit a cause of action against the City for damages or be deemed a waiver of the City's sovereign immunity relative to any claim against the City.

Nondisclosure. The Consultant agrees that it will not divulge to third parties without the written consent of the City any information obtained from or through the City in connection with the performance of this Contract. Nothing shall preclude disclosure of information by the City.

Changes. No change in this Contract shall be made except in writing prior to the change in work or terms being performed. The Consultant shall make any

and all changes in the Work without invalidating this Contract when specifically ordered to do so in writing by the City. Consultant, prior to the commencement of such changed or revised work, shall submit promptly to the City, a written cost or credit proposal for such revised Work. If the City and Consultant shall not be able to agree as to the amount, either in consideration of time or money to be allowed or deducted, it shall nevertheless be the duty of Consultant, upon written notice from the City, to immediately proceed with such alteration or change, and Consultant shall be compensated the reasonable value of such Work. **No work or change shall be undertaken or compensated for without prior written authorization from the City.**

Termination. The City shall have the right to terminate the Contract at any time for any reason by giving the Consultant written notice to such effect. The City shall pay to the Consultant in full satisfaction and discharge of all amounts owing to the Consultant under the Contract an amount equal to the cost of all Work performed by the Consultant up to such termination date, less all amounts previously paid to the Consultant on account of the Contract Price. The Consultant shall submit to the City its statement for the aforesaid amount, in such reasonable detail as the City shall request, within thirty (30) days after such date of termination. The City shall not be liable to the Consultant for any damages on account of such termination for loss of anticipated future profits with respect to the remainder of the Work.

Multi-year contracts; Non-appropriation. Notwithstanding any provision herein to the contrary, the City is obligated only to make the payments set forth in the attached contract as may lawfully be made from funds budgeted and appropriated for that purpose during the City's then current fiscal year at the discretion of the City. If no funds are appropriated or otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year (an "Event of Nonappropriation"), this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the City to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party. If applicable, this Agreement may be annually renewed at each fiscal year by inclusion of specific appropriation for this Agreement, from year to year not to exceed the maximum renewal period or term as set forth in the Agreement.

Accounting. During the period of this Contract, the Consultant shall maintain books of accounts of its expenses and charges in connection with this Contract in accordance with generally accepted accounting principles and practices. The City shall at reasonable times have access to these books and accounts to the extent required to verify all invoices submitted hereunder by the Consultant.

Other Consultants. The City reserves the right to employ other consultants in connection with the Work.

Request for Proposals. If the City issued a request for proposals in connection with the Work, such request for proposals and the proposal of the Consultant in response thereto are incorporated herein by reference and made a part of this Contract. In case of any conflicts between the request for proposals and the executed Consultant/Services Contract or proposal of the Consultant, the requirements of the City's Request for Proposal and this executed Consultant/Professional Services Contract shall control and supersede unless a change thereto is specifically stated in this Contract.

Project Records and Work Product. The Consultant shall provide the City with copies of all documents pertinent to the Work which shall include, without limitation, reports, correspondence, meeting minutes, and originals of all deliverables. The City shall own all right, title and interest, including without limitations, all copyrights and intellectual property rights, to all documents and Work Product of the Consultant created in performance of or relating to this Contract. Consultant agrees to take all steps reasonably requested by the City to evidence, maintain, and defend the City's ownership rights in the Work Product.

Site Operations. Where appropriate, the City will arrange for right of entry to any property at the request of the Consultant for the purpose of performing studies, tests, and evaluations in connection with the Work. The City shall have access at all times to the Project for the purpose of observation and inspection. The Contractor shall provide proper and adequate facilities for such access and observation

Personnel. The Work shall be performed exclusively by the personnel of the Consultant identified in the Consultant's proposal and no other personnel of the Consultant shall perform any of the Work without the express written approval of the City.

Compliance with State Immigration Statutes. As a condition for the award of this Agreement, the Consultant shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Work. The Consultant shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Work. Such affidavits shall be in substantially the form provided in the Bid Proposal. The Consultant shall not be required to provide these affidavits to the City if such affidavits have been previously provided to the City within the past year. All words in this paragraph shall have the definitions as provided in Section 285.525 R.S.Mo.

Pursuant to Section 208.009 R.S.Mo., the Consultant shall provide at the earlier of submission of any bid or execution of any agreement affirmative proof that the Applicant for the Consultant is a citizen or a permanent resident of the United States or is lawfully present in the United States. The Applicant for the Consultant (or "Applicant") shall be the person authorized to prepare, submit and sign contract documents on behalf of the Consultant and shall be eighteen years of age or older. Such affirmative proof shall include documentary evidence recognized by the Missouri Department of Revenue when

processing an application for a driver's license, a Missouri driver's license, as well as any document issued by the federal government that confirms an alien's lawful presence in the United States.

*For all contracts with a total potential value of \$100,000 or more and contractors with ten (10) or more employees: Contractor shall comply with Section 34.600 RSMo. (the Anti-Discrimination against Israel Act) including executing the certification attached as **Exhibit C** hereto.*

Representations. Consultant agrees that it has not relied on any representations or warranties of the City, oral or written, other than expressly identified in this Contract. The parties agree the Contract represents the entire agreement between the parties.

Other Representations, Warranties, and Covenants by the Contractor. The Contractor represents and warrants that the Contractor has been engaged in such Work as is required for the Project and has provided services such as the ones to be performed under this Agreement to other municipalities and/or private enterprises and that the Contractor owns sufficient equipment and engages sufficient personnel to perform the Contractor's obligations under this Agreement. The Contractor further represents and warrants that the Contractor is an equal opportunity employer. The Contractor agrees that the Contractor shall not use in any form or medium the name of the City for any advertising unless the Contractor receives the prior written consent of the City

Governing/Choice of Law. This Agreement shall be governed by and construed and interpreted in accordance with the internal laws of the State of Missouri, without regard to its principles of conflict of laws, with venue in St. Louis County, Missouri. As a prerequisite to the Contractor filing any claim against the City in any court of law or equity pursuant to this Contract, the Contractor agrees that its shall be bound to first file such claim with the City's Board of Administrative Review, pursuant to and in accordance with Chapter 160 of the City Code.

Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement.

Other Special Provisions. Notwithstanding the above, for the first-year term, the City Administrator shall have the authority to accept two million dollars in insurance coverage from Consultant in lieu of the sovereign immunity amounts.

Exhibit A

SCOPE OF SERVICES

This Agreement shall consist of individual projects on an on-call, as-needed basis to provide certain restoration and/or abatement services on a specific property within the City as directed by the City Administrator and Mayor. Such abatement and/or restoration services include but are not limited to removing and disposing of debris and trash from a property, removing and disposing of cars, equipment, or other items from a property, grass cutting, cutting, treating, and/or removing overgrown weeds and other vegetation, boarding up or securing dangerous structures, and other abatement or restoration services. When directed by the City Administrator, the Consultant shall inspect the relevant property and in consultation with the City Administrator, or his/her designee, as to the work to be performed, prepare a work order that lists the restoration and/or abatement services to be performed on such property and the cost for same in accordance with the below cost sheet. The Consultant shall not perform any Work until the work order is executed by the City. The City Administrator and Mayor shall have the authority to execute any work order for a specific project where costs are estimated to be under \$5,000.00. Any projects with estimated costs of \$5,000.00 or more shall require the prior consent of the Board of Aldermen. Every work order signed by the City shall be subject to and under the conditions and requirements of this Agreement.

Board ups – \$1.10 per United inch (this is the addition of Width in inches and length in inches X cost \$1.10) $W+L \times \$ = \text{Cost}$

Grass cut- up to ½ acre, 12” or under \$65.00

Grass cut up to ½ acre 13-24” \$75.00

grass cut up to ½ acre 24-36” tall \$100.00

Grass cut- up to 1 acre, 12” or under \$125.00

Grass cut up to 1 acre 13-24” \$150.00

Grass cut up to 1 acre 24-36” tall Brush hog required \$250.00

Anything over 36” tall will be bid

Overgrowth 5ft in Height Allowable rate not to exceed \$1000.00 or Bid on request.

**In the event overgrowth exceeds the \$1000.00 allowable rate a bid will be supplied due to the nature of overgrowth. IE thorny or poison ivy types

Vehicle towing: Cars, Truck, SUVs, motorcycles and small boats \$150.00

Vehicle towing: RV’s, boats over \$250.00

Remove brush, per cubic yard \$30.00

Remove trash, per cubic yard yard. \$30.00

Tire: Standard vehicle tire \$5.00; with rim \$10.00

Tire: Truck \$10.00; with rim \$15.00

Tire: Diesel \$30.00; with rim \$50.00

Tire: Farm Tractor \$50.00

Standard labor rate is \$45.00 per man per hour

Any other services not listed an estimate can be provided free of charge.

Exhibit C

ANTI-DISCRIMINATION AGAINST ISRAEL ACT CERTIFICATION

Note: Contractor is not required to provide this certification if: (1) the contract has a total potential value of less than one hundred thousand dollars (\$100,000.00) or (2) Contractor employees fewer than ten (10) employees.

Pursuant to RSMo. §34.600, a public entity is prohibited from contracting “to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the person or company is not currently engaged in, and shall not, for the duration of the contract, engage in a boycott of:

Goods or services from the State of Israel;

Companies doing business in, or with, Israel

Companies authorized by, licensed by, or organized under the laws of the State of Israel; or

Persons or entities doing business in the State of Israel.”

For a definition of the term “boycott”, please refer to RSMo. §34.600.3. A copy of the statute is attached. This is a requirement of state law and not the City of Fenton.

By signing the below, the Contractor agrees and certifies that it does not currently, and will not for the duration of this contract, engage in any of the types of boycotts listed above and further understands that this is a contractual requirement imposed by the State of Missouri and, therefore, agrees to hold the City harmless and seek no damages of any kind against the City for requiring such a certification, and further agrees that, if Contractor believes such certification violates Contractor’s rights, Contractor will pursue any legal claim against the state of Missouri or any other related entity and expressly covenants not to sue the City as a result of this statutory certification requirement.

CONTRACTOR

By: _____
[signature]

Print Name

Its: _____
[list title]

34.600. Citation of law — public entity contracts, no boycott of goods or services from Israel — definitions — violation, voiding of contract — rulemaking authority. — 1. This section shall be known as the "Anti-Discrimination Against Israel Act".

2. A public entity shall not enter into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel. This section shall not apply to contracts with a total potential value of less than one hundred thousand dollars or to contractors with fewer than ten employees.

3. As used in this section, the following terms and phrases shall mean:

(1) "**Boycott Israel**" and "**boycott of the State of Israel**", engaging in refusals to deal, terminating business activities, or other actions to discriminate against, inflict economic harm, or otherwise limit commercial relations specifically with the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel, that are all intended to support a boycott of the State of Israel. A company's statement that it is participating in boycotts of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel, or that it has taken the boycott action at the request, in compliance with, or in furtherance of calls for a boycott of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel shall be considered to be conclusive evidence that a company is participating in a boycott of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel; provided, however that a company that has made no such statement may still be considered to be participating in a boycott of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel if other factors warrant such a conclusion;

(2) "**Company**", any for-profit or not-for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations;

(3) "**Public entity**", the state of Missouri or any political subdivision thereof, including all boards, commissions, agencies, institutions, authorities, and bodies politic and corporate of the state created by or in accordance with state law or regulations.

4. Any contract that fails to comply with the provisions of this section shall be void against public policy.

5. The commissioner of administration or his or her designee may promulgate regulations to implement the provisions of this section* so long as they are consistent with this section and do not create any exceptions. Any rule or portion of a rule, as that term is defined in section [536.010](#), that is created under the authority of this section shall become effective only if it complies with and is subject to all of the provisions of [chapter 536](#) and, if applicable, section [536.028](#). This section and [chapter 536](#) are nonseverable and if any of the powers vested with the general assembly pursuant to [chapter 536](#) to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2020, shall be invalid and void.