



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: August 18, 2020

Agenda Item LES
Approvals:
City Manager ES
Dept. Head MB
Attorney _____
Finance JER

Department: Public Works
Prepared By: Tom Bonigut, Public Works Director/City Engineer

Subject: **AMENDMENT No. 1 TO EXISTING AGREEMENT WITH ED STEWART AND ASSOCIATES FOR GRAFFITI REMOVAL SERVICES.**

Fiscal Impact: Yes. The proposed amendment will result in expenditures of up to \$95,200 during the current Fiscal Year 2021. The approved Fiscal Year 2021 budget includes funding for this action.

Summary: This report requests City Council approval to extend the existing graffiti removal agreement with Ed Stewart and Associates for an additional year as further discussed below.

Discussion: On December 19, 2017 the City Council approved an agreement with Ed Stewart and Associates to provide graffiti removal services (see Attachment 1 for staff report). That agreement (provided in Attachment 2) was for an initial term through June 30, 2020, but included a provision to authorize up to two (2) one-year extensions. Due to excellent performance by Ed Stewart and Associates, staff recommends City Council approval of the first term extension through June 30, 2021 via the formal agreement amendment provided in Attachment 3. The maximum not-to-exceed cost for graffiti removal services for Fiscal Year 2021 is \$95,200, consistent with the rate schedule included in the approved agreement. There are funds in the approved Fiscal Year 2021 budget for this expense.

Recommended

Action: STAFF RECOMMENDS THAT the City Council approve and authorize the Public Works Director/City Engineer to execute Amendment No. 1 to the Agreement with Ed Stewart and Associates (City Contract No. C17-58) to provide graffiti removal services at a maximum cost of \$95,200 for the period from July 1, 2020 through June 30, 2021.

Attachments: 1. December 19, 2017 Staff Report
2. Original Agreement
3. Amendment No. 1

Notification: Ed Stewart and Associates.

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Approvals:

City Manager [Signature]

Dept. Head [Signature]

Attorney [Signature]

Finance [Signature]

AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: December 19, 2017

Department: Public Works / Maintenance Services
Prepared By: Randy Little, Maintenance Manager

Subject: *AWARD OF AGREEMENT TO E. STEWART AND ASSOCIATES FOR GRAFFITI REMOVAL.*

Fiscal Impact: Yes. The FY 2017-18 budget is \$97,200 combined for administration of the Agreement and estimated graffiti removal costs. The bid proposal from E. Stewart and Associates (Stewart) includes a monthly administration rate and hourly labor/equipment rates for graffiti removal for a combined estimated total of \$95,200 per fiscal year, and \$238,000 for the initial term of the proposed Agreement. No supplemental appropriations are required.

Summary: The City's current Agreement with Stewart to provide graffiti removal services will expire December 27, 2017. Staff recommends that Council approve and award a Professional Services Agreement with Stewart for an initial term of January 1, 2018 to June 30, 2020, with two optional one year extensions, for a total amount not to exceed \$238,000.00 for the initial term. This total includes administration of the Agreement, and graffiti removal on public property including coastal/beach trails and specific private property locations within the City, at prevailing wage in an amount not to exceed \$75,000.00 for administration, an estimated \$50,500.00 for graffiti removal on public property, and an estimated \$112,500.00 for graffiti removal on private property.

Discussion: The City's Maintenance Services Division which oversees the Agreement, issued a Request for Proposals (RFP) on November 2, 2017 and advertised the RFP in the Orange County Register and on the PlanetBids website as directed by City policy. The bid opening was held on November 28, 2017.

Two Proposals were received, with the following totals for the initial term of January 1, 2018 through June 30, 2020:

	Administration of Agreement		Total Aggregate
	Per Month	Total	Hourly Rate
• Meyers Services	\$7,600	\$228,000	\$737.50
• E. Stewart	\$2,500	\$75,000	\$350.00

The Stewart proposal reflects a difference in cost of \$5,100 per month and \$153,000 total for the term, below the Meyers proposal. The proposed Professional Services Agreement with E. Stewart and Associates, Inc. is available for review in the City Clerk's office.

Recommended

Action: STAFF RECOMMENDS THAT the City Council approve and authorize the Mayor to execute Contract No. ____ by and between The City of San Clemente and E. Stewart and Associates, Inc. for graffiti removal services in connection with public properties and specific private property locations within the City for the initial term of January 1, 2018 to June 30, 2020, with two optional one year extensions.

Attachments: Bidder's Listing

Notification: None.

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**PROFESSIONAL SERVICES AGREEMENT
FOR GRAFFITI REMOVAL**

C17.58

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this ~~19th~~ day of December, 2017 (the "Effective Date"), by and between the City of San Clemente, a municipal corporation, hereinafter referred to as the "CITY", and E. Stewart and Associates, Inc. of 1000 Calle Negocio, San Clemente, CA 92673 hereinafter referred to as the "CONTRACTOR".

RECITALS:

- A. CITY requires professional Graffiti Removal services to be performed at or in connection with public property and specific private property locations within the City.
- B. CONTRACTOR has represented to CITY that CONTRACTOR is qualified to perform said services and has submitted a proposal to CITY for same.
- C. CITY desires to have CONTRACTOR perform said services on the terms and conditions set forth herein.

COVENANTS:

Based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, CITY and CONTRACTOR agree as follows:

ARTICLE 1
RESPONSIBILITIES OF CONTRACTOR

1.1 Term.

The term of this Agreement shall commence on the Effective Date, and shall continue and remain in effect, until June 30, 2020, with the option of two one-year extensions, unless terminated earlier pursuant to the terms hereof. Notwithstanding the foregoing, the City Manager or his or her designee shall have the authority on behalf of the City to administratively approve extensions to the term hereof not to exceed a cumulative total of one hundred eighty (180) days.

1.2 Scope of Services.

CONTRACTOR shall perform any and all work necessary for the completion of the tasks and services set forth in the "Scope of Services" attached hereto and incorporated herein as Exhibit "A" in a manner satisfactory to CITY. By execution of this Agreement,

CONTRACTOR warrants that (i) it has thoroughly investigated and considered the work to be performed; (ii) it has carefully examined the location or locations at or with respect to which the work is to be performed, as applicable; and (iii) it fully understands the difficulties and restrictions attending the performance of the work provided for under this Agreement. CONTRACTOR acknowledges that certain refinements to the Scope of Services may, on occasion, be necessary, to achieve CITY's goals hereunder, and CONTRACTOR shall cooperate with and assist the CITY to identify and make such refinements prior to undertaking any tasks or services that may require refinement.

1.3 Schedule of Performance:

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall furnish to CITY proof of insurance coverage as required under Article 5, Insurance. Upon CITY's release to CONTRACTOR of a fully executed copy hereof and issuance of a written Notice to Proceed, CONTRACTOR shall promptly commence performance of the work. Until such time, CONTRACTOR is not authorized to perform and will not be paid for performing any work under this Agreement. CONTRACTOR shall exercise reasonable diligence to have the services as set forth in Exhibit "A" completed and submitted to CITY for final approval as soon as reasonably practicable and in accordance with the schedule of performance attached hereto and incorporated herein as Exhibit "B", provided that CONTRACTOR shall be entitled to an extension of time for any delays caused by events or occurrences beyond CONTRACTOR's reasonable control.

1.4 Identity of Persons Performing Work.

CONTRACTOR represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. CONTRACTOR shall not replace any of the principal members of the Project team, including any of the persons listed in Exhibit "A" (if CONTRACTOR'S personnel is listed on Exhibit "A"), or any successors to any of such persons, without CITY's prior written approval.

CONTRACTOR represents that the tasks and services required hereunder will be performed by CONTRACTOR or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. In carrying out such tasks and services, CONTRACTOR shall not employ any undocumented aliens (i.e., persons who are not citizens or nationals of the United States).

This Agreement contemplates the personal services of CONTRACTOR and CONTRACTOR's employees, and it is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of CONTRACTOR and CONTRACTOR's employees. Neither this Agreement nor any interest therein may be assigned by CONTRACTOR, except upon written consent of CITY.

Furthermore, CONTRACTOR shall not subcontract any portion of the performance contemplated and provided for herein without the prior written approval of CITY, except for those subcontractors named in the proposal for the project. Nothing herein contained is intended to or shall be construed as preventing CONTRACTOR from employing or hiring as many employees as CONTRACTOR may deem necessary for the proper and efficient execution of this Agreement.

1.5 Cooperation and Coordination of Work With CITY.

CONTRACTOR shall work closely with CITY's designated representative, either individual or committee, who shall have the principal responsibility for liaison and who shall, on a continuous basis, review and approve CONTRACTOR's work. CONTRACTOR shall ensure that CITY has reviewed and approved all required work as the project progresses.

1.6 Compliance With Laws.

CONTRACTOR shall comply with all applicable Federal, State and local laws, ordinances and regulations, including without limitation all applicable fair labor standards. CONTRACTOR shall not discriminate against any employee or applicant for employment or any approved subcontractor, agent, supplier or other firm or person providing services to CONTRACTOR in connection with this Agreement on the basis of race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, or mental or physical disability. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, and mental or physical disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Prior to execution of this Agreement, CONTRACTOR shall furnish to CITY proof that CONTRACTOR and all of its subcontractors have a current, valid business license issued by CITY.

1.7 Standard of Performance.

CONTRACTOR acknowledges and understands that the services and work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, CONTRACTOR's services and work shall be held to a standard of quality and workmanship prevalent in the industry for such service and work. CONTRACTOR represents to CITY that CONTRACTOR holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. CONTRACTOR shall perform the work and services under this Agreement in accordance with such standard of work and in accordance with the accepted standards of the professional disciplines involved in the

project. All work shall be completed to the reasonable satisfaction of CITY. If CITY reasonably determines that the work is not satisfactory, CITY shall have the right to: (i) meet with CONTRACTOR to review CONTRACTOR's work and resolve matters of concern; and/or (ii) require CONTRACTOR to repeat unsatisfactory work at no additional charge until it is satisfactory.

1.8 Contractor Ethics.

CONTRACTOR represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of CITY to obtain CITY's approval of this Agreement. CONTRACTOR shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to CONTRACTOR pursuant to Article 3, Compensation. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) CONTRACTOR shall not possess or maintain any business relationship with the applicant or any other person or entity which CONTRACTOR knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to CITY in accordance with this Agreement CONTRACTOR shall not advocate either for or against said project and/or application, and (iii) CONTRACTOR shall immediately notify CITY in the event CONTRACTOR determines that CONTRACTOR has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section 1.8 shall be applicable to all of CONTRACTOR's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

1.9 Changes and Additions to Scope of Services.

CITY may make changes within the general scope of services provided for in this Agreement. CONTRACTOR shall agree to any such changes that are reasonable. CONTRACTOR shall make no change in or addition to the character or extent of the work required by this Agreement except as may be authorized in advance in writing by CITY. Such supplemental authorization shall set forth the specific changes of work to be performed and related extension of time and/or adjustment of fee to be paid to CONTRACTOR by CITY.

1.10 Hiring of Illegal Aliens Prohibited

CONTRACTOR shall not hire or employ any person to perform work within the City of San Clemente or allow any person to perform work required under this Agreement unless such person is a United States citizen or is properly documented and legally entitled to be employed within the United States.

1.11 Endorsement on PS&E/Other Data

CONTRACTOR shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by CONTRACTOR, and where appropriate will indicate CONTRACTOR's authorized signature and professional registration number.

ARTICLE 2
RESPONSIBILITIES OF CITY

2.1 Provision of Information.

CITY shall provide full information regarding its requirements for the project, and it shall furnish, without charge to CONTRACTOR, any and all information, data, plans, maps and records which are available to CITY and are necessary for the provision by CONTRACTOR of the tasks and services set forth herein.

2.2 Cooperation With CONTRACTOR.

CITY shall cooperate with CONTRACTOR in carrying out the work and services required hereunder without undue delay. In this regard, CITY, including any representative thereof, shall examine plans and documents submitted by CONTRACTOR, shall consult with CONTRACTOR regarding any such plans and documents, and shall render any necessary decisions pertaining to such plans and documents as promptly as is practicable.

ARTICLE 3
PAYMENT

3.1 Payment Schedule: Maximum Payment Amount.

Prior to the tenth of the month, CONTRACTOR shall submit to CITY a monthly status report and invoices itemizing the services rendered during the previous month. Within fifteen (15) working days after receipt of an invoice from CONTRACTOR, CITY shall determine whether and to what extent CONTRACTOR has adequately performed the services for which payment is sought. If CITY determines that CONTRACTOR has not adequately performed such services, CITY shall inform CONTRACTOR of those acts which are necessary for satisfactory completion. Subject to the provisions of Section 5.2 below, which provide for the City to withhold payment in the event CONTRACTOR's insurance expires during the term of this Agreement, CITY shall cause payment to be made to CONTRACTOR within fifteen (15) working days from CITY's determination that CONTRACTOR has adequately performed those services for which CITY has been invoiced. In no case shall CITY pay in excess of each line item set forth in Exhibit "A" for any particular task unless approved and authorized by the CITY in writing (applicable only if Exhibit "A" breaks down the Scope of Services on a line item basis). The total compensation for the Scope of Services set forth in Exhibit "A" shall not exceed Two-Hundred Thirty-Eight Thousand Dollars (\$238,000.00) which includes \$75,000 (2,500.00

per month) for administrative services, an estimated \$50,500.00 for graffiti removal on public property including coastal/beach trails, and an estimated \$1,12,500.00 for graffiti removal on specific private property locations within the City. (\$238,000.00), including all amounts payable to CONTRACTOR for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement (the "Total Compensation").

3.2 Changes in Work

If CONTRACTOR estimates that any proposed change within the general scope of services set forth in Exhibit "A" causes an increase or decrease in the cost and/or the time required for performance of this Agreement, CONTRACTOR shall so notify CITY of that fact in advance of commencing performance of such work. Any such change, and the cost for such change, shall be agreed upon by CITY and CONTRACTOR, and reduced to a writing that, once signed by both CITY and CONTRACTOR, shall modify this Agreement accordingly. In determining the amount of any cost increase for such change, the value of the incomplete portions of the original tasks and services affected by the change shall be credited back to CITY.

3.3 Additional Work

CITY may request CONTRACTOR to perform additional services not covered by the specific scope of services set forth in Exhibit "A", and CONTRACTOR shall perform such extra services and will be paid for such extra services when the extra services and the cost thereof are reduced to writing, signed by both CITY and CONTRACTOR, and made a part of this Agreement. CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written amendment. To the extent that the extra services render all or a portion of the original tasks and services unnecessary, the value of the unnecessary and incomplete portions of original tasks and services shall be credited back to CITY.

ARTICLE 4 INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor and not an employee of the CITY. Neither the CITY nor any of its employees shall have any control over the conduct of the CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth, and CONTRACTOR expressly warrants not to, at any time or in any manner, represent that CONTRACTOR, or any of CONTRACTOR's agents, servants or employees, are in any manner agents, servants or employees of the CITY, it being distinctly understood that CONTRACTOR is and shall at all times remain as to the CITY a wholly independent contractor and that CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

ARTICLE 5
INDEMNITY AND INSURANCE

5.1. Indemnification

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS A "LICENSED DESIGN PROFESSIONAL" AND IS PROVIDING DESIGN PROFESSIONAL SERVICES:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees (collectively, the "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of CONTRACTOR or any officers, agents, employees, representatives, or subcontractors of CONTRACTOR [collectively, the "CONTRACTOR ENTITIES"]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control (collectively, the "Liabilities"). Such obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS NOT A "LICENSED DESIGN PROFESSIONAL":

CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of CONTRACTOR or CONTRACTOR's officers, agents, employees, representatives, or subcontractors [collectively, the "CONTRACTOR ENTITIES"]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the actions or failure to act of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control, under this Agreement.

For purposes of this Agreement, a "Licensed Design Professional" shall be limited to licensed architects, registered professional engineers, licensed professional land surveyors and landscape architects, all as defined under current law, and as may be amended from time to time by California Civil Code § 2782.8.

5.2 Insurance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall submit certificates and endorsements to CITY indicating compliance with the following minimum insurance requirements, and CONTRACTOR shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' Compensation insurance to cover CONTRACTOR's employees as required by the California Labor Code with employer's liability limits not less than One Million Dollars (\$1,000,000) per accident or disease. Before execution of this Agreement by CITY, CONTRACTOR shall file with CITY the attached signed Worker's Compensation Insurance Certification. CONTRACTOR shall require all subcontractors similarly to provide such compensation insurance for the respective employees.

None of the CITY, the San Clemente Redevelopment Agency, or any of their respective officers, employees, and agents will be responsible for any claims in law or equity occasioned by failure of CONTRACTOR to comply with this paragraph.

- B. Commercial General Liability, personal injury and property damage liability, contractual liability, independent-contractor's liability, and automobile liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses, and Two Million Dollars (\$2,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City's Risk Manager. Each such policy of insurance shall:

- (1) be issued by companies that hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide, or a company of equal financial stability that is approved by CITY's Risk Manager for all coverages except surety.
- (2) name and list as additional insureds CITY, CITY's officers, employees, and agents and, if the CITY's Risk Manager so requires, the City of San Clemente Redevelopment Agency and its officers, employees, and agents. An endorsement shall accompany the insurance certificate naming such additional insureds.

- (3) specify it acts as primary insurance and that no insurance held or owned by CITY (or, if applicable, the San Clemente Redevelopment Agency) shall be called upon to cover a loss under said policy;
- (4) contain a clause substantially in the following words: "it is hereby understood and agreed that this policy may not be canceled or materially changed except upon thirty (30) days prior written notice to CITY of such cancellation or material change as evidenced by a return receipt for a registered letter;"
- (5) cover the operations of CONTRACTOR pursuant to the terms of this Agreement; and
- (6) be written on an occurrence and not a claims-made basis.

C. Professional Liability or Errors and Omissions insurance specifically designed to protect against acts, errors or omissions of the CONTRACTOR and "covered professional services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

If this box is checked and CITY has initialed below, the requirement for Professional Liability or Errors and Omissions insurance set forth in paragraph C above is hereby waived.

CITY's Initials: _____

Notwithstanding anything herein to the contrary, in the event any of CONTRACTOR's insurance as required pursuant to this Section 5.2 expires during the term of this Agreement, CITY shall withhold any payment due to CONTRACTOR hereunder until such time as CONTRACTOR obtains replacement insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to CITY.

CONTRACTOR shall require all of its subcontractors to procure and maintain during the course of their subcontract work with CONTRACTOR insurance that complies with the foregoing minimum insurance requirements. CONTRACTOR shall obtain from such subcontractors and retain in its files certificates evidencing such compliance.

ARTICLE 6
TERMINATION

This Agreement may be terminated by CITY for any reason, with or without cause, upon written notice to CONTRACTOR. In such event, CONTRACTOR shall be compensated for all services performed and costs incurred up to the date of notification for which CONTRACTOR has not been previously compensated, plus termination expenses reasonably incurred and properly accounted for (but in no event to exceed the amount which, when combined with other amounts paid, exceeds the amount for any uncompleted task set forth in Exhibit "A", as applicable). Upon receipt of notice of termination from CITY, CONTRACTOR shall immediately stop its services, unless otherwise directed, and deliver to CITY all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

ARTICLE 7
MISCELLANEOUS

7.1 Ownership of Documents.

All reports, software programs, as well as original data collected, original reproducible drawings, plans, studies, memoranda, computation sheets and other documents assembled or prepared by CONTRACTOR or furnished to CONTRACTOR in connection with this Agreement shall be the property of CITY and delivered to CITY at completion of the project or termination of this Agreement, whichever occurs first. Copies of said documents may be retained by CONTRACTOR, but shall not be made available by CONTRACTOR to any individual or organization without the prior written approval of CITY.

Any use of completed documents for projects other than that covered by this Agreement and/or any use of uncompleted documents without specific written authorization from CONTRACTOR will be at CITY's sole risk and without liability or legal exposure to CONTRACTOR.

7.2 Notices.

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States mail, addressed to CONTRACTOR at E. Stewart and Associates, Inc., 1000 Calle Negocio, San Clemente, CA 92673, and to the City of San Clemente, 100 Avenida Presidio, San Clemente, California 92672, Attention: Maintenance Manager.

7.3 Covenant Against Contingent Fees.

CONTRACTOR warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or

person any fee or commission from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee or commission.

7.4 Liquidated Damages.

APPLICABLE ONLY IF THIS BOX HAS BEEN CHECKED AND BOTH PARTIES HAVE INITIALED BELOW.

If CITY seeks monetary damages for CONTRACTOR'S failure to complete all of the services required hereunder by the completion date set forth in Exhibit "B" (the "Completion Date"), CONTRACTOR shall be required to pay to CITY _____ Dollars (\$ _____) per day for each day beyond the Completion Date that any of such services remain uncompleted; provided, however, that nothing herein shall be deemed to limit CITY's remedy for CONTRACTOR's failure to complete all services required hereunder by the Completion Date to seeking monetary damages, and CITY shall be entitled to pursue any other equitable remedy permitted by law, including, without limitation, specific performance.

THE PARTIES HERETO AGREE THAT THE AMOUNT SET FORTH IN THIS SECTION 7.4 (THE "DAMAGE AMOUNT") CONSTITUTES A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY, THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE DAMAGE AMOUNT SET FORTH IN THIS SECTION 7.4 SHALL BE THE SOLE DAMAGES REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, BUT NOTHING IN THIS SECTION 7.4 SHALL BE INTERPRETED TO LIMIT CITY'S REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL TO EXPLAIN THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

CONTRACTOR'S INITIALS: _____ CITY'S INITIALS: _____

Notwithstanding, any of the above, nothing herein is intended to preclude the CITY's recovery of its attorney's fees and costs incurred to enforce this Section 7.4, as provided in Section 7.10 below.

7.5 Interpretation and Enforcement of Agreement.

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court with jurisdiction in such county, and CONTRACTOR agrees to submit to the personal jurisdiction of such court.

7.6 Disputes.

In the event of any dispute arising under this Agreement, the injured party shall notify the defaulting party in writing of its contentions by submitting a claim therefor. The injured party shall continue performance of its obligations hereunder so long as the defaulting party immediately commences to cure such default and completes the cure of such default with reasonable diligence and in no event to exceed 30 days after service of the notice, or such longer period as may be permitted by the injured party; provided, that if the default results in an immediate danger to the health, safety, and general welfare, CITY may take such immediate action as CITY deems warranted.

7.7 Retention of Funds.

CITY may withhold from any monies payable to CONTRACTOR sufficient funds to compensate CITY for any losses, costs, liabilities or damages suffered by CITY due to default of CONTRACTOR in the performance of the services required by this Agreement.

7.8 Waiver.

No delay or omission in the exercise of any right or remedy by a nondefaulting party shall impair such right or remedy or be construed as a waiver. CITY's consent or waiver of one act or omission by CONTRACTOR shall not be deemed to constitute a consent or waiver of CITY's rights with respect to any subsequent act or omission by CONTRACTOR. Any waiver by either party of any default must be in writing.

7.9 Rights and Remedies are Cumulative.

Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

7.10 Attorneys' Fees.

In the event either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the taking of depositions and discovery, expert witness fees, and all other necessary costs incurred in the litigation, suit, or other action requiring attorney time. All such fees shall be enforceable whether or not such action is prosecuted to final judgment.

7.11 Integrated Agreement.

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement.

7.12 Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties.

[APPLICABLE TO INDIVIDUAL CONTRACTORS ONLY]

7.13 Compliance with California Unemployment Insurance Code Section 1088.8:

Prior to signing the Contract, CONTRACTOR shall provide to CITY a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. CONTRACTOR understands that pursuant to California Unemployment Insurance Code Section 1088.8, the CITY will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

[End – Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

By: [Signature]

Its: Mayor

Dated: Jan 15th, 2018

ATTEST:

CITY CLERK of the City of San Clemente, California.

APPROVED AS TO FORM:
BEST BEST & KRIEGER

By: [Signature]
City Attorney

APPROVED AS TO AVAILABILITY
OF FUNDING

By: [Signature]
Finance Authorization

E. Stewart & Associates, Inc
("CONTRACTOR")

Contractor's License Number 953389

By: [Signature]

Its: Corporate Secretary

Dated: 12/19, 2017

EXHIBIT A

SCOPE OF SERVICES AND SPECIFICATIONS

1. DESCRIPTION OF CONTRACT AND INTENT

The intent of this Scope of Services and Specifications is to provide graffiti removal from both public and specific private properties within the City of San Clemente, to administer this program and to provide staffing for intake of graffiti reports through a dedicated graffiti hotline and an internet based website.

2. SCOPE OF WORK

A. Furnish all labor, equipment, materials, and supervision to perform graffiti removal described herein including, but not limited to, the following:

1. Provide full-time staffing for accepting incoming calls to the Graffiti Hotline
2. Respond to calls from the Graffiti Hotline.
3. Coordinate with the City's Code Compliance staff to ascertain that permission to enter private property has been accomplished or to determine if the private property graffiti is highly visible and necessitates extraordinarily rapid removal
4. During regular City working hours, notify appropriate City staff when graffiti is located on City/public ("public") property
5. After regular City working hours, on weekends and holidays, remove graffiti from public property
6. Photo document all graffiti prior to removal and provide copies to San Clemente Police Services within 8 hours of notification
7. Provide Best Management Practices in graffiti removal, whether with painting, sanding, pressure washing, or whatever media or equipment is used
8. Follow the guidelines of the San Diego Regional Water Quality Control Board

3. WORKING HOURS

Contractor will be required to respond 24 hours a day, 7 days a week, 365 days a year, as needed.

4. GRAFFITI HOTLINE AND ADMINISTRATION

A. Contractor shall provide a 24-hour daily graffiti hotline to be answered by either staff or an answering service in the following manner: "Hello. You have reached the City of San Clemente's Graffiti Hotline. In order to best serve the community in the removal of graffiti, can you please provide the location where you have noted graffiti?" The individuals answering the hotline will solicit the exact location of the graffiti, and obtain the name and contact number from the caller, and stress that this information will be kept confidential and is only solicited in case the Contractor has difficulty locating the graffiti in question.

- B. Contractor shall receive and respond to graffiti reports in the graffiti portal on the City's website, to solicit the same information on graffiti location as detailed in "A" above.
- C. Upon receipt of the location of the graffiti, Contractor will determine if the graffiti is located on public or private property.
1. If located on City of San Clemente public property,
 - a. during "regular" working hours, the Contractor shall notify the Maintenance Services Division of the location of the graffiti.
 - b. after hours, on holidays or weekends, the Contractor shall remove the graffiti on public property, and notify the Maintenance Services Division. Any damage to structures shall be reported immediately to the Maintenance Services Division.
 2. If located on private property,
 - a. Contractor shall contact San Clemente Code Compliance to notify the property owner, unless a long term permission document to enter private property is on file for the property in question from the property owner. If a permission document is on file for that property, Contractor shall remove the graffiti.
 - b. If there is no permission document on file, and Code Compliance determines that the private property graffiti is highly visible and necessitates extraordinarily quick removal, the Contractor shall respond and remove the graffiti from the private property.

Under no circumstances is the Contractor to enter private property unless formal permission has been obtained, or unless directed to do so in these "emergency" situations by City representatives.

- D. Any damage beyond graffiti to structures on private property are to be reported to the Code Compliance Division.
- E. All graffiti, whether located on public or private property, shall be digitally photographed, with address and time of photo provided as a caption to each photo. All such photos shall then be electronically mailed to San Clemente Police Services and the Maintenance Services Division within 8 hours of the notification. Copies of said photos shall be saved onto a compact disk (CD), and CD shall be attached to all applicable billing.

5. GENERAL GRAFFITI REMOVAL GUIDELINES

- A. The Contractor shall remove graffiti, feathering out the area to hide impressions of the specific removal which will include but not be limited to brick, cinder block, concrete sidewalks, concrete walls and partitions, painted interior and exterior surfaces, large railroad rip rap rocks on the beach, and decorative paving. In addition, if graffiti must be removed from acrylic panels or tile, specialized removing agents shall be used to eliminate "clouding" or "distortion."

- B. The Contractor shall clean, of various types of, all graffiti, poles, signs, wood, metal, plastic, paper, decals, stickers, gum, paint, markers, crayons, ropes, chains, string, wires and tapes on an as needed basis.
- C. Removal of the same from City traffic control or irrigation controller boxes.

6. GENERAL GRAFFITI REMOVAL REQUIREMENTS.

- A. All graffiti removal functions shall be performed in accordance with the following specifications, unless otherwise indicated in the Work-Description Section. The City shall have the right to determine the extent and frequency or additional "as needed" services. Standards and frequencies may be modified from time to time as deemed necessary by the City for the proper maintenance of the listed facilities.
- B. All operations shall be conducted so as to provide maximum safety for the public, and minimize disruption of the public use of parks, beaches and facilities.
- C. Contractor shall only enter upon private property once the formal written permission has been granted, and great care shall be taken to remove the graffiti without disruption to the private property.
- D. Contractor shall clean sidewalks, roadways, and any other areas littered or soiled by his maintenance operations in a manner approved by the Maintenance Manager.
- E. Contractor shall notify the City immediately of any unusual and/or hazardous conditions on public property, including but not limited to restroom plumbing, sewer backups, fallen branches, or any item that creates a hazard or prevents the public's use of the parks/facilities.
- F. Contractor shall notify the City within one (1) hour of noticing malfunctioning facilities, or conditions that may hinder or interrupt the public's use of the parks/facilities. Once it has been ascertained that the Contractor's agents failed to provide such notification, there shall be a deduction of Two Hundred Fifty Dollars (\$250.00) per incident.

7. MOBILE PRESSURE UNITS

- A. When graffiti removal mandates the use of a mobile pressure washing unit, the following criteria must be met.
 - 1. The unit must be capable of 3,000 psi with variable pressure capabilities. Unit shall have the capability of heating water to 200 degrees. All solutions used must be safe and biodegradable. Other graffiti removal media shall also consist of material approved by the City to include but not be limited to silica sand, baking soda or other media to be determined. Graffiti removal from acrylic panels shall be done with New Dimensions DISAPPEAR™ Organic Graffiti/Adhesive/Paint Remover or approved equal product.
 - 2. Units shall be self-contained, carry water and not require a water hook-up.
 - 3. Graffiti cover up paint shall be done with water base paints at locations where graffiti cannot be removed with pressure washing.

4. All painting shall require general surface preparation, so as to provide a clean, dry surface free of debris, oil or rust. A primer shall be used as required to provide an undercoat for quality finish coat. All finish paint type and color should match as well as possible. In cases where multiple paint colors exist (such as private walls on alleys) an attempt will be made to match the most prevalent color.

8. TIME FRAME FOR RESPONSE AND COMPLETION

- A. The Contractor shall be available by cell phone for 24-hour emergency response.
- B. The Contractor shall respond to graffiti removal within eight (8) hours of notification when notified of required work.
- C. EXCEPTION: When graffiti is of a nature that requires immediate attention as determined by a City representative, the Contractor shall respond within fifteen (15) minutes of notification, confirming said notification, and respond with service within one (1) hour of the notification. A \$250 performance deficiency deduction will be taken from the monthly billing for each non-response occurrence.
- D. Contractor shall electronically mail all photos of graffiti to both San Clemente Police Services and to Maintenance Services within 8 hours of removal of the graffiti.

9. PUBLIC CONVENIENCE AND SAFETY

- A. The Contractor shall conduct their operation so as to cause the least possible obstruction and inconvenience to the public.
- B. The Contractor shall follow traffic control guidelines as detailed in Item 15 - "Street Closures, Detours, Barricades" on Page 5-6 of Exhibit A.

10. PRESERVATION OF PUBLIC AND PRIVATE PROPERTY

- A. The Contractor shall exercise due care to avoid injury to existing improvements of facilities, utilities, adjacent property, trees and shrubbery.
- B. Contractor shall protect all improvements from injury or damage. Contractor shall provide and install suitable safeguards to protect such objects from injury or damage.

11. LEVEL AND STANDARD OF MAINTENANCE

- A. All work shall be performed in accordance with the highest graffiti removal standards, and shall meet with the approval of the City of San Clemente Maintenance Services Division or other designated City staff. If, in the sole judgement of the City, the level of maintenance is less than that specified herein, the City shall, at its option, in addition to or in lieu of other remedies provided herein, withhold and deduct appropriate payment from the Contractor until services are rendered in accordance with specifications set forth within this document, and providing no other arrangements have been made between the Contractor and the City. Failure by Contractor to notify the City's Maintenance Manager or other designated City staff of a change and/or failure to perform an item or work on a scheduled day, may result in deduction of payment for that date or week at the City's discretion. Payment shall be deducted for work not performed. Payment shall NOT

resume until such time as the City determines the work is performed to City standard, nor shall reimbursement for prior inadequate work be given.

- B. The Contractor is required to correct deficiencies within the time specified by the City. If noted deficient work has not been completed to the City's satisfaction, payment for subject deficiency shall be withheld for current billing period, and shall continue to be withheld until deficiency is corrected, without right to retroactive payments.

12. SUPERVISION OF CONTRACT

- A. All work shall meet with the approval of the City of San Clemente Maintenance Services Division. If so deemed by the City, there shall be weekly meetings with the Contractor and the City representative to determine progress and to establish areas needing attention.
- B. Any specific problem area which does not meet the conditions of the specifications set forth herein shall be called to the attention of the Contractor in writing and if not corrected, payment to the Contractor shall not be made until condition is corrected in a manner satisfactory to the City as set forth in the specifications.

13. SPECIFICATIONS / WORK OR MATERIALS NOT SPECIFIED

These specifications are intended to cover all labor, material and standards of graffiti removal workmanship to be employed in the work called for in these specifications, or reasonably implied by terms of same. Work or materials of a minor nature which may not be specifically mentioned, but which may be reasonably assumed as necessary for the completion of this work, shall be performed by the Contractor as described in the specifications, at no additional cost to the City.

14. PROVISIONS FOR EXTRAS

- A. No new work of any kind shall be considered an extra unless a separate estimate is given for said work and the estimate is approved by the City before the work is commenced. The Contractor shall be required to provide before and after photographs of safety items or emergency repairs which were made without prior City approval. Documentation of contract compliance may be required on some occasions.
- B. Proposals for extra work shall include whether current contractual staffing is proposed to do the extra work, or whether additional forces shall be used.
- C. Once extra work has been assigned to the Contractor, with a mutually agreed deadline for completion, a two-hundred fifty dollar (\$250.00) per day deduction shall be made for each day this work extends past the agreed deadline. The Maintenance Manager may grant approval for extensions.

15. STREET CLOSURES, DETOURS, BARRICADES

- A. Warning signs, lights and devices shall be installed and displayed in conformity with the "Manual of Warning Signs, Lights and Devices" for use in performance of work

upon highways issued by the State of California, Department of Transportation and as directed by City staff:

- B. If the Contractor fails to provide and install any of the signs or traffic control devices required hereby or ordered by the City staff, staff may cause such signs or traffic control devices to be placed by others, charge the costs therefore against the Contractor, and deduct the same from the next payment.
- C. During the progress of the work, adequate provisions shall be made by the Contractor to so accommodate the normal traffic over the public streets as to cause a minimum of inconvenience to the general public. Means of ingress and egress shall be provided for occupants of adjacent property, with convenient access to driveway, housing or building.
- D. The Contractor shall be required to provide and maintain barriers, guards and lights when and where it may be necessary to do so in order to effectively guard the public from danger as a result of the work being done. Contractor shall also be required to post proper notices and signals to the public regarding detours and the condition of the work under construction, all in accordance with applicable provisions of the vehicle code.
- E. If required, providing official "NO PARKING" signs and posting the street for no parking shall be the Contractor's responsibility. In order for signs to be enforced by the City of San Clemente Police Services, signs must be posted 24 hours in advance and checked by the San Clemente Police Services Watch Commander.
- F. The Contractor's operations shall cause no unnecessary inconvenience. The access rights of the public shall be considered at all times. Unless otherwise authorized, traffic shall be permitted to pass through the work, or an approved detour shall be provided.
- G. Safe and adequate pedestrian and vehicular access shall be provided and maintained to fire hydrants, commercial and industrial establishments, churches, schools, parking lots, service stations, motels, fire and police stations, hospitals, and establishments of similar nature. Access to these facilities shall be continuous and unobstructed unless otherwise approved by the Maintenance Manager.
- H. Unless otherwise approved by the Maintenance Manager, the Contractor shall maintain and provide safe and adequate pedestrian zones, public transportation stops and pedestrian crossings at intervals not exceeding 300 feet.
- I. Vehicular access to residential driveways shall be maintained to the property line except when necessary construction precludes such access for reasonable periods of time.
- J. The Contractor shall cooperate with the various parties involved in the delivery of mail and the collection and removal of trash and garbage to maintain existing schedules for these services.

16. DISPOSAL

Any and all material used for the removal of graffiti shall be disposed of by the Contractor in a safe and legal manner:

17. RECORDS

- A. The Contractor shall keep accurate records concerning all of its employees or agents and provide the City within fifteen (15) days of the effective date of this contract with names, addresses, and telephone numbers of employees to be called in emergency. Any changes in the work force that impact this report shall be addressed to the City immediately.
- B. Contractor shall keep accurate, detailed records of each reporting/notification of graffiti to the Contractor.
- C. Contractor shall maintain a monthly log of all calls, emails or other communications from any source reporting graffiti to the Contractor, whether or not those communications require a request for service, with a description of action taken by Contractor or reason for no action.
- D. The top of the log shall show the title (San Clemente Graffiti Log), month of activity and date submitted. The body of the log shall include all of the following for each incident of reported graffiti: date and time reported; reporting source, specific location including address when possible, public or private property, if private - specify source approving removal, date graffiti removed, and any pertinent notes.
- E. The graffiti/communications log for the most recent, complete month's activity, shall be submitted to the City of San Clemente Maintenance Services Division. This report shall be submitted no later than five (5) working days following the end of each month.
- F. Contractor shall submit invoices monthly, as specified in the contract agreement. A compact disk (CD) for the invoiced month of activity, containing all photos of all graffiti incidents before removal, shall accompany each monthly invoice.
- G. The Contractor shall permit the City to inspect and audit its books and records at any reasonable times.
- H. All logs, reports and invoices shall be due as specified. A twenty-five dollar (\$25.00) per day deduction shall be made for each day any log or report submittal is late to the City. Deductions shall be reflected in the next monthly billing. Invoices failing to note incurred deductions shall not be paid.

18. EMERGENCY SERVICES

The Contractor shall provide the City with names and cellular telephone numbers of at least two qualified persons who can be called by City representatives when emergency maintenance conditions occur during hours when the Contractor's normal work force is not present. These Contractor representatives shall respond to said emergency within sixty (60) minutes from receiving notification.

19. CONTRACTOR'S OFFICE

Contractor is required to maintain an office within a one-hour response time of the City limits and to provide the office with phone service during normal working hours. During all other times, a telephone answering service shall be utilized and the answering service shall be capable of contacting the Contractor by cell phone. The Contractor shall also

provide a dedicated telephone line with with a voice mail system, or approved equal. This system shall allow forwarding of complaints and requests for service directly from the City. The Contractor shall provide and maintain a viable email address throughout the term of the contract.

20. EXAMINATION OF SITE AND WORK

City makes no representation about the order or condition of the work area nor does the City warrant that the work area shall be free from defects, either apparent or hidden, at the commencement of, or at any time during the term of the contract. Contractor must examine the location, physical conditions and surroundings of which these factors shall influence the performance of the work. By entering into the contract, Contractor shall be deemed to have agreed to accept the condition of the work area in its "as is" condition with the intent to upgrade or modify existing deficiencies to these specifications.

21. QUALITY OF WORK AND MATERIAL

All material and equipment furnished by the Contractor shall be high grade, and free from defects and imperfections, unless otherwise hereinafter specified. Workmanship shall be in accordance with the Best Management Practices. Both materials and workmanship shall be subject to the approval of the Maintenance Manager. All materials used shall be approved in advance by the Maintenance Manager.

A. The City reserves the right to purchase materials directly and make available to the Contractor, or to provide a local vendor where the Contractor can make appropriate purchases directly to a City purchase order. In the event the City exercises the option to purchase the materials, the following conditions shall apply:

1. Contractor shall conform to all City practices and procedures.
2. All City purchases shall be for the sole expressed use of and for the City.
3. The Contractor shall secure, store, inventory, distribute and control all materials entrusted to the Contractor's representatives. All materials and inventories shall be made available to the City upon request.
4. The Contractor shall reduce the unit cost for each maintenance task by the City's actual cost for the materials provided and used.

22. WORKMANSHIP AND SUPERVISION

- A. The Contractor shall provide a work force sufficient to complete the work as it is specified.
- B. Work shall be performed by competent and experienced workers.
- C. The work force shall include a thoroughly skilled, experienced and competent supervisor who shall be responsible for adherence to the specifications. Supervisors must communicate effectively both in written and oral English, and shall be present in the City at all times during contractual operations. A Supervisor is defined as a full-time employee assigned to direct work crews, with authority to authorize work orders, make decisions in behalf of the Contractor, authorize additional work, etc. In no case shall a full-time employee normally assigned to lesser status be provided in lieu of a Supervisor. Any order given to these Supervisors shall be deemed as

delivered to the Contractor.

- D. All personnel working in the City of San Clemente shall be of good character, neat appearance, and in appropriate dress as approved by the Maintenance Manager. All personnel shall wear identification badges or patches.
- E. Persons employed by the Contractor who are found not to be satisfactory by the City shall be discharged or reassigned by the Contractor on fifteen (15) days notice from the City.

23. REPAIRING INJURED WORK

The Contractor shall report without delay any damage to City equipment or property and shall be held responsible for the replacement of any such damage caused by his act hereunder.

24. EQUIPMENT

All vehicles and equipment used in conjunction with the work shall be maintained in neat, clean, and orderly manner and shall be in good working order. Equipment should be clearly marked with the Contractor's company name, and identification number or code. The Maintenance Manager, or his authorized agent, may reject any vehicle or piece of equipment and order it removed from the use in the City of San Clemente. Said equipment must be replaced by appropriate, approved equipment within two working days, or deductions to the monthly contract amount shall continue until such time as appropriate, approved equipment is provided.

25. SAFETY REQUIREMENT

- A. All work performed under this contract shall be performed in such a manner as to provide maximum safety to the public and where applicable, comply with all safety standards required by CAL-OSHA. The Maintenance Manager reserves the right to issue restraint or cease and desist orders to the Contractor when unsafe or harmful acts are observed or reported relative to the performance of the work under this contract.
- B. The Contractor shall maintain all work sites free of hazards to persons and/or property resulting from his operations. Any hazardous condition noted by the Contractor, which is not a result of his operations, shall be immediately reported to the Maintenance Manager or his designated representative.

26. CLAIMS BY CONTRACTOR'S EMPLOYEES

- A. The Contractor shall hold harmless the City and all of its officials, officers, employees, agents and volunteers from any and all damages or claims, of any kind or nature, that may be made or may arise directly or indirectly from the performance of duties by the Contractor.
- B. Contractor shall not permit access into any City of San Clemente or other private structures by any unauthorized persons.

27. LIABILITY FOR DAMAGES

- A. The Contractor shall be fully responsible for any and all damage done to City or private property, equipment, or other property of the public or private premises that result from the Contractor's operations under this contract.
- B. The Contractor may insure the equipment, materials and work to cover Contractor's interest in the same. The City shall not, under any circumstance, be answerable or accountable for any loss or damage that may happen to said equipment, materials and work, or any part or parts thereof, used and employed in fully completing the contract.
- C. Any keys to City facilities are the sole responsibility of the Contractor. No copies shall be made without City permission, and the loss or theft of these keys shall require re-keying of any such facilities fully at the Contractor's expense.

28. ADVERTISING

No advertising of any kind or description, bill posters, printed, painted or by the use of any other method application legible to human sight, shall appear on any buildings, structures, fences, canopies, posts or signs except valid and authorized legal notices required to be placed thereon and except as may be specifically authorized in these General Conditions.

29. SCHEDULES

- A. The Contractor shall adjust his schedule to compensate for all holidays, special events, inclement weather, etc.
- B. Graffiti shall be removed within 8 hours of receipt of location (notification), unless specified otherwise by the Maintenance Manager or designees.

30. PERFORMANCE DURING INCLEMENT WEATHER

The Contractor shall immediately notify the Maintenance Manager before the work force has been removed from the jobsite due to inclement weather, or other reasons.

31. SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD STANDARDS

The City of San Clemente is governed by water quality standards set in place by the San Diego Regional Water Quality Control Board.

- 1. Under no circumstances, shall debris be swept, blown, or washed into streets or parking lots in a manner that could place this debris into storm drains.
- 2. The use of mechanized blowers will be done professionally and to a minimum.
- 3. Due to the stringent requirements of the San Diego Regional Water Quality Control Board, the City shall ban the use of blowers if the Contractor fails to use them properly. No additional financial consideration will be included should blower use be banned.
- 4. Dust will be controlled.

5. Any washing of hardscape will be drained into adjacent landscaping and in no circumstances be washed onto streets or parking lots.
6. Any violation of these items shall result in the appropriate fines as dictated by the City of San Clemente.

32. CONTRADICTIONS

In the case that any portion of this specification contradicts another, the more stringent shall prevail. For example, if one portion of the specifications call for specific daily service and another area calls out weekly service of the same type, the daily specification shall stand.

CITY OF SAN CLEMENTE

Graffiti Removal Bid Form

(Page 1 of 4)

The City of San Clemente expressly reserves the right to reject proposals in response to this RFP without indicating any reasons for such rejection(s).

If awarded the contract, the undersigned hereby agrees to sign said contract and furnish the necessary bonds/insurance within ten (10) days after the award of said contract.

The undersigned has examined the location of the proposed work and is familiar with the Scope of Services and Specifications and other contract documents and the local conditions at the places where the work is to be done.

The undersigned agrees to furnish, perform and pay for all work, labor, materials, taxes, transportation services and charges, fees and appurtenant items necessary or incidental to work as specified by the Request for Proposals, Scope of Services and Specifications, and all documents related to this proposal.

UNIT COSTS

- A. The proposer agrees that for requested and/or required changes in the scope of work, including additions and deletions on work not performed, the Contract Sum shall be adjusted in accordance with the following unit prices, where the City elects to use this method in determining costs.
- B. Proposer is advised that the unit prices shall enter into the determination of the successful proposer. Unreasonable prices may result in rejection of the entire proposal. Unit prices listed below refer to all items maintained or installed and include all costs connected with such items, including but not limited to, specified materials, labor, overhead and profit for contractor and/or subcontractors.
- C. The unit price quoted by the proposer shall be those unit prices that shall be charged or credited for labor and materials to be provided regardless of the total number units and/or amount of labor required for added or deleted items of work.
- D. All work shall be performed in accordance with the Scope of Services and Specifications included in this RFP.

CITY OF SAN CLEMENTE Graffiti Removal Bid Form (Page 2 of 4)

BID COVER LETTER

The Honorable Mayor and City Council
San Clemente, California

Ladies and Gentlemen:

In compliance with the proposal calling therefore, the undersigned having carefully read all documents related to this proposal, hereby proposes and agrees to provide Graffiti Removal in the City of San Clemente, California in accordance with all of the above and the following.

This is to be a three (3) year contract or major portion thereof, based on the City's fiscal year beginning July 1 of each year and ending on June 30 of the following year, with an initial contract term of January 1, 2018 through June 30, 2020. The City may choose to extend the Contract term at the City's sole discretion and by mutual consent of the City and Contractor, with the option of two one-year extensions for a potential total contract term of five years.

The undersigned certifies that all documents related to this proposal have been read and understands all terms and conditions related thereto; and, in conformity with the terms and conditions, does hereby propose to the City of San Clemente as follows:

For Initial Contract Term (January 1, 2018 through June 30, 2020)

Monthly fee for program admin.: \$ 2500 per month
(For dedicated phone line, answering service, administrative personnel, before and after photos, materials. Does not include graffiti removal labor.)

Labor:

1 man crew: \$ 60 per hour
2 man crew: \$ 80 per hour
Equipment - Pressure washer: \$ 10 per hour
Two man crew with pressure washer: \$ 30 per hour

Weekday after-hours service: \$ 60 per hour *1 man 80 per hr 2 man crew*
(For billing purposes, after-hours service is before 6:30 am and after 4:00 pm)

Weekend and holiday callout: \$ 120 per hour *1 man, 240 per hr 2 man crew*

Total Aggregate Hourly Rate: \$ 350 per hour
(Total of all above hourly rates combined)

CITY OF SAN CLEMENTE
Graffiti Removal Bid Form (Page 3 of 4)

For 1st Optional 1-Year Extension (July 1, 2020 through June 30, 2021)

Monthly fee for program admin.: \$ 2500 per month
 (For dedicated phone line, answering service, administrative personnel, before and after photos, materials. Does not include graffiti removal labor.)

Labor:

1 man crew: \$ 60 per hour

2 man crew: \$ 80 per hour

Equipment - Pressure washer: \$ 10 per hour

Two man crew with pressure washer: \$ 20 per hour

Weekday after-hours service: \$ 60 per hour *1 man, 80 per two man crew*
 (For billing purposes, after-hours service is before 6:30 am and after 4:00 pm)

Weekend and holiday callout: \$ 120 per hour *1 man, 240 per two man crew*

Total Aggregate Hourly Rate: \$ 350 per hour

(Total of all above hourly rates combined)

(Total of all above hourly rates combined)

For 2nd Optional 1-Year Extension (July 1, 2021 through June 30, 2022)

Monthly fee for program admin.: \$ 2500 per month
 (For dedicated phone line, answering service, administrative personnel, before and after photos, materials. Does not include graffiti removal labor.)

Labor:

1 man crew: \$ 60 per hour

2 man crew: \$ 80 per hour

Equipment - Pressure washer: \$ 10 per hour

Two man crew with pressure washer: \$ 20 per hour

Weekday after-hours service: \$ 60 per hour *1 man, 80 per two man crew*
 (For billing purposes, after-hours service is before 6:30 am and after 4:00 pm)

Weekend and holiday callout: \$ 120 per hour *1 man, 240 per two man crew*

Total Aggregate Hourly Rate: \$ 350 per hour

(Total of all above hourly rates combined)

CITY OF SAN CLEMENTE

Graffiti Removal Bid Form

(Page 4 of 4)

NOTE: Bid Price includes all sales, use and/or other taxes applicable to the above.

The undersigned has checked carefully all the above figures and understands that the City of San Clemente shall not be responsible for any errors or omissions on the part of the undersigned in making up this bid.

11/28/2017
Date

E. Stewart & Associates, Inc
Company (Please Print)

Edwin W. Stewart
Company Representative (Please Print)

[Handwritten Signature]
Signature

CEO
Title

(949) 795-5798
Telephone #

Ed@eStewartInc.com
E-mail Address

E. Stewart and Associates, Inc.

1000 Calle Negocio
San Clemente, CA 92673
(949) 498-9250
FAX (949) 498-4961.

November 28, 2017

Mr. Randy Little, Maintenance Manager
Maintenance Services Division
City of San Clemente
100 Avenida Presidio
San Clemente, CA 92672.

Request for Proposal: Graffiti Removal - RFP 11-2017

Dear Mr. Little,

Stewart and Associates has been the City's graffiti removal contractor since the summer of 2007, when it began as a pilot program. The program was sent out to bid, and as the low bidder we were awarded the contract. We would like to continue this work by submitting this request for proposal.

Our experience with graffiti throughout the City has enabled us to become familiar with all aspects of graffiti removal, including the administration of the program. The following is the procedure we have implemented pursuant to the requirements of our existing contract: We have established a 24 hour graffiti hotline that is monitored 7 days a week. We also receive reports of graffiti through the City's task force and the City website. Once the graffiti has been reported, either Carla Mortensen or Denise Stewart (see organization chart) calls the reporting party to acknowledge we received their call. A worksheet is issued to Gregory Monceaux, Supervisor (who adds 1 to 3 other crew members, based on the size of the graffiti), photos are taken and the graffiti is removed by power washing, sandblasting (sidewalks, concrete, etc.), painting over or graffiti remover. Carla or Denise then document all information on a graffiti log, consisting of dates reported and locations of graffiti (addresses and longitude/latitude locations), source and date of removal. Photos are then electronically posted to the Orange County Sheriff's Department Tag Site. This enables the department to track the "signatures" of taggers, which helps in the prosecution of taggers throughout the county. Our staff has appeared in court with our documented records to assist in these prosecutions. We then submit the graffiti log, photos and billing each month - one to the City and one to Beaches and Parks.

Having our home and office located in San Clemente enables us to be available for all services on a 24 hour basis. The project will be managed from our office located at 1000 Calle Negocio, San

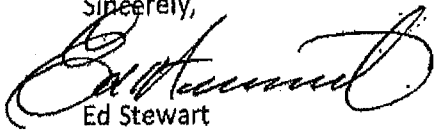
Clemente, CA 92673. Each team member will devote as many hours as is necessary in order to complete each task according to the contract.

This proposal is in strict compliance with the Request for Proposal and Draft Agreement and no exceptions to either are proposed.

The proposed prices will be valid for a period of 90 days.

We consider it a privilege to work in our community and hope to be able to continue providing graffiti removal services.

Sincerely,



Ed Stewart

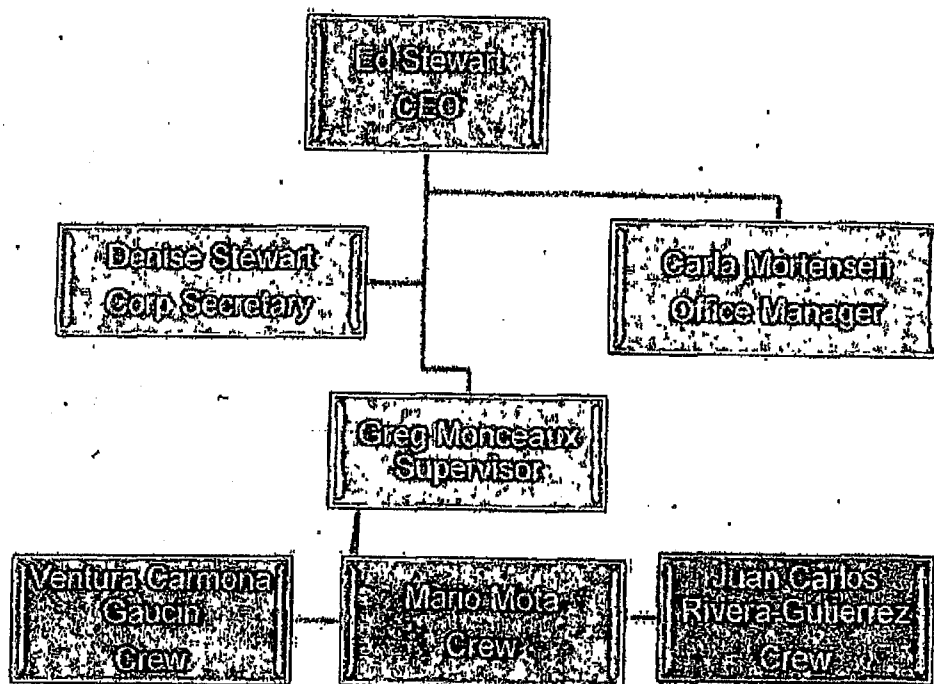
References:

Rod Hamilton, Public Works Manager
City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, CA 92675
(959) 443-6365

Ziad Mazboudi, Engineering Services Manager
City of Laguna Niguel
30111 Crown Valley Parkway
Laguna Niguel, CA 92677
(949) 362-4341

Ray Lardie, Fire Services
City of Laguna Beach
505 Forest Avenue
Laguna Beach, CA 92652
(949) 497-0756

E. Stewart & Associates, Inc.





City of San Clemente
Maintenance Services Division

OFFICIAL NOTICE

November 20, 2017

TO: Prospective Bidders
RE: Request for Proposals (RFP)
RFP #: GRAF RFP 11-2017
Graffiti Removal
FROM: Randy Little, Maintenance Manager
SUBJECT: Addendum No. 1 to the Subject Request for Proposals

Transmitted herewith is Addendum No. 1.

The Contractor shall sign this page as acknowledgment of receipt of Addendum No. 1 and attach both (2) pages of this notice to his/her bid proposal. Bids will not be accepted without these pages completed and attached.

We acknowledge receipt of Addendum No. 1 for the above mentioned RFP and hereby accept its terms and conditions as part of our bid.

Edwin W Stewart
Contractor's Signature

11/28/17
Date

Edwin W Stewart
Contractor's Name (please print)

CEO
Contractor's Title (please print)

E Stewart and Associates Inc.
Contractor Company Name (please print)



City of San Clemente
Maintenance Services Division

ADDENDUM NO. 1

November 20, 2017

To: Prospective Bidders

**Subject: Addendum No. 1 To Request For Proposals (RFP)
Graffiti Removal, RFP # GRAF RFP 11-2017**

PRE-BID QUESTIONS, RESPONSES, CLARIFICATIONS

1. Question: Should reporting party be called to confirm we received call/e-mail and to verify location?

Response/Clarification: Yes.

2. Question: Should the following information be logged and the records maintained for future use by the City of San Clemente, the OCSD and Orange County Tagger Site: Date graffiti submitted, location, reporting party telephone number or e-mail address, Task Force CRM #, latitude and longitude of graffiti location and date completed?

Response/Clarification: Yes.

3. Question: Regarding Exhibit A - Scope of services and specifications: #4 E, Should photos also be electronically mailed to the Orange County Taggers Site? #8 D, Should photos be electronically mailed to the Orange County Taggers Site within 8 hours of removal of graffiti?

Response/Clarification: Yes and Yes.

4. Question: Will 2 separate billings be required: one for City locations and one for beaches and parks locations?

Response/Clarification: No.

5. Question: In the event of prosecution proceedings will appearance in court (with records) to testify be required?

Response/Clarification: Yes.

**FIRST AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT FOR
GRAFFITI REMOVAL**

This First Amendment to Professional Services Agreement for Graffiti Removal (this "First Amendment") is made and entered into on this ____ day of August, 2020, by and between the CITY OF SAN CLEMENTE, a California municipal corporation ("City"), and E. Stewart and Associates, Inc. ("Contractor").

RECITALS:

- A. City and Contractor entered into that certain Professional Services Agreement for Graffiti Removal (the "Agreement") on December 19, 2017.
- B. Section 1.1 of the Agreement specifies an initial term through June 30, 2020, with the option to extend the total Agreement term by up to two (2) one-year extensions.
- C. Based on Contractor's excellent performance, City and Contractor desire to amend the Agreement to exercise the first one-year Agreement term extension, to provide for Graffiti Removal services through June 30, 2021.
- D. The maximum payment amount of the Agreement shall also be increased to correspond to the new extended term of the Agreement.

COVENANTS:

Section 1: Section 1.1 of the Agreement titled "Term" is hereby replaced in its entirety with the following:

1.1 Term.

The term of this Agreement shall commence on the Effective Date, and shall continue and remain in effect, until **June 30, 2021, with the option of one (1) additional one-year extension**, unless terminated earlier pursuant to the terms hereof. Notwithstanding the forgoing, the City Manager or his or her designee shall have the authority on behalf of the City to administratively approve extensions to the term hereof not to exceed a cumulative total of one hundred eighty (180) days.

Section 2: Section 3.1 of the Agreement titled "Payment Schedule: Maximum Payment Amount" is hereby replaced in its entirety with the following:

Prior to the tenth of the month, CONTRACTOR shall submit to CITY a monthly status report and invoices itemizing the services rendered during the previous month. Within fifteen (15) working days after receipt of an invoice from CONTRACTOR, CITY shall determine whether and to what extent CONTRACTOR has adequately performed the services for which payment is sought. If CITY determines that CONTRACTOR has not adequately performed such services, CITY shall inform CONTRACTOR of those

acts which are necessary for satisfactory completion. Subject to the provisions of Section 5.2 below, which provide for the City to withhold payment in the event CONTRACTOR's insurance expires during the term of this Agreement, CITY shall cause payment to be made to CONTRACTOR within fifteen (15) working days from CITY's determination that CONTRACTOR has adequately performed those services for which CITY has been invoiced. In no case shall CITY pay in excess of each line item set forth in Exhibit "A" for any particular task unless approved and authorized by the CITY in writing (applicable only if Exhibit "A" breaks down the Scope of Services on a line item basis). The fee ("Maximum Annual Fee") for the Scope of Services set forth in Exhibit "A" provided during Fiscal Year 2021 (i.e. period from July 1, 2020 through June 30, 2021) shall not exceed NINETY-FIVE THOUSAND, TWO HUNDRED DOLLARS (\$95,200.00). The Maximum Annual Fee shall be inclusive of all amounts payable to CONTRACTOR for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement (the "Total Compensation").

Section 3: Except as expressly amended by this First Amendment, the remaining portions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Fourth Amendment to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

By: _____

Its: _____

Dated: _____, 2020

ATTEST:

CITY CLERK of the City of
San Clemente, California

Approved as to form:
BEST BEST & KRIEGER

City Attorney

E. STEWART AND ASSOCIATES, INC.
("CONTRACTOR")

By: _____

Its: _____

Dated: _____, 2020

Finance Authorization