

1 the same terms and conditions offered to the County of Alameda, except as
2 modified by Exhibit "B" attached to and incorporated in this Agreement, for an
3 amount not to exceed One Million Eighty-One Thousand Dollars (\$1,081,000), for
4 a period of one (1) year, commencing at midnight on November 1, 2009, and
5 terminating at 11:59 p.m. on October 31, 2010, with the option to renew for two (2)
6 additional one (1) year periods, at the discretion of the City Manager. To the
7 extent that the Alameda Contract and this Agreement are inconsistent, the
8 following priority shall govern: (1) this Agreement and (2) the Alameda Contract.

9 C. Payment for the graffiti removal services purchased from
10 Contractor by the City shall be made by the City on delivery to and acceptance of
11 the graffiti removal services by the City and submittal of an invoice to the City.
12 Payment is due thirty (30) days after the date of the invoice.

13 D. The parties may, by mutual agreement, amend this
14 Agreement with the approval of the City's City Council.

15 2. Neither this Agreement nor any money that becomes due to
16 Contractor under this Agreement may be assigned by Contractor without the prior written
17 consent of the City Manager or his designee.

18 3. Any notice given under this Agreement shall be in writing and
19 personally delivered or deposited in the U.S. Postal Service, return receipt, and shall be
20 delivered or mailed to Contractor at the relevant address first stated above, and to the
21 City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager.
22 Notice shall be deemed given three days after deposit in the mail.

23 4. The terms appearing on the Alameda Contract are incorporated in
24 this Agreement.

25 5. Contractor shall cooperate with the City in all matters relating to self-
26 accrual of use tax. Contractor shall contact the City Treasurer for additional information
27 regarding self-accrual.

28 6. This Agreement and all documents which are incorporated by

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 reference in this Agreement constitute the entire understanding between the parties and
2 supersede all other agreements, oral or written, with respect to the subject matter of this
3 Agreement. If there is any legal proceeding between the parties to enforce or interpret
4 this Agreement, or to protect or establish any rights or remedies, the prevailing party shall
5 be entitled to its costs and expenses, including reasonable attorney's fees.

6 IN WITNESS WHEREOF, the parties have caused this document to be duly
7 executed with all formalities required by law as of the date first stated above.

8 GRAFFITI PROTECTIVE COATINGS,
9 INC., a California corporation
10 1-8, 2010 By [Signature]
11 CARLA LENHOFF
12 (Type or Print Name)
13 President

12 1-7, 2010 By [Signature]
13 STEVEN LENHOFF
14 (Type or Print Name)
15 Secretary

16 "Contractor"
17 CITY OF LONG BEACH, a municipal
18 corporation
19 Assistant City Manager
20 By [Signature]
21 City Manager
22 "City"

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER**

21 This Agreement is approved as to form on 1-11,
22 2010.

23 ROBERT E. SHANNON, City Attorney
24 By [Signature]
25 Deputy

26
27
28

EXHIBIT "A"

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of July 1, 2008, is by and between the County of Alameda and the Redevelopment Agency of the County of Alameda, (hereinafter referred to collectively as "Public Entity"), and Graffiti Protective Coatings, Inc. (hereinafter referred to as the "Contractor").

WITNESSETH

Whereas, Public Entity desires to obtain Graffiti services which are more fully described in Exhibit A hereto ("graffiti abatement"); and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to Public Entity; and

Now, therefore it is agreed that Public Entity does hereby retain Contractor to provide graffiti abatement services herein after referred to as "Work", and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated and summaries are attached hereto as exhibit A-1 into this Agreement by this reference:

- Exhibit A Definition of Services
- Exhibit A-1 Description of Services
- Exhibit B Payment Terms
- Exhibit C Insurance Requirements
- Exhibit D Debarment and Suspension Certification
- Exhibit E Contract Compliance Reporting Requirements

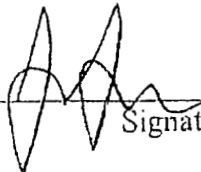
The term of this Agreement shall be from July 2, 2008 through July 1, 2011.

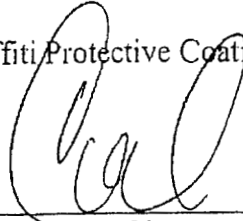
The compensation payable to Contractor hereunder shall not exceed four hundred and fifty thousand dollars (\$450,000) for the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF ALAMEDA

Graffiti Protective Coatings, Inc.

By: 
Signature

By: 
Signature

Name: John Glann
(Printed)

Name: CARLA Ledoff
(Printed)


Title: Purchasing Agent

Title: Mrs.

Date: 7/15/2008

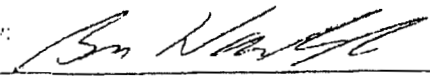
Date: 7/14/08

Redevelopment Agency of the County of Alameda

President of the Board

Date 7/21/08


By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

APPROVED AS TO FORM for the Redevelopment Agency:
RICHARD E. WINNIE, County Counsel

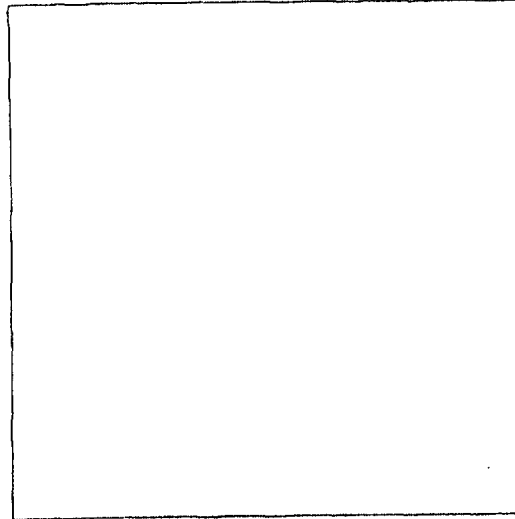
By: 
Brian Washington, Assistant County Counsel

APPROVED AS TO FORM for the County of
Alameda:

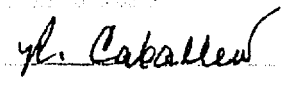
RICHARD E. WINNIF, County Counsel

By: 

Kathleen Pacheco, Senior Deputy County
Counsel



As a public officer, specifically as County Counsel, the President of the Board of
Supervisors, I am hereby certifying that the above information is true and correct.
7/1/08

By: _____
7/1/08
 7/1/08

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the Public Entity in any capacity whatsoever and Public Entity shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor and anyone hired by and/or under the Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold Public Entity harmless from any and all liability which Public Entity may incur because of Contractor's failure to pay such amounts.

In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of Public Entity.

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of Public Entity is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the Public Entity agency concerned.

Notwithstanding the foregoing, if the Public Entity determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, Public Entity may upon two week's notice to Contractor, withhold

from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments

2. INDEMNIFICATION: To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda and the Redevelopment Agency, its Boards of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The Public Entity may participate in the defense of any such claim without relieving Contractor of any obligation hereunder.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda Public Entity Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of Public Entity, Contractor shall indemnify, defend, and hold harmless Public Entity for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Public Entity.

3. INSURANCE AND BOND: Contractor shall at all times during the term of the Agreement with the Public Entity maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
4. PREVAILING WAGES: Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about services provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing

rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.

5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the Contractor nor its carrier shall be entitled to recover from Public Entity any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
6. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold Public Entity harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.
 - b. **Accidents:** If a death, serious personal injury or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to Public Entity a written report, in such form as may be required by Public Entity of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of Public Entity equipment, tools, material, or staff were involved.
 - c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the Public Entity the opportunity to review and inspect such evidence, including the scene of the accident.
7. **DEBARMENT AND SUSPENSION CERTIFICATION:** (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

- a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
- b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
8. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.
9. TRAVEL EXPENSES: Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.
10. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.
11. OWNERSHIP OF DOCUMENTS: Contractor hereby assigns to the Public Entity and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the Public Entity, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the Public Entity and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, respecting in any way the subject matter of this Agreement.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take

such further steps as may be reasonably requested by Public Entity to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the Public Entity and any assignee of the Public Entity an express royalty – free license to retain and use said Documents and Materials. The County's/Agency's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In Contractor's contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the Public Entity the aforesaid assignment and license rights as to that Contractor's Documents and Materials. Contractor agrees to defend, indemnify and hold the Public Entity harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the Public Entity harmless from any claims for infringement of patent or copyright arising out of such selection. The County's/Agency's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. CONFLICT OF INTEREST; CONFIDENTIALITY: The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the Public Entity that Contractor has no present, and will have no future, conflict of interest between providing the Public Entity services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the Public Entity, as determined in the reasonable judgment of the Boards of Supervisors of the Public Entity.

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the Public Entity will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the Public Entity by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement. These conflict of

interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the Public Entity hereunder.

13. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To Public Entity: Public Works
951 Turner Court
Hayward, California 94545-2651
Attn: Mike Dutra

To Contractor: Graffiti Protective Coatings, Inc.
419 N. Larchmont Blvd., #264
Los Angeles, CA 90004
Attn: Barry Steinhart, General Manager

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. USE OF PUBLIC ENTITY PROPERTY: Contractor shall not use Public Entity property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
15. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:
Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
 - a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. Contractor shall, if requested to so do by the Public Entity, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by the Public Entity, Contractor shall provide the Public Entity with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.

16. **DRUG-FREE WORKPLACE:** Contractor and Contractor's employees shall comply with the County's/Agency's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any Public Entity facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a Public Entity facility or work site, the Contractor within five days thereafter shall notify the head of the Public Entity department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement
17. **AUDITS; ACCESS TO RECORDS:** The Contractor shall make available to the Public Entity, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the Public Entity, and shall furnish to the Public Entity, its authorized agents, officers or employees such other evidence or information as the Public Entity may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with Public Entity requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the Public Entity, make such books and records available to the Public Entity for inspection at a location within County or Contractor shall pay to the Public Entity the reasonable, and necessary costs incurred by the Public Entity in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The Public Entity further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the Public Entity, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the Public Entity makes the final or last payment or within three (3) years after any pending issues between the Public Entity and Contractor with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to Public Entity for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this

Agreement. Contractor's obligations under the preceding sentence shall continue for three (3) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by Public Entity), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County's/Agency last payment to Contractor under this Agreement.

19. TIME OF ESSENCE: Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. TERMINATION: The Public Entity has and reserves the right to suspend, terminate or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the Public Entity should abandon, terminate or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its graffiti abatement Services shall not exceed \$450,000 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.
21. PUBLIC ENTITIES SMALL LOCAL AND EMERGING BUSINESS PARTICIPATION: Contractor shall subcontract with *Stiles Paint MFG Inc. (21595 Curtis Street,; Principal, Bruce Sohrab)*, for services to be provided under this Agreement in an amount of at least twenty percent (20%) of the contract value of this Agreement in accordance with The County of Alameda Small and Emerging Local Business provision.

Participation of a small and/or emerging local business must be maintained for the term of this contract. Contractor shall not substitute the small and/or emerging local business(s) listed in this agreement without prior written approval from the Public Entity. Public Entity will be under no obligation to pay contractor for the percent committed to a small and/or local business if the work is not performed or not performed by the listed small and/or emerging local business. Said requests to substitute a small and/or emerging local business shall be submitted in writing to the County Purchasing Department, ATTN: Purchasing Manager, 1401 Lakeside Drive, 9th Floor, Oakland, CA 94612.

Contractor shall provide SLEB utilization reports when invoicing the Public Entity utilizing the Alameda County Compliance System. Contractor and Contractor's small and/or emerging local businesses participating as subcontractors on the

awarded contract are required to use the County web-based compliance system as described in Exhibit E (Contract Compliance Reporting Requirements) to report and validate payments made by Prime Contractors to the certified small and/or emerging local businesses. It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System.

Contact the County Business Outreach and Contract Compliance Office at 1401 Lakeside Drive, 10th Floor, Oakland, CA, (510) 208-9617 if you have any other questions regarding utilization of the Alameda County Contract Compliance System.

22. **FIRST SOURCE PROGRAM:** For contracts over \$100,000, Contractor shall provide Public Entity ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the Public Entity that Contractor has available during the contract term before advertising to the general public.
23. **CHOICE OF LAW:** This Agreement shall be governed by the laws of the State of California.
24. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between Public Entity and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.
26. **HEADINGS** herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

27. **ADVERTISING OR PUBLICITY:** Contractor shall not use the name of Public Entity, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of Public Entity in each instance.
28. **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of all parties.
29. **ASSURANCE OF PERFORMANCE:** If at any time Public Entity believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the Services as required by this Agreement, Public Entity may request from Contractor prompt written assurances of performance and a written plan acceptable to Public Entity, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's/Agency request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
30. **SUBCONTRACTING/ASSIGNMENT:** Contractor shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the County's/Agency prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's/Agency's prior written approval.
 - c. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.
31. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.

32. SEVERABILITY: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
33. PATENT AND COPYRIGHT INDEMNITY: Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to Public Entity under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless Public Entity of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. Public Entity will: (1) notify Contractor promptly of such claim, suit or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County's/Agency's prior written consent, to any settlement, which would require Public Entity to pay money or perform some affirmative act in order to continue using the Contractor Products.
- a. If Contractor is obligated to defend Public Entity pursuant to this Section 33 and fails to do so after reasonable notice from Public Entity, Public Entity may defend itself and/or settle such proceeding, and Contractor shall pay to Public Entity any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with County's/Agency's defense and/or settlement of such proceeding.
 - b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for Public Entity the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.
 - c. Notwithstanding this Section 33, Public Entity retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
34. OTHER AGENCIES: Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the

Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.

35. SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A
DEFINITION OF SERVICES

1. Contractor shall provide graffiti services in accordance with the "Specific Requirements" section within County's/Agency's Request for Proposal No.900343 (RFP) and "Description of Services" section of Contractor's Proposal dated April 21, 2008. Said sections are incorporated herein by reference and attached hereto as Exhibit A-1.
 - a. In the event of any conflict (direct or indirect) among any of the above-referenced exhibits, the more stringent requirements providing the Public Entity with the broader scope of services shall have precedence, such that the scope of work described in the RFP sections and the scope of work described in Contractor's proposal shall both be performed to the greatest extent feasible.
 - b. Public Entity and Contractor agree that the following Supplemental Provisions are incorporated into this Agreement, and that the Additional Provisions shall take precedence over inconsistent or conflicting provisions contained in the above-referenced exhibits.
2. Contractor project team will consist of the following Key Personnel and subcontractors, as applicable during the contract term:
 - A. Barry Steinhart – General Manager
 - B. Carla Lenhoff – President
 - C. Julio Bonilla – Vice President / Staff Manager

Contractor agrees that it shall not transfer or reassign the individuals identified above as Key Personnel or substitute subcontractors without the express written agreement of Public Entity, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make a good faith effort to present to Public Entity an individual with greater or equal qualifications as a replacement subject to County's/Agency's approval, which approval shall not be unreasonably withheld.
3. The contractor will subcontract with Stiles Paint MFG INC. for 20% of the total contract value.
4. The approval of Public Entity to a requested change shall not release Contractor from its obligations under this Agreement.

EXHIBIT A-1
Description of Services

The services to be provided by Contractor shall consist of providing on-call graffiti abatement services throughout the unincorporated and redevelopment areas of the County of Alameda. In addition, a minimum of at least four (4) hours of weekly surveillance will be required as part of the contract. The Contractor shall coordinate work with the appropriate governmental agencies, Public Entity staff, private property owners, and/or managers of properties of the project sites. For each service call, the Contractor shall complete the associated graffiti abatement services within 24 hours.

Contractor shall be compensated for removing graffiti on a per square foot basis, as provided in the Agreement. Contractor shall provide all supervision of employees at work site.

Contractor must provide for the following:

1. Receive service request on a 24-hour basis.
2. Assign personnel to the site associated to the service request, and abate the graffiti within 24 hours of the initial service request call.
3. Prepare surfaces and paint over graffiti with a color matching the existing covering or remove graffiti with appropriate cleaners, removers, etc.
4. Apply anti-graffiti coating in compliance with all federal, state, and local laws at locations of repeated graffiti vandalism.
5. Protect surfaces, landscaping and personal property adjacent to graffiti abatement locations.
6. Properly clean up work areas, and dispose of paints, chemicals, solvents, and cleaning agents utilized in performing the graffiti abatement work per local, state, and federal regulations.
7. Provide before and after DIGITAL photograph files of graffiti abatement work as requested.
8. Supervise personnel.
9. Accurately track and report the work location, scope, quantity of work performed, and employment utilization.
10. Provide the Public Entity with a Quality Assurance Summary Report on a quarterly basis, regarding the extent of service requests, locations of work performed, and a tally of associated cost of service.
11. Provide the County /Agency with a Request for Payment with a summary report reflecting the month's extent of service requests and locations of work performed tallied by Public Entity service area code, separating private and public property sites on separate invoices.
12. Demonstrate their successful work record and cost effective performance.
13. Present recommendations from other similar clients for similar work.

Specific Requirements:

Contractor, under the general supervision of the Project Administrator or designee, will perform the following tasks:

1. As requested, abate graffiti from the public structures including, but not limited to:
 - i. Bus benches and shelters;
 - ii. Public buildings, monuments and facilities;
 - iii. Street light/ Utility / Flag poles;
 - iv. Trash receptacles;
 - v. Park tables and benches;
 - vi. Fences;
 - vii. Play structures;
 - viii. Electrical equipment / Utility boxes;
 - ix. Fire hydrants;
 - x. Concrete structures – (sidewalks, bridges, overpasses, and flood channel facilities, etc.)
 - xi. Apply anti-graffiti coating, as required.

Perform graffiti abatement work on private structures, with the prior approval of the property owner and Public Entity. As authorized, abate graffiti from private structures including, but not limited to:

- Exterior walls;
 - Fences;
 - Sidewalks;
 - Windows;
 - Trash receptacles;
 - Apply anti-graffiti coatings, as required
2. At the direction of the Project Administrator or designee, work areas and work assignments as outlined and described may be changed as needed.
 3. Regularly scheduled meetings will be held between Public Entity and Contractor at mutually agreed upon dates and times.
 4. Contractor shall make every effort and document the efforts to employ residents of Alameda County for graffiti abatement.
 5. All sand, water, or other materials used in blasting or pressure washing operations must be contained and disposed of in accordance with local, state, and federal regulations.
 6. Any damages to public or private property as a result of Contractor's operations must be corrected at the sole expense of Contractor.

Deliverables / Reports

a. Provide Work Order:

In cases where graffiti abatement occurs on County property or right of ways, work Order Forms must be signed by authorized Public Entity personnel prior to the start of work unless otherwise directed. In cases where graffiti abatement occurs on private property, the Contractor and private property owner must properly execute a Right of Entry permit to do the work required, and the Public Entity Project administrator or designee must authorize the work to be performed unless otherwise directed. The completed Work Order Form shall confirm that the Contractor has obtained authorization to perform graffiti abatement services at the subject site/property, that the work has been completed and that the Public Entity has accepted the work.

b. Provide Quality Assurance Report (QAR):

Contractor will provide the Project Administrator or designee with a Quality Assurance Report (QAR) on a quarterly basis on the number of sites abated, their address locations, the number of staff employed at each work site and any hazardous materials and / or other irregularities encountered. Reports by Contractor shall be on recycled paper when such paper is available at a cost of not greater than ten percent more than cost of virgin paper, and when such paper is available at the tie it is required. For the purposes of this contract agreement, recycled paper is paper that contains at least 50% recycled product. If recycled paper is not available, the Contractor shall use white paper. Written reports prepared under this contract agreement may be submitted to the Public Entity via fax transmission or e-mail.

c. Contractor shall provide and utilize a "Work Order" form, which outlines:

- i. Name, address and phone number of individual or agency requesting graffiti abatement;
- ii. Date and time of work order request;
- iii. Location of graffiti reported;
- iv. Type of building or structure affected by graffiti;
- v. Scope and quantity of work to be performed;
- vi. Complete schedule of names and locations of each Contractor employee working each day in each location. Contractor shall verify that the employees assigned to each work site are in fact at the work site; Include a CD of before and after DIGITAL photograph files and graffiti abatement work.

**EXHIBIT B
PAYMENT TERMS**

1. Public Entity will pay Contractor upon successful completion and acceptance of the following services listed below, within thirty (30) days, upon receipt of invoice.
2. Contractor shall provide the following support documentation with each monthly invoice:
 - A. Total daily hours each employee worked;
 - B. Total per week each employec worked;
 - C. Total hours charged by activity for each employee;
 - D. Hourly rate being charged for each employee;
 - E. Type and quantity of graffiti abatement material applied;
 - F. List of equipment utilized at each work site;
 - G. Total dollar amount charged by activity for each employee.

Contractor shall be paid for the following services provided on Public and / or Private property according to the following:

Description	Unit of Measure	Unit Cost
Group 1 Painting, per address or location up to 150 square feet	Address or location	88.00
Group 1 Painting over 150 square feet	Per Square foot	.050
Group 2 Media Blasting and Chemical Removal, per address up to 150 square feet	Address or location	88.00
Group 2 Media Blasting and Chemical Removal over 150 square feet	Per Square foot	1.00

Discounts:

A 10% discount will be given if the monthly billing exceeds \$8,333. If the monthly billing exceeds \$12,500 a 15% discount and if the monthly billing exceeds \$16,666 there will be a 20% discount.

3. Invoices will be approved by the Public Entities.
4. Total payment under the terms of this Agreement will not exceed the total amount of \$450,000. This cost includes all taxes and all other charges.
5. Upon award of this Agreement by Public Entity and Contractor shall forthwith jointly create a schedule governing the timely performance of Contractor's services hereunder. The agreed upon schedule shall be incorporated into this Agreement upon its adoption by the parties and thereafter Contractor shall perform all services under this Agreement in conformance with the schedule.

EXHIBIT “B”

EXHIBIT "B"

ADDITIONAL SERVICES

The Contractor agrees to provide the following additional services to the City:

1. Contractor's initial graffiti removal efforts in Long Beach parks shall restore park sidewalks, signs and structures as much as possible to a clean and graffiti-free state. This initial restoration shall be performed at no charge to the City of Long Beach. Once parks are graffiti-free, Contractor shall proactively patrol the parks in a manner as to maintain them in a graffiti-free state. Contractor shall respond to all service requests made by the Department of Parks, Recreation & Marine staff within 24 hours.
2. All technicians working on the project shall be paid prevailing wages, as determined by the California Department of Industrial Relations.
3. Contractor shall provide the City its real-time, web-based Target Graffiti software at no charge. Software shall be made available to the Department of Parks, Recreation and Marine, Long Beach Police Department and Department of Community Development, or as otherwise designated by the City.
4. The fees charged by the Contractor for the parks shall be capped at \$15,000 per month. All additional fees above \$15,000 per month shall be credited as a 'courtesy discount'.

5. The 'per location' fees shall be as follows:

<u>ITEM</u>	<u>ITEM DESCRIPTION</u>	<u>QUANTITIES</u>	<u>UNIT</u>	<u>UNIT PRICE</u>
1	Paint surface, color matching, minimum charge per location.	150 sq ft or less more than 150 sq ft	location sq ft	\$22.00 \$0.14
2	Sand blast, porous surface, minimum charge per location	75 sq ft or less more than 75 sq ft	location sq ft	\$12.00 \$0.20
3	Water blast, porous surface, minimum charge per location	75 sq ft or less more than 75 sq ft	location sq ft	\$13.00 \$0.18
4	Chemical removal, non-porous surface, minimum charge per location	75 sq ft or less more than 75 sq ft	location sq ft	\$12.00 \$0.16
5	2 nd story and above removals	150 sq ft or less 150 sq ft or more	location sq ft	\$28.00 \$0.16
6	Bridge graffiti removals, minimum charge per location	1000 sq ft or less 1000 sq ft or more	location sq ft	\$80.00 \$0.18