

## SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18<sup>th</sup> Street, Merced, California 95340, (hereinafter referred to as “City”) and Eleuterio Guillermo Hernandez DBA EG Painting, a Contractor General Partnership, whose address of record is 479 Cabernet St., Los Banos, CA 93635, (hereinafter referred to as “Contractor”).

WHEREAS, City is undertaking a project to abate graffiti; and,

WHEREAS, Contractor represents that it possesses the professional skills to provide graffiti abatement services in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. SCOPE OF SERVICES. The Contractor shall furnish the following services: Contractor shall provide the graffiti abatement services described in Exhibit “A” attached hereto.

No additional services shall be performed by Contractor unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Chief of Police or designee. However, the means by which the work is accomplished shall be the sole responsibility of the Contractor.

2. TIME OF PERFORMANCE. All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit “A” attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Contractor may change the requirements in said Schedule.

3. TERM OF AGREEMENT. The term of this Agreement shall commence upon the day first above written and end on June 30, 2027, with an option to renew for two (2) one-year terms.

4.     **COMPENSATION.** Payment by the City to the Contractor for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference. The Contractor agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "A". For Contractor's services rendered under this Agreement, City shall pay Contractor the not to exceed sum of \$541,209.60.

5.     **METHOD OF PAYMENT.** Compensation to Contractor shall be paid by the City after submission by Contractor of an invoice delineating the services performed.

6.     **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Agreement shall be the property of the City, and Contractor hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7.     **CONTRACTOR'S BOOKS AND RECORDS.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8.     **INDEPENDENT CONTRACTOR.** It is expressly understood that Contractor is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Contractor shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Contractor desire any insurance protection, the Contractor is to acquire same at its expense.

In the event Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for 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 City.

9. INDEMNITY. Contractor shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Contractor or Contractor's officers, employees, volunteers, and agents during performance of this Agreement; Contractor shall indemnify, protect, defend (with counsel selected by the City) save and hold City, its officers, employees and agents harmless from any and all claims or causes of action for any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Contractor or its employees, subcontractors, or agents, or by the quality or character of Contractor's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Contractor shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Contractor shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Contractor shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Contractor.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Contractor shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Contractor shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.

- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Contractor.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Contractor shall carry professional liability insurance appropriate to Contractor's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Contractor shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium. In addition to any other remedies City may have, City reserves the right to withhold payment if Contractor's insurance policies are not current.

## 11. PREVAILING WAGES.

A. Labor Code Compliance. If the work performed under this Agreement falls within Labor Code Section 1720(a)(1) definition of a “public works” the Contractor agrees to comply with all of the applicable provisions of the Labor Code including, those provisions requiring the payment of not less than the general prevailing rate of wages. The Contractor further agrees to the penalties and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.

B. These wage rate determinations are made a specific part of this Agreement by reference pursuant to Labor Code Section 1773.2. General Prevailing Wage Rate Determinations may be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov/>.

C. After award of the Agreement, and prior to commencing work, all applicable General Prevailing Wage Rate Determinations, if applicable, are to be obtained by the Contractor from the Department of Industrial Relations. These wage rate determinations are to be posted by the Contractor at the job site in accordance with Section 1773.2 of the California Labor Code.

D. Contractor agrees to include prevailing wage requirements, if applicable, in all subcontracts when the work to be performed by the subcontractor under this Agreement is a “public works” as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771.

12. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the City.

13. TERMINATION FOR CONVENIENCE OF CITY. The City may terminate this Agreement any time by mailing a notice in writing to Contractor that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

14. CONFORMANCE TO APPLICABLE LAWS. Contractor shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Contractor hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

15. WAIVER. In the event that either City or Contractor shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

16. INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS. In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

17. AMBIGUITIES. This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this

Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

18. VENUE. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

19. AMENDMENT. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

20. INTEGRATION. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

21. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

22. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
D. Scott McBride  
City Manager



ATTEST:  
D. SCOTT MCBRIDE, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:  
CRAIG J. CORNWELL, CITY ATTORNEY

BY: Craig Cornwell 6/15/2024  
City Attorney Date

ACCOUNT DATA:  
M. VENUS RODRIGUEZ, FINANCE OFFICER

BY: \_\_\_\_\_  
Verified by Finance Officer

*{Signatures continued on next page}*

CONTRACTOR

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

Its: \_\_\_\_\_  
(Title)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

Its: \_\_\_\_\_  
(Title)

Taxpayer I.D. No. \_\_\_\_\_

ADDRESS:

TELEPHONE: \_\_\_\_\_

FAX: \_\_\_\_\_

E-MAIL:

## 7. LOCAL BUSINESS ENTERPRISE (LBE) PARTICIPATION CALCULATIONS

CITY OF MERCED

PROJECT NUMBER

PROJECT NAME

Name of Bidder: EG PAINTING**WORK ITEMS**

	<b><u>IDENTIFIED WORK ITEMS</u></b>	<b><u>LBE'S NAME</u></b>	<b><u>ITEM TOTAL</u></b>
3	LADDERS	EG PAINTING	\$ 470.00
	ROLLERS	EG PAINTING	\$ 60.00
	BRUSHES	EG PAINTING	\$ 80.00
	BUCKETS	EG PAINTING	\$ 20.00
	TARPS, TAPE (BOXES)	EG PAINTING	\$ 420.00
	SANDPAPPER		\$ 24.00
	CAULKING AND CAULKING GUN		\$ 78.00
	PUTTY KNIFE		\$ 25.00
		<b>TOTAL OF WORK ITEMS</b>	<b>\$ 1,177.00</b>

**SUPPLY ITEMS**

	<b><u>IDENTIFIED SUPPLY ITEMS</u></b>	<b><u>LBE'S NAME</u></b>	<b><u>ITEM TOTAL</u></b>
	REMOVAL SOLUTION	EG PAINTING	\$ 200.00
	PRIMER PAINT	1 GALLON PAILS WHITE & GRAY	\$ 120.00
	MATCHING COLORS PAINT	1 GALLON PAIL PER JOB	\$ 100.00
	PLASTIC SHEETS		\$ 45.00
	PAINTERS MASK		\$ 36.00
	GLOVES		\$ 50.00
	PERSONAL PROTECTION	EQUIPMENT (GOGGLES)	\$ 20
	RESPIRATOR		\$ 200.00
			\$
		<b>TOTAL OF SUPPLY ITEMS</b>	<b>\$ 771.00</b>

### CALCULATIONS

A) Total Amount of Work Items	= \$ 1177.00
B) Total Amount of Supply Items	= \$ 771.00
C) Total Amount of LBE Recognition (A + B)	= \$ 1948.00
D) Total Bid Amount From Bid Proposal	= \$ 9020.16
E) Percent LBE Participation (C/D x 100)	= 22%

To the best of my knowledge, I believe the LBE Participation Calculations are true and accurate.

  
\_\_\_\_\_  
Signature of Bidder

\_\_\_\_\_  
ELEUTERIO GUILLERMO HERNANDEZ

\_\_\_\_\_  
Name of Bidder (Print or Type)

03-30-2024  
\_\_\_\_\_  
Date

## **SCOPE OF PROJECT**

The City of Merced is seeking a firm to provide graffiti abatement services which include the removal or concealment of unauthorized graffiti vandalism from public and private properties, digitally recording every graffiti incident, and creating weekly and monthly reports for use in reporting of incidents to the police department for internal tracking purposes.

## **SPECIAL ISSUES AND REQUIREMENTS**

**Pricing:** The City requires hourly pricing not to exceed 120 hours a month.

**Wages:** This project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations (DIR). No contractor or subcontractor may be listed on a bid proposal or awarded a contract for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. Awarded contractor will report certified prevailing wages to the Department of Industrial Relations using a project number that the City will provide to the contractor before contract work begins.

**Bond:** The main contractor will submit a payment bond covering the full amount of the contract prior to commencing work per California State Civil Code 9550. For specific details regarding the form and purpose of the bond, check out Civil Code Section 9554.

**Service Times:** The City requires proactive and reactive service daily, Monday through Friday.

**Response to requests:** Expected response requirement for removals from notification is 24 hours.

**Private Property Service:** The City requires permission from owner to access private property before service.

**Form of contract:** Proposers shall affirm in the response the ability to execute a contract with the City of Merced (Attachment 1). In the absence of such a statement, the proposal may be deemed incomplete.

**Length of Contract:** Proposer shall affirm ability to contract services for three (3) years with an option to renew for two (2), one-year terms.

**Labor Code:** Proposers shall comply with Sections 3700 et seq. of Labor Code of the State of California, requiring every employer to be insured against liability for worker's compensation.

**Insurance:** Proposers shall also meet the insurance requirements in Section 10 of the contract, including liability insurance in the amount of \$1,000,000, naming the City of Merced, its officers, agents and employees as additionally insured.

### **Local Business Enterprise Policy:**

- a) Good faith effort. The City Council has adopted Local Business Enterprise Policy (A-19) requiring service providers to make a good faith effort to include local businesses in their contracts with the City. This may include offering an opportunity through subcontracting, if



any. Proposers must comply with this policy by filling out and submitting the Certification of Good Faith Effort pages from Policy A-19 in their response.

- b) **Local Business Preference.** The City also offers a 5% preference to local vendors. If the Proposer has offices located within the limits of the City of Merced, the Proposer should fill out and submit the attached Local Business Preference form. as satisfaction of this requirement.

**Conflicts of Interest:** Proposers must be aware of and comply with conflict of interest rules included in the California Political Reform Act, and Section 1090 et. seq. of the Government Code. The Political Reform Act requires City/Agency officers and committee members to file statement of interest and abide by a Conflict of Interest Code. Section 1090 limits or prohibits a public official from contracting with a body of which an official is a member. Section 1090 applies even where the officer only reviews the contract for the approving body. If the Proposer holds no City or Agency board or committee appointment or other relationship, the proposal should simply state that in response to this item.

#### **FORM AND CONTENTS OF A FULL PROPOSAL**

Each response proposal shall include the following items in the order listed:

- Statement confirming ability to execute the Agreement for Professional Services as presented.
- Completed Policy A-19's Certification of Good Faith Effort.
- Completed Local Business Preference Form if vendor wants to claim local business preference.
- Statement regarding Conflict of Interests