

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this 15th day of OCTOBER, 2018, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and Environmental Compliance Resources, a California Limited Liability Company, whose address of record is P.O. Box 598, Winton, California 95388 (hereinafter referred to as "Consultant").

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

WHEREAS, Consultant 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 Consultant shall furnish the following services: Consultant shall provide the graffiti abatement services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant 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 Consultant.

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 Consultant may change the requirements in said Schedule.

3. **TERM OF AGREEMENT.** The term of this Agreement shall commence on July 1, 2018 and shall end on June 30, 2023.

4. **COMPENSATION.** Payment by the City to the Consultant 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 Exhibit "A" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A". For Consultant's services rendered under this Agreement, City shall pay Consultant the following not to exceed sums:

Year	Monthly Amount	Yearly Amount
1	\$15,791.67	\$189,500.00
2	\$16,075.92	\$192,911.00
3	\$16,365.25	\$196,383.00
4	\$16,664.83	\$199,918.00
5	\$16,959.75	\$203,517.00

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant 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 Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant 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. **CONSULTANT'S BOOKS AND RECORDS.** Consultant 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 Consultant 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 Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant 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, Consultant 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 Consultant 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.** Consultant 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 Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from 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 Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant'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 Consultant 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 Consultant 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, Consultant 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, Consultant 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) Consultant 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) Consultant 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 Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant 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) Consultant 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) Consultant 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 Consultant.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant 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. Consultant shall carry professional liability insurance appropriate to Consultant'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. Consultant 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.

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. **ASSIGNABILITY OF AGREEMENT.** It is understood and agreed that this Agreement contemplates personal performance by the Consultant 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 Consultant under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant 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.

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

Consultant 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 Consultant 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, Consultant 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.

14. **WAIVER.** In the event that either City or Consultant 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.

15. **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.

16. **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.

17. **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.

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

19. **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.

20. **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.

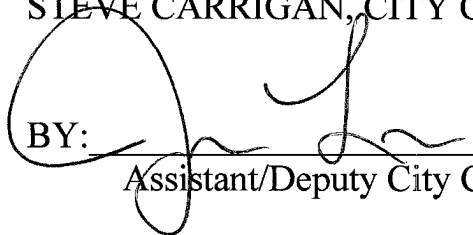
21. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of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

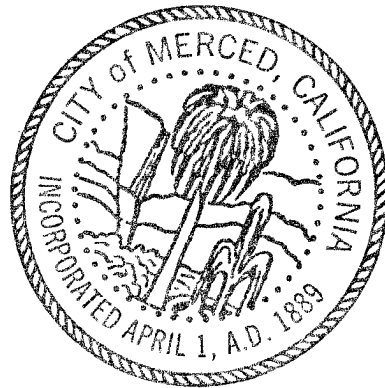
BY: 
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

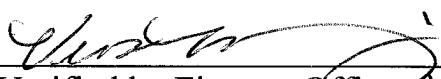
BY: 
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY:  10-1-18
City Attorney Date



300764 PO#131512
ACCOUNT DATA:

BY: 
Verified by Finance Officer V-16371
Funds Available - ms 10/9/18
FL 10/1/18

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001-1005-522-17-00
\$189,500.00

CONSULTANT
ENVIRONMENTAL COMPLIANCE
RESOURCES, a California Limited
Liability Company

BY: Paul Joseph Creighton
Paul Joseph Creighton

Its: CEO

Taxpayer I.D. No. _____

ADDRESS: P.O. Box 598
Winton, CA 95388

TELEPHONE: (209) 564-6845

FAX: _____

E-MAIL: paul@c-33painting.com

Proposal:
Graffiti Abatement services for
City of Merced, CA

By: Environmental Compliance Resources

PROPOSAL

GRAFFITI ABATEMENT SERVICES

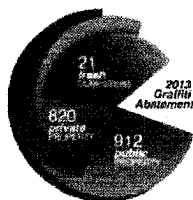
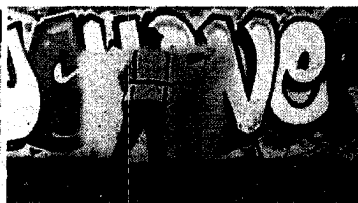
FOR

CITY OF MERCED, CALIFORNIA

By: Environmental Compliance Resources LLC

Environmental Compliance Resources was established in 2010 by the company's owner Paul Creighton to provide a better solution for government agencies requiring a new comprehensive solution to combat graffiti vandalism community wide. Since its creation, ECR has worked with many cities and counties throughout California to remove and cover graffiti and assist in finding the source of the problem to stop graffiti, before it starts. In Merced alone, ECR has removed over 11 million square feet of Graffiti Vandalism from the streets. Mr. Creighton has become an industry leader, who's trained and assisted in graffiti vandalism crime prevention and prosecution throughout the United States and worldwide. In 2017, while studying graffiti in Europe, Mr. Creighton identified new trends related to social media and its direct link to graffiti vandalism within a micro community level. By linking social media and public transportation together to track and trace the path of vandals, response time for graffiti removal has been reduced. Mr. Creighton is also an expert witness for the court system having over seven years experience related to graffiti vandalism crimes. Working closely with the Merced Police Department and several other agencies within the City of Merced, ECR has built a reputation in providing great customer service and a team that is committed to a better Merced. The Merced Police Department has been instrumental in the success in the overall reduction and conviction of graffiti vandals city wide and working closely with ECR the future looks even brighter.

Environmental Compliance Resources uses many industry first techniques and chemicals to combat graffiti. ECR developed its own product line of environmental biodegradable friendly chemicals to remove graffiti. ECR's employees are professionally trained to identify best methods suitable for the removal of graffiti vandalism.





Services

ECR has two main methods for Graffiti Abatement: Painting and Chemical removal. We tailor the removal method to the specific surface to ensure efficient and complete removal.

Paint

Our trucks carry four stock colors in our sprayers at all times to remove graffiti on surfaces that get tagged often such as fences and buildings. We also have the ability to color match walls and fences to seamlessly cover over unsightly graffiti vandalism.

Chemical

Our Graffiti Removal unit carries a variety of chemicals that we use to remove graffiti from surfaces that cannot be painted. One of our chemicals is used to remove graffiti or stickers from street signs such as stop signs, without damaging the reflective coating.

ECR created it's own environmentally biodegradable friendly chemicals that are used to remove graffiti from brick and other surfaces that leave no damage. This is an excellent way to maintain the integrity of historical buildings and other textured walls.

SCOPE OF PROJECT

ECR is proposing to provide graffiti abatement services to include; the removal and concealment of graffiti from public and private properties, digitally record the graffiti incidents, and create weekly and monthly reports for use in reporting of incidents to the police department for tracking.

Term and Compensation: Environmental Compliance Resources, LLC is prepared to enter into a five year contract with no COLA increase the first year and the standard COLA increase included into the remaining four years starting at the rate of \$189,500 annually. Environmental Compliance Resources, LLC has been providing services at the same financial rate over the length of its term with the City of Merced and has forgone any rate increases which continued during and long after the great recession all while having the required coverage area increase over 18% with the additions of new parks and sound walls within the city. Our commitment to putting Merced first will continue as we have demonstrated in the past and look forward to the addition of more park spaces and subdivisions throughout our city.

Conflict of Interest Statement: Proposer holds no City or Agency board or committee appointment or other relationship. Under section 1090 of the California Political Reform Act, there is no conflict of interest with Environmental Compliance Resources, LLC, any of it's officers, or employees.

Local Business Enterprise Policy Statement of Compliance: The City Council of Merced has adopted a Local Business Enterprise Policy requiring service providers to make a good faith effort to include local businesses in their contract with the City or Agency. Environmental Compliance Resources, LLC for over 10 years has exclusively contracted with Sherwin Williams located in Merced by purchasing several thousand gallons of paint and sundries products. Our partnership doesn't stop there, ECR also makes every effort to locate and source all supplies and services with local Merced companies first as its business plan. ECR has a long standing relationship with businesses from fuel providers to tire repair shops and will continue to long into the future.

(Attachment 1)

Statement Confirming Ability To Execute Agreement As Presented: Environmental Compliance Resources, LLC has provided all legal documents required per this proposal and is fully committed to execute this agreement as presented. With our expert track record in providing graffiti abatement services throughout the years, it is a strong example of the work we are committed to continue long into the future.



CITY OF MERCED

Merced Civic Center
678 W. 18th Street
Merced, CA 95340

ADMINISTRATIVE REPORT

File #: 18-442

Meeting Date: 10/1/2018

Report Prepared by: Lieutenant Alan Ward, Police

SUBJECT: Approval of a Five-Year Agreement with Environmental Compliance Resources for Graffiti Abatement Services

REPORT IN BRIEF

Considers approving a five (5) year agreement for graffiti abatement services between the City of Merced and Environmental Compliance Resources for \$189,500 for the first year with 1.8% increases for each subsequent year.

RECOMMENDATION

City Council - Adopt a motion approving a five-year agreement for graffiti abatement services with Environmental Compliance Resources and authorizing the City Manager or Assistant City Manager to execute all the necessary documents.

ALTERNATIVES

1. Approve, as recommended by staff, or,
2. Approve, subject to other than recommended by; or,
3. Deny; or,
4. Refer to staff for reconsideration of specific terms; or,
5. Continue to a future meeting (date and time to be specified in the motion.)

AUTHORITY

Charter of the City of Merced, Section 200.

CITY COUNCIL PRIORITIES

As provided in the 2018-19 Adopted Budget.

DISCUSSION

In September 2010, staff solicited for graffiti abatement services with six local companies and received two proposals for consideration. After reviewing the two proposals, the Council awarded a contract to Environmental Compliance Resources (ECR). Since that time, ECR has provided graffiti abatement services to the City of Merced. Their current contract expired July 1, 2018.

Since June of 2018, the police department solicited twice for graffiti abatement services and received only one bid proposal. ECR has submitted a proposal to continue providing the city with graffiti abatement services for the next five years.

Since ECR has been providing graffiti abatement services graffiti sightings have reduced while concealment of the blight has increased, ECR is well aware of problem areas and responds to calls for service from City Staff and the public immediately. ECR and its staff have developed strong working relationships with Code Enforcement, the police department, and the public.

ECR is requesting a five year contract to ensure their ability to keep up with employee and equipment costs while ensuring their ability to provide the highest quality service. ECR's proposal is to provide their services for \$189,500.00 for the 2018-19 fiscal year which will be paid in monthly installments of \$15,791.67. ECR's proposal is to add a 1.8% COLA increase per year for the remaining four fiscal years of the contract.

The agreement with ECR's in the amount of \$189,500 is an increase of \$17,005.00 over the \$172,495 budgeted amount in the 2018-19 Adopted budget.

IMPACT ON CITY RESOURCES

This agreement is an increase of \$17,005.00 over the budgeted amount. However, there is salary savings within the 2018-19 budget that can be used to cover the increased cost of the contract.

Staff will also need to consider the COLA increases in future budget considerations if approved.

ATTACHMENTS

1. ECR Contract