

**MAINTENANCE/REPAIR SERVICES AGREEMENT
WITH SUPERIOR PROPERTY SERVICES, INC. FOR
GRAFFITI ABATEMENT SERVICES**

THIS MAINTENANCE/REPAIR SERVICES AGREEMENT ("Agreement") is made and entered into as of this 1st day of May, 2026 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and SUPERIOR PROPERTY SERVICES, INC., a California corporation ("Contractor"), whose address is 2181 South Dupont Drive, Anaheim, CA 92806, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Contractor to perform maintenance and/or repair services for City ("Project").
- C. Contractor possesses the skill, experience, ability, background, certification and knowledge to provide the maintenance and/or repair services described in this Agreement.
- D. Contractor has examined the location of all proposed work, carefully reviewed and evaluated the specifications set forth by City for the Project, is familiar with all conditions relevant to the performance of services, and has committed to perform all work required for the compensation specified in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

1.1 The term of this Agreement shall commence on the Effective Date, and shall terminate on April 30, 2029, unless terminated earlier as set forth herein.

1.2 On May 28, 2022, The City and Contractor entered into an agreement (Contract No. C-8839-1) for graffiti abatement services. Upon the execution of this Agreement, the parties agree to terminate Contract No. C-8839-1 and have services continue through this Agreement.

2. SERVICES TO BE PERFORMED

2.1 Contractor shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). As a material inducement to City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and Contractor is experienced in performing the Work contemplated herein and, in light of such status and

experience, Contractor covenants that it shall follow community professional standards with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances, in performing the Work required hereunder, and that all materials will be of good quality.

2.2 Contractor shall perform all Work required to be performed, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment and all utility and transportation services necessary for the Project.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Contractor shall perform the Services in accordance with the schedule included in Exhibit A. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Contractor to strictly adhere to the schedule set forth in Exhibit A, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Contractor shall not be responsible for delays due to causes beyond Contractor's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Contractor shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein, not later than two (2) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Contractor's control.

3.4 For all time periods not specifically set forth herein, Contractor shall respond in the most expedient and appropriate manner under the circumstances, by fax, hand-delivery or mail.

4. COMPENSATION TO CONTRACTOR

4.1 City shall pay Contractor for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Except as otherwise provided herein, no rate changes shall be made during the term of this Agreement without the prior written approval of City. Contractor's compensation for all Services performed in accordance with this Agreement, including all reimbursable items, shall not exceed **Seven Hundred Seventy-Five Thousand Dollars and 00/100 (\$775,000.00)**, without prior written amendment to the Agreement.

4.2 Upon the first anniversary of the Effective Date and upon each anniversary of the Effective Date thereafter, the billing rates set forth in Exhibit B ("Billing Rates") may be adjusted in proportion to changes in the Consumer Price Index, subject to the maximum adjustment set forth below. Such adjustment shall be made by multiplying the Billing Rates in Exhibit B by a fraction, the numerator of which is the value of the

Consumer Price Index for the calendar month three (3) months preceding the calendar month for which such adjustment is to be made, and the denominator of which is the value of the Consumer Price Index for the same calendar month immediately prior to Effective Date. The Consumer Price Index to be used in such calculation is the "Consumer Price Index, All Items, 1982-84=100 for All Urban Consumers (CPI-U)", for the Los Angeles-Riverside-Orange County Metropolitan Area, published by the United States Department of Labor, Bureau of Labor Statistics. If both an official index and one or more unofficial indices are published, the official index shall be used. If said Consumer Price Index is no longer published at the adjustment date, it shall be constructed by conversion tables included in such new index. In no event, however, shall the amount payable under this Agreement be reduced below the Billing Rates in effect immediately preceding such adjustment. The maximum adjustment increase to the Billing Rates, for any year where an adjustment is made pursuant to this Section, shall not exceed the Consumer Price Index or 2.0% of the Billing Rates in effect immediately preceding such adjustment, whichever is less. Contractor shall notify City in writing of any requests for adjustment pursuant to this Section at least thirty (30) days prior to the Effective Date of such adjustment, and provide updated billing rates. Adjusted billing rates shall be approved in writing by City prior to use.

4.3 Contractor shall submit monthly invoices to City describing the Work performed the preceding month. Contractor's bills shall include the name and/or classification of employee who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Contractor no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.4 City shall reimburse Contractor only for those costs or expenses specifically identified in Exhibit B to this Agreement, or specifically approved in writing in advance by City.

4.5 Contractor shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with Exhibit B.

5. PROJECT MANAGER

5.1 Contractor shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Contractor has designated Nancy Hernandez to be its Project Manager. Contractor shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Contractor, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Contractor warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the Utilities Department. City's Utilities Manager or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Contractor in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Contractor, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Contractor's Work schedule.

8. TYPE AND INSTALLATION OF MATERIALS/STANDARD OF CARE

8.1 Contractor shall use only the standard materials described in Exhibit A in performing Services under this Agreement. Any deviation from the materials described in Exhibit A shall not be installed or utilized unless approved in advance and in writing by the Project Administrator.

8.2 All of the Services shall be performed by Contractor or under Contractor's supervision. Contractor represents that it possesses the personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Contractor certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws and legally recognized professional standards.

8.3 Contractor represents and warrants to City that it has, shall obtain and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Contractor to practice its profession. Contractor shall maintain a City of Newport Beach business license during the term of this Agreement.

8.4 Contractor shall not be responsible for delay, nor shall Contractor be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Contractor's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. RESPONSIBILITY FOR DAMAGES OR INJURY

9.1 City and all officers, employees and representatives thereof and all persons and entities owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services shall not be responsible in any manner for any loss or damage to any of the materials or other things used or employed in performing the Project or for injury to or death of any person as a result of Contractor's performance of the Services required hereunder; or for damage to property from any cause arising from the performance of the Project and/or Services by Contractor, or its subcontractors, or its workers, or anyone employed by either of them.

9.2 Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects, obstructions or from any cause arising from Contractor's Work on the Project and/or Services, or the Work of any subcontractor or supplier selected by Contractor.

9.3 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Agreement (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Contractor's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

9.4 Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor.

9.5 Contractor shall perform all Work in a manner to minimize public inconvenience and possible hazard, to restore other work areas to their original condition and former usefulness as soon as possible, and to protect public and private property. Contractor shall be liable for any private or public property damaged during the performance of the Work by Contractor or its agents.

9.6 To the extent authorized by law, as much of the money due Contractor under and by virtue of the Agreement as shall be considered necessary by City may be retained by it until disposition has been made of such suits or claims for damages as aforesaid.

9.7 The rights and obligations set forth in this Section shall survive the termination of this Agreement.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Contractor on an independent contractor basis and Contractor is not an agent or employee of City. The manner and means of conducting the Work are under the control of Contractor, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Contractor or its employees. Nothing in this Agreement shall be deemed to constitute approval for Contractor or any of Contractor's employees or agents, to be the agents or employees of City. Contractor shall have the responsibility for and control over the means of performing the Work, provided that Contractor is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Contractor as to the details of the performance of the Work or to exercise a measure of control over Contractor shall mean only that Contractor shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

Contractor agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with Contractor on the Project.

12. CITY POLICY

Contractor shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

Contractor is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

14. INSURANCE

Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

15. PREVAILING WAGES

15.1 Pursuant to the applicable provisions of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages including legal holidays and overtime Work for each craft or type of workman needed to execute the Work contemplated under the Agreement shall be paid to all workmen employed on the Work to be done according to the Agreement by the Contractor and any subcontractor. In accordance with the California Labor Code (Sections 1770 et seq.), the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the Work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the Agreement. A copy of said determination is available by calling the prevailing wage hotline number (415) 703-4774 and requesting one from the Department of Industrial Relations. The Contractor is required to obtain the wage determinations from the Department of Industrial Relations and post at the job site the prevailing rate or per diem wages. It shall be the obligation of the Contractor or any subcontractor under him/her to comply with all State of California labor laws, rules and regulations and the parties agree that the City shall not be liable for any violation thereof.

15.2 Unless otherwise exempt by law, Contractor warrants that no contractor or subcontractor was listed on the bid proposal for the Services that it is not currently registered and qualified to perform public work. Contractor further warrants that it is currently registered and qualified to perform "public work" pursuant to California Labor Code section 1725.5 or any successor statute thereto and that no contractor or subcontractor will engage in the performance of the Services unless currently registered and qualified to perform public work.

16. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Contractor is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Contractor. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

17. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Contractor shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be

provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

18. OWNERSHIP OF DOCUMENTS

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Contractor, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Contractor or any other party. Contractor shall, at Contractor's expense, provide such Documents to City upon prior written request.

19. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

20. RECORDS

Contractor shall keep records and invoices in connection with the Services to be performed under this Agreement. Contractor shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement. All such records and invoices shall be clearly identifiable. Contractor shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Contractor shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Contractor under this Agreement.

21. WITHHOLDINGS

City may withhold payment to Contractor of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Contractor shall not discontinue Work as a result of such withholding. Contractor shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Contractor shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

22. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

City reserves the right to employ other contractors in connection with the Project.

23. CONFLICTS OF INTEREST

23.1 Contractor or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

23.2 If subject to the Act and/or Government Code §§ 1090 et seq., Contractor shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Contractor shall indemnify and hold harmless City for any and all claims for damages resulting from Contractor's violation of this Section.

24. NOTICES

24.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

24.2 All notices, demands, requests or approvals from Contractor to City shall be addressed to City at:

Attn: Utilities Manager
Utilities Department
City of Newport Beach
949 West 16th Street
Newport Beach, CA 92663

24.3 All notices, demands, requests or approvals from City to Contractor shall be addressed to Contractor at:

Attn: Nancy Hernandez
Superior Property Services, Inc.
2181 South Dupont Drive
Anaheim, CA 92806

25. CLAIMS

25.1 Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Contractor shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Contractor's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Contractor in writing as unsettled at the time of its final request for payment. Contractor and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Contractor shall be required to file any claim Contractor may have

against City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

25.2 To the extent that Contractor's claim is a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, the Parties agree to follow the dispute resolution process set forth therein. Any part of such "Claim" remaining in dispute after completion of the dispute resolution process provided for in Public Contract Code section 9204 or any successor statute thereto shall be subject to the Government Claims Act requirements requiring Contractor/Consultant to file a claim in strict conformance with the Government Claims Act. To the extent that Contractor's claim is not a "Claim" as defined in Public Contract Code section 9204 or any successor statute thereto, Contractor shall be required to file such claim with the City in strict conformance with the Government Claims Act (Government Code sections 900 et seq.).

26. TERMINATION

26.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

26.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Contractor. In the event of termination under this Section, City shall pay Contractor for Services satisfactorily performed and costs incurred up to the effective date of termination for which Contractor has not been previously paid. On the effective date of termination, Contractor shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

27. LABOR

27.1 Contractor shall conform with all applicable provisions of state and federal law including, but not limited to, applicable provisions of the federal Fair Labor Standards Act ("FLSA") (29 USCA § 201, *et seq.*).

27.2 Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Agreement, Contractor shall immediately give written notice to City, and provide all relevant information.

27.3 Contractor represents that all persons working under this Agreement are verified to be U.S. citizens or persons legally authorized to work in the United States.

27.4 To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, and employees from loss or damage, including but not limited to attorneys' fees, and other costs of defense by reason of actual or alleged violations of any applicable federal, state and local labor laws or law, rules, and/or regulations. This obligation shall survive the expiration and/or termination of the Agreement.

28. STANDARD PROVISIONS

28.1 Recitals. City and Contractor acknowledge that the above Recitals are true and correct and are hereby incorporated by reference.

28.2 Compliance with all Laws. Contractor shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Contractor shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

28.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

28.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

28.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

28.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

28.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

28.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

28.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

28.10 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

28.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.


28.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 4-13-2020

By: 
Aaron C. Harp
City Attorney

ATTEST:

Date: _____

By: _____
Lena Shumway
City Clerk

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Lauren Kleiman
Mayor

**CONTRACTOR: SUPERIOR
PROPERTY SERVICES, INC.,**

a California corporation

Date: _____

By: _____
Ronald Bruneck
Chief Executive Officer

Date: _____

By: _____
Nancy Hernandez
Chief Financial Officer

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services
 Exhibit B – Schedule of Billing Rates
 Exhibit C – Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

SCOPE OF SERVICES

Objective:

Contractor shall provide the following on-call graffiti abatement services to the City, under the direction of the Utilities Department, which shall identify specific tasks, deliverables and deadlines on an as-needed basis.

Contract Term: **Up to Five (5) years**

Minimum Qualifications:

1. Possession of a State of California C-33 License (Painting and Decorating Contractor);
2. Possession of a State of California C-61 D38 License (Water and Sand Blasting);
3. A minimum of five (5) years of experience in the provision of graffiti abatement services;
4. A minimum of three (5) years of experience working with the TAGRS system described in this Scope of Services;
5. Each service vehicle used on-site to remedy incidence of graffiti shall have color-matching technology on-board the service vehicle; and
6. Contractor shall provide all equipment necessary to complete the services cited in this Scope of Services.

Project Description:

1. Contractor is required to attend training by the Orange County Sheriff's Department on how to utilize Tracking Automated and Graffiti Reporting System ("TAGRS").
2. Contractor will monitor the City's graffiti hotline daily, take photos of the graffiti (before and after removal); upload the photos to TAGRS and contractors in house system. Input information regarding the size, location, description and cost of repair the same day the work is completed.
3. If necessary, the City will provide the Contractor with additional work assignments throughout the day or request the contractor monitor designated hotspots. From time to time, the City may request Contractor to provide graffiti abatement services on non-City owned private property that is visible from the public right-of-way. In most cases, the property owner is required to sign a release of liability waiver form for the City and Contractor prior to any work performed by Contractor on their property.

Contractor will be responsible for supplying and paying for the communication device(s) and/or service(s) necessary to complete the uploading of the required information to TAGRS and contractors' in-house system.

4. Contractor will be required to submit an activity report to the Utilities Manager, or designee.
 - a. The activity report includes the location of the graffiti, type, date, TAGRS ID, and the number of hours that it took to complete the work.
 - b. The activity report will be submitted daily via email to the Utilities Manager or designee's office at (7:30 a.m.).
 - c. Invoices should be submitted on a monthly basis.
5. Contractor is required to respond by phone or email to initial requests for graffiti removal by City within one (1) hour. For emergencies, Contractor is required to be on-site of reported incident location within two (2) hours of City's original request, including after-hours requests. Contractor must provide a twenty-four (24) hour contact for city staff.
6. Contractor must be available for same day response, including after hours, weekends, and holidays.
7. Contractor is responsible for supplying all materials necessary to perform the services requested in this scope of work, including, but not limited to, paint, graffiti/adhesive remover and other cleaning supplies.
8. All vehicles assigned by Contractor to this project shall carry pressure washing equipment.
9. Contract will utilize appropriate method of covering or removing graffiti considering the particular surface and conditions such as painting, steam cleaning, pressure washing, wet sandblasting, wire brush, non-corrosive solvent removal (environmentally safe), and/or other as-needed methodologies or techniques available to Contractor.
10. Contractor shall conform to all current regulations of the South Coast Air Quality Management District (AQMD). The Contractor is also required to adhere to the provisions of the Federal Clean Water Act as regulated by the U.S. Environmental Protection Agency (EPA) in Code 40, Code of Federal Regulations (CFR) Parts 122, 123, 124, the Porter-Cologne Act (California Water Act), and the National Pollutant Discharge Elimination System (NPDES) requirements. Suitable Best Management Practices (BMPs) shall be applied to prevent any chemical, debris or any non-stormwater discharges from entering the storm drain system (storm drains and gutters) during all graffiti abatement services, including water/sand blasting, pressure washing and other removal activities.
11. Where color-matching is specified, all paints used shall match existing colors to the satisfaction of the City. The Contractor shall receive no additional compensation to repaint in matching color. This includes color matching to include natural materials such as rock formations. Contractor shall have color-matching technology and capacities on their service truck or other vehicle used in the field.
12. For the current work schedule, contractor shall provide, at a minimum, one crew (a crew can be one person) with one truck for seven (7) days a week of service. Normal working hours (not including driving time) shall be between the hours of 7:00 a.m. and 4:30 p.m.,

Monday through Thursday and 7:00 a.m. to 3:30 p.m. on Fridays. Weekend work typically begins no earlier than 7:00am. City may call out Contractor to perform after-hours or holiday work.

13. In addition, contractor shall provide one additional crew one weekday per week (one person can serve as this extra crew.) This means for one (1) weekday each week, contractor shall provide two (2) crews (minimum of two people – one person with each truck), with two (2) trucks for graffiti abatement services.

14. During the contract term, the City may modify the seven (7) days a week level of service. If service level is changed or modified, the City's Project Manager or their designee shall provide the Contractor with at least thirty (30) days' prior written notice.

15. Holiday Hours

a. Observed holidays shall be based on the list of Federal Holidays and are listed below.

- New Year's Day
- Martin Luther King, Jr.'s Birthday
- President's Day
- Veterans Day
- Thanksgiving Day
- Friday after Thanksgiving Day
- Christmas Day
- New Year's Eve

b. The following days are excluded from the list of observed holidays. City will require the Contractor to be available for work on these days.

- Memorial Day
- Independence Day July 4th (or day observed)
- Labor Day

16. All correspondence shall be addressed to: Attn: Utilities Manager, Utilities Department, City of Newport Beach, 949 West 16th Street, Newport Beach, California 92663.

17. This service engagement may occasionally require interaction with members of the public who wish to notify graffiti technicians of occurrences of graffiti. Subsequently, graffiti technicians assigned to this project must be able to communicate clearly in English.

18. Work order system – Contractor shall provide a web-based work order system. At a minimum, this system should have the following features:

- a. Be able to receive work orders electronically via the web from a computer or mobile device.
- b. Offer a free mobile application for Android or iPhone formats through Google and Apple marketplace, respectively.

- c. Work orders shall be electronically submitted in real-time to the work order system and shall be assigned a unique work order number.
- d. Access to the system should be granted to specific City staff for direct work entry. At a minimum the system should log and display:
 - i. System work order IDs
 - ii. City's work order number (if applicable)
 - iii. Live work order status
 - iv. Address/location of graffiti
 - v. Type of surface affected
 - vi. Method of removal
 - vii. Square footage treated
 - viii. Date and time work order was received
 - ix. Date and time work order was completed
 - x. All pending and/or completed work orders on Google Maps
- e. Upon job completion, a "thank you" message with before and after photos shall be transmitted electronically to the requestor's email address (if provided).
- f. Only record and monitor incidents of graffiti located within the City.
- g. Needs to integrate or have ability to integrate with the City's Quest system.
- h. Allow for upload and storage of multiple photos per work order number.
- i. A direct link through URL from the City's website.
- j. All data collected by the system (including photographs) shall become the property of the City.
- k. Contractor will be required to demonstrate all aspects of the work order system through a working version of the software prior to award of Contract.
- l. Include Smartphone app names and contact information for a minimum of three (3) government customers of similar size that have used Bidder's software for at least twelve (12) months.

EXHIBIT B

SCHEDULE OF BILLING RATES

EXHIBIT B
SCHEDULE OF BILLING RATES

ITEM NUMBER	DESCRIPTION	UNT OF MEASURE	QUANTITY	UNIT PRICE	ANNUAL COST
1	WEEKDAY GRAFFITI REMOVAL SERVICES	DAYS	260	\$525.00	\$136,500.00
2	SATURDAY GRAFFITI REMOVAL SERVICES	DAYS	52	\$575.00	\$ 29,900.00
3	ONE ADDITIONAL TECHNICIAN/TRUCK WEEKDAY GRAFFITI SERVICES	DAYS	52	\$500.00	\$ 26,000.00
4	ONE ADDITIONAL TECHNICIAN/TRUCK WEEKEND - SUNDAY RATE GRAFFITI SERVICES	DAYS	25	\$625.00	\$ 15,625.00
5	SUNDAY & HOLIDAYS (MEMORIAL DAY/JULY 4TH/LABOR DAY)	DAYS	55	\$750.00	\$ 41,250.00
6	OVERTIME HOURS (Outside Normal Work Hours - 4:30PM to 7:00AM)	HOURS	48	\$ 85.00	\$ 4,080.00
7	GENERAL PROVISIONS (INSURANCE, BONDING, ETC)	ANNUAL	1	\$ 0	\$ 0
	ESTIMATED TOTAL ANNUAL COST				\$253,355.00

Please note Quantities are estimates and may change at the sole discretion of the City

EXHIBIT C

INSURANCE REQUIREMENTS – MAINTENANCE/REPAIR/JANITORIAL SERVICES

1. Provision of Insurance. Without limiting Contractor's indemnification of City, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Contract, policies of insurance of the type and amounts described below and in a form satisfactory to City. Contractor agrees to provide insurance in accordance with requirements set forth here. If Contractor uses existing coverage to comply and that coverage does not meet these requirements, Contractor agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Contractor shall maintain Workers' Compensation Insurance providing statutory benefits and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each employee for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California. In addition, Contractor shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with California law for all of the subcontractor's employees. The insurer issuing the Workers' Compensation insurance shall amend its policy by endorsement to waive all rights of subrogation against City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Contract. Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Contract.
 - B. General Liability Insurance. Contractor shall maintain commercial general liability insurance, and if necessary excess/umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per

occurrence, four million dollars (\$4,000,000) general aggregate and four million dollars (\$4,000,000) completed operations aggregate. The policy shall cover liability arising from bodily injury, property damage, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Contractor shall submit to City, along with a certificate of insurance, additional coverage as stated in Section 4. Other Insurance Requirements.

- C. Automobile Liability Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Contractor arising out of or in connection with Work to be performed under this Contract, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.

Contractor shall submit to City, along with a certificate of insurance, additional coverage as stated in Section 4. Other Insurance Requirements.

- D. Excess/Umbrella Liability Insurance. If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this contract, then said policies shall be "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this contract, including, but not limited to, the additional insured and primary & non-contributory insurance requirements stated herein. No insurance policies maintained by the City, whether primary or excess and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess umbrella liability policies are exhausted.

Contractor shall submit to City, along with a certificate of insurance, additional coverage as stated in Section 4. Other Insurance Requirements.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Contract or shall specifically allow Contractor or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and

shall require similar written express waivers and insurance clauses from each of its subcontractors.

- B. Additional Insured Status. All liability policies including general liability, products and completed operations, excess/umbrella liability, builder's risk, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Contract shall be included as additional insureds under such policies.
 - C. Primary and Non Contributory. Contractor's insurance coverage shall be primary insurance and/or the primary source of recovery with respect to City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers, employees, and any person or entity owning or otherwise in legal control of the property upon which Contractor performs the Project and/or Services contemplated by this Contract. Any insurance or self-insurance maintained by City shall be excess of Contractor's insurance and shall not contribute with it.
 - D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation or nonrenewal of coverage (except for nonpayment for which ten (10) calendar days' notice is required) for each required coverage except Builders Risk Insurance, which shall contain an endorsement with said required notices.
 - E. Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format at least as broad as CG 20 10 11 85. Limits of liability for General Liability in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate and two million dollars (\$2,000,000) completed operations aggregate.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
- A. Evidence of Insurance. Contractor shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. All of the executed documents referenced in this Contract must be returned to City within ten (10) regular City business days after the date on the "Notification of Award".

Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Contract. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

- B. City's Right to Revise Requirements. The City reserves the right at any time during the term of the Contract to change the amounts and types of insurance required by giving Contractor ninety (90) calendar days' advance written notice of such change. If such change results in substantial additional cost to Contractor, City and Contractor may renegotiate Contractor's compensation.
- C. Right to Review Subcontracts. Contractor agrees that upon request, all agreements with subcontractors or others with whom Contractor enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 10 11 85.
- D. Enforcement of Contract Provisions. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Exhibit A are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Contractor. Any

available proceeds in excess of specified minimum limits of insurance and coverage shall be available to the City.

- F. Self-Insured Retentions. Contractor agrees not to self-insure or to use any self-insured retentions on any portion of the insurance required herein and further agrees that it will not allow any indemnifying party to self-insure its obligations to City. If Contractor's existing coverage includes a self-insured retention, the self-insured retention must be declared to City. City may review options with Contractor, which may include reduction or elimination of the self-insured retention, substitution of other coverage, or other solutions. Contractor agrees to be responsible for payment of any deductibles on their policies.
- G. City Remedies for Non Compliance. If Contractor or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Contract, or to suspend Contractor's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Contractor or reimbursed by Contractor upon demand.
- H. Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Contract, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- I. Coverage not Limited. All insurance coverage and limits provided by Contractor and available or applicable to this Contract are intended to apply to the full extent of the policies. Nothing contained in this Contract or any other agreement relating to City or its operations limits the application of such insurance coverage.
- J. Coverage Renewal. Contractor will renew the coverage required here annually as long as Contractor continues to provide any Work under this or any other Contract or agreement with City. Contractor shall provide proof that policies of insurance required herein expiring during the term of this Contract have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Contractor's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City with five (5) calendar days of the expiration of the coverages.

- K. Maintenance of General Liability Coverage. Contractor agrees to maintain commercial general liability coverage for a period of ten (10) years after completion of the Project or to obtain coverage for completed operations liability for an equivalent period.