

## **PROFESSIONAL SERVICES AGREEMENT**

(City of Lake Elsinore and Graffiti Tracker Inc.)

**THIS PROFESSIONAL SERVICES AGREEMENT** is made as of November 1, 2023 by and between the City of Lake Elsinore, (“Agency”), and Graffiti Tracker Inc. (“Contractor”).

### **RECITALS**

1. Agency has determined that it requires professional services from a Contractor to provide graffiti analysis and tracking services for the Agency.
2. Agency desires to retain Contractor, as an independent contractor to provide such services on an as needed basis.
3. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

**NOW, THEREFORE**, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties hereto agree as follows:

#### **1. Contractor’s Services.**

- a. **Scope and Level of Services.** The nature, scope, and level of the specific services to be performed by Contractor are as set forth in Exhibit A, attached to this Agreement and incorporated herein as though set forth in full. Agency is retaining Contractor pursuant to this Agreement on a non-exclusive basis and reserves the right to retain other professionals to perform similar service if Agency determines such services are needed.
  - b. **Time of Performance.** The services shall be performed in a timely manner and on a regular basis in accordance with the written instruction of the Contract Administrator. Time is of the essence in the performance of this Agreement.
2. **Standard of Care.** As a material inducement to Agency to enter into this Agreement, Contractor hereby represents and warrants that it has the professional expertise and experience necessary to undertake the services to be provided herein.

3. **Compliance with Law.** All services rendered hereunder by Contractor shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of Agency and any federal, state or local governmental agency having jurisdiction in effect at the time service is rendered.
4. **Term of Agreement.** This Agreement is effective on the date set forth in the initial paragraph of this Agreement and shall remain in effect for a period of 36 months, unless earlier terminated pursuant to Section 14.
5. **Compensation.** Agency agrees to compensate Contractor for its services according to the fee and payment schedule set forth in Exhibit B, attached hereto and incorporated herein as though set forth in full. In no event shall the total compensation and costs payable to Contractor under this Agreement exceed the sum of thirty-three thousand dollars and no cents (\$33,000.00) unless specifically approved by the City Council. Agency agrees that services may not begin until first payment is received.
6. **Ownership of Work Product.** All reports, documents or other written material developed by Consultant in the performance of this Agreement shall be and remain the property of Agency without restriction or limitation upon its use or dissemination by Agency.
7. **Representatives.**
  - a. **Project Manager.** The Project Manager for the services required under this Agreement is hereby designated as Timothy M. Kephart who shall be the representative of Contractor authorized to act in its behalf with respect to the services specified herein. It is expressly understood that the experience, knowledge, capability and reputation of the foregoing Project Manager were a substantial inducement for Agency to enter into this Agreement. Therefore, the foregoing Project Manager shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. Contractor may not change the foregoing Project Manager without the express written approval of Agency.
  - b. **Contract Administrator.** The Contract Administrator and Agency's representative shall be the City Manager, or his/her designee. It shall be Contractor's responsibility to assure that the Contract Administrator is kept informed of the progress of the performance of the services, and Contractor shall refer any

decisions that must be made by Agency to the Contract Administrator. Unless otherwise specified herein, any approval of Agency required hereunder shall mean the approval of the Contract Administrator.

8. **Standard of Performance.** Contractor shall perform all work to the highest professional standards and in a manner reasonably satisfactory to Agency. Contractor hereby covenants that it shall follow the highest professional standards in performing all services required hereunder.
9. **Status as Independent Contractor.** Contractor is, and shall at all times remain as to Agency, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of Agency or otherwise act on behalf of Agency as an agent. Neither Agency nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner, employees of Agency. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Agreement, and to indemnify and hold Agency harmless from any and all taxes, assessments, penalties, and interest asserted against Agency by reason of the independent contractor relationship created by this Agreement. Contractor shall fully comply with the workers' compensation law regarding Contractor and Contractor's employees. Contractor further agrees to indemnify and hold Agency harmless from any failure of Contractor to comply with applicable workers' compensation laws. Agency shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to Agency from Contractor as a result of Contractor's failure to promptly pay to Agency any reimbursement or indemnification arising under this section.
10. **Confidentiality.** Agency agrees not to use any intellectual property or information related to the Graffiti Tracker system for purposes of development or competition of another Graffiti Tracker system. Upon request, all Agency data shall be returned to Agency upon the termination of this Agreement. Contractor's covenant under this section shall survive the termination of this Agreement.
11. **Conflict of Interest.** Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Contractor under this Agreement, or which would conflict in any manner with the performance of its services hereunder.
12. **Indemnification.** Contractor agrees to indemnify, hold harmless and defend Agency and

the Redevelopment Agency, and their respective officers, employees, volunteers, and agents serving as independent contractors in the role of Agency or Agency officials, (collectively, "Indemnities"), from any claim, demand, damage, liability, loss, cost or expense, for any damage whatsoever, including but not limited to death or injury to any person and injury to any property, resulting from willful misconduct, negligent acts, errors or omissions of Contractor or any of its officers, employees, or agents.

- a. Agency does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by Agency, or the deposit with Agency, of any insurance policy or certificate required pursuant to this Agreement.
- b. This hold harmless, indemnification and defense provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense. Contractor agrees that Contractor's covenant under this section shall survive the termination of this Agreement.

13. **Cooperation.** In the event any claim or action is brought against Agency relating to Contractor's performance or services rendered under this Agreement, Contractor shall render any reasonable assistance and cooperation that Agency might require.

#### 14. **Termination.**

- a. Agency shall have the right to terminate the services of Contractor at any time for any reason on Thirty (30) calendar days written notice to Contractor. In the event this Agreement is terminated by Agency, Contractor shall be paid for services satisfactorily rendered to the last working day this Agreement is in effect, and Contractor shall have no other claim against Agency by reason of such termination, including any claim for compensation.
- b. Contractor shall have the right to terminate this Agreement at any time for any reason on Thirty (30) calendar days written notice to Agency, and Contractor shall be paid for services satisfactorily rendered to the last working day this Agreement is in effect.

15. **Notices.** Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during receiving party's regular business hours or by facsimile before or during receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail,

postage prepaid, to the addresses heretofore below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

**Agency:**

City of Lake Elsinore  
130 S. Main Street  
Lake Elsinore CA 92530

**Contractor:**

Graffiti Tracker Inc.  
2916 S 132<sup>nd</sup> St #311  
Omaha, NE 68144

16. **Nondiscrimination and Equal Employment Opportunity.** In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition or sexual orientation. Contractor will take affirmative action to ensure that employees are treated without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.
17. **Assignability; Subcontracting.** Contractor shall not assign, transfer, or subcontract any interest in this Agreement or the performance of any of Contractor's obligations hereunder, without the prior written consent of Agency, and any attempt by Contractor to so assign, transfer, or subcontract any rights, duties, or obligations arising hereunder shall be void and of no effect.
18. **Compliance with Laws/Licenses.** Contractor shall comply with all applicable laws, ordinances, codes and regulations of the federal, state, and local governments. Contractor shall obtain and maintain all necessary professional licenses for providing the services outlined in this Agreement.
19. **Non-Waiver of Terms, Rights and Remedies.** Waiver by either party of any one or

more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by Agency of any payment to Contractor constitute or be construed as a waiver by Agency of any breach of covenant, or any default which may then exist on the part of Contractor, and the making of any such payment by Agency shall in no way impair or prejudice any right or remedy available to Agency with regard to such breach or default.

20. **Attorney's Fees.** In the event that either party to this Agreement shall commence any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees. The venue for any litigation shall be Los Angeles County. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the party who drafted this Agreement or who drafted that portion of the Agreement.
21. **Exhibits; Precedence.** All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provision of any Exhibit or document incorporated herein by reference, the provisions of this Agreement shall prevail.
22. **Entire Agreement.** This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Agency and Contractor. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

**"CITY" CITY OF LAKE ELSINORE**

**"CONTRACTOR"**  
**Grafitti Tracker, Inc.**

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City Manager

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BY: Timothy M. Kephart  
Its: Owner

**ATTEST:**

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City Clerk

APPROVED AS TO FORM:

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City Attorney

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Assistant City Manager