

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664

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AGREEMENT

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THIS AGREEMENT is made and entered, in duplicate, as of July 13, 2016, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on July 12, 2016, by and between GRAFFITI PROTECTIVE COATINGS, INC. a California corporation with a place of business at 419 N. Larchmont Boulevard, #264, Los Angeles, California 90004 ("Contractor"), and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, City requires specialized services requiring unique skills to be performed in connection with graffiti removal services ("Project"); and

WHEREAS, City has selected Contractor in accordance with City's administrative procedures using a Request for Proposals ("RFP"), and City has determined that Contractor and its employees are qualified, licensed, if so required, and experienced in performing these specialized services; and

WHEREAS, City desires to have Contractor perform these specialized services, and Contractor is willing and able to do so on the terms and conditions in this Agreement;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in this Agreement, the parties agree as follows:

1. SCOPE OF WORK OR SERVICES.

A. Contractor shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for these services in an annual amount, not to exceed One Million Three Hundred Seventy Thousand Dollars (\$1,370,000), at the rates or charges shown in Exhibit "B".

B. City shall pay Contractor in due course of payments following receipt from Contractor and approval by City of invoices showing the services or

1 task performed, the time expended (if billing is hourly), and the name of the Project.
2 Contractor shall certify on the invoices that Contractor has performed the services
3 in full conformance with this Agreement and is entitled to receive payment. Each
4 invoice shall be accompanied by a progress report indicating the progress to date
5 of services performed and covered by the invoice, including a brief statement of any
6 Project problems and potential causes of delay in performance, and listing those
7 services that are projected for performance by Contractor during the next invoice
8 cycle. Where billing is done and payment is made on an hourly basis, the parties
9 acknowledge that this arrangement is either customary practice for Contractor's
10 profession, industry or business, or is necessary to satisfy audit and legal
11 requirements which may arise due to the fact that City is a municipality.

12 C. Contractor represents that Contractor has obtained all
13 necessary information on conditions and circumstances that may affect its
14 performance and has conducted site visits, if necessary.

15 D. By executing this Agreement, Contractor warrants that
16 Contractor (a) has thoroughly investigated and considered the scope of services to
17 be performed, (b) has carefully considered how the services should be performed,
18 and (c) fully understands the facilities, difficulties and restrictions attending
19 performance of the services under this Agreement. If the services involve work upon
20 any site, Contractor warrants that Contractor has or will investigate the site and is
21 or will be fully acquainted with the conditions there existing, prior to commencement
22 of services set forth in this Agreement. Should Contractor discover any latent or
23 unknown conditions that will materially affect the performance of the services set
24 forth in this Agreement, Contractor must immediately inform the City of that fact and
25 may not proceed except at Contractor's risk until written instructions are received
26 from the City.

27 E. Contractor must adopt reasonable methods during the life of
28 the Agreement to furnish continuous protection to the work, and the equipment,

1 materials, papers, documents, plans, studies and other components to prevent
2 losses or damages, and will be responsible for all damages, to persons or property,
3 until acceptance of the work by the City, except those losses or damages as may
4 be caused by the City's own negligence.

5 F. CAUTION: Contractor shall not begin work until this
6 Agreement has been signed by both parties and until Contractor's evidence of
7 insurance has been delivered to and approved by City.

8 2. TERM. The term of this Agreement shall commence at midnight on
9 August 1, 2016, and shall terminate at 11:59 p.m. on July 31, 2019, unless sooner
10 terminated as provided in this Agreement, or unless the services or the Project is
11 completed sooner. The term can be extended for five (5) additional one-year periods, at
12 the discretion of the City Manager.

13 3. COORDINATION AND ORGANIZATION.

14 A. Contractor shall coordinate its performance with City's
15 representative, if any, named in Exhibit "C", attached to this Agreement and
16 incorporated by this reference. Contractor shall advise and inform City's
17 representative of the work in progress on the Project in sufficient detail so as to
18 assist City's representative in making presentations and in holding meetings on the
19 Project. City shall furnish to Contractor information or materials, if any, described in
20 Exhibit "D", attached to this Agreement and incorporated by this reference, and shall
21 perform any other tasks described in the Exhibit.

22 B. The parties acknowledge that a substantial inducement to City
23 for entering this Agreement was and is the reputation and skill of Contractor's key
24 employee, Barry Steinhart. City shall have the right to approve any person proposed
25 by Contractor to replace that key employee.

26 4. INDEPENDENT CONTRACTOR. In performing its services,
27 Contractor is and shall act as an independent contractor and not an employee,
28 representative or agent of City. Contractor shall have control of Contractor's work and the

1 manner in which it is performed. Contractor shall be free to contract for similar services to
2 be performed for others during this Agreement; provided, however, that Contractor acts in
3 accordance with Section 9 and Section 11 of this Agreement. Contractor acknowledges
4 and agrees that (a) City will not withhold taxes of any kind from Contractor's compensation;
5 (b) City will not secure workers' compensation or pay unemployment insurance to, for or
6 on Contractor's behalf; and (c) City will not provide and Contractor is not entitled to any of
7 the usual and customary rights, benefits or privileges of City employees. Contractor
8 expressly warrants that neither Contractor nor any of Contractor's employees or agents
9 shall represent themselves to be employees or agents of City.

10 5. INSURANCE.

11 A. As a condition precedent to the effectiveness of this
12 Agreement, Contractor shall procure and maintain, at Contractor's expense for the
13 duration of this Agreement, from insurance companies that are admitted to write
14 insurance in California and have ratings of or equivalent to A:V by A.M. Best
15 Company or from authorized non-admitted insurance companies subject to Section
16 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII
17 by A.M. Best Company, the following insurance:

18 (a) Commercial general liability insurance (equivalent in scope to
19 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
20 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
21 coverage shall include but not be limited to broad form contractual liability,
22 cross liability, independent contractors liability, and products and completed
23 operations liability. City, its boards and commissions, and their officials,
24 employees and agents shall be named as additional insureds by
25 endorsement (on City's endorsement form or on an endorsement equivalent
26 in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and this insurance
27 shall contain no special limitations on the scope of protection given to City,
28 its boards and commissions, and their officials, employees and agents. This

1 policy shall be endorsed to state that the insurer waives its right of
2 subrogation against City, its boards and commissions, and their officials,
3 employees and agents.

4 (b) Workers' Compensation insurance as required by the California
5 Labor Code and employer's liability insurance in an amount not less than
6 \$1,000,000. This policy shall be endorsed to state that the insurer waives
7 its right of subrogation against City, its boards and commissions, and their
8 officials, employees and agents.

9 (c) Professional liability or errors and omissions insurance in an
10 amount not less than \$1,000,000 per claim.

11 (d) Commercial automobile liability insurance (equivalent in scope
12 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an
13 amount not less than \$500,000 combined single limit per accident.

14 B. Any self-insurance program, self-insured retention, or
15 deductible must be separately approved in writing by City's Risk Manager or
16 designee and shall protect City, its officials, employees and agents in the same
17 manner and to the same extent as they would have been protected had the policy
18 or policies not contained retention or deductible provisions.

19 C. Each insurance policy shall be endorsed to state that coverage
20 shall not be reduced, non-renewed or canceled except after thirty (30) days prior
21 written notice to City, shall be primary and not contributing to any other insurance
22 or self-insurance maintained by City, and shall be endorsed to state that coverage
23 maintained by City shall be excess to and shall not contribute to insurance or self-
24 insurance maintained by Contractor. Contractor shall notify City in writing within five
25 (5) days after any insurance has been voided by the insurer or cancelled by the
26 insured.

27 D. If this coverage is written on a "claims made" basis, it must
28 provide for an extended reporting period of not less than one hundred eighty (180)

1 days, commencing on the date this Agreement expires or is terminated, unless
2 Contractor guarantees that Contractor will provide to City evidence of uninterrupted,
3 continuing coverage for a period of not less than three (3) years, commencing on
4 the date this Agreement expires or is terminated.

5 E. Contractor shall require that all sub-contractors or contractors
6 that Contractor uses in the performance of these services maintain insurance in
7 compliance with this Section unless otherwise agreed in writing by City's Risk
8 Manager or designee.

9 F. Prior to the start of performance, Contractor shall deliver to City
10 certificates of insurance and the endorsements for approval as to sufficiency and
11 form. In addition, Contractor shall, within thirty (30) days prior to expiration of the
12 insurance, furnish to City certificates of insurance and endorsements evidencing
13 renewal of the insurance. City reserves the right to require complete certified copies
14 of all policies of Contractor and Contractor's sub-Contractors and contractors, at any
15 time. Contractor shall make available to City's Risk Manager or designee all books,
16 records and other information relating to this insurance, during normal business
17 hours.

18 G. Any modification or waiver of these insurance requirements
19 shall only be made with the approval of City's Risk Manager or designee. Not more
20 frequently than once a year, City's Risk Manager or designee may require that
21 Contractor, Contractor's sub-Contractors and contractors change the amount,
22 scope or types of coverages required in this Section if, in his or her sole opinion, the
23 amount, scope or types of coverages are not adequate.

24 H. The procuring or existence of insurance shall not be construed
25 or deemed as a limitation on liability relating to Contractor's performance or as full
26 performance of or compliance with the indemnification provisions of this Agreement.

27 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
28 contemplates the personal services of Contractor and Contractor's employees, and the

1 parties acknowledge that a substantial inducement to City for entering this Agreement was
2 and is the professional reputation and competence of Contractor and Contractor's
3 employees. Contractor shall not assign its rights or delegate its duties under this
4 Agreement, or any interest in this Agreement, or any portion of it, without the prior approval
5 of City, except that Contractor may with the prior approval of the City Manager of City,
6 assign any moneys due or to become due Contractor under this Agreement. Any
7 attempted assignment or delegation shall be void, and any assignee or delegate shall
8 acquire no right or interest by reason of an attempted assignment or delegation.
9 Furthermore, Contractor shall not subcontract any portion of its performance without the
10 prior approval of the City Manager or designee, or substitute an approved sub-Contractor
11 or contractor without approval prior to the substitution. Nothing stated in this Section shall
12 prevent Contractor from employing as many employees as Contractor deems necessary
13 for performance of this Agreement.

14 7. CONFLICT OF INTEREST. Contractor, by executing this Agreement,
15 certifies that, at the time Contractor executes this Agreement and for its duration,
16 Contractor does not and will not perform services for any other client which would create a
17 conflict, whether monetary or otherwise, as between the interests of City and the interests
18 of that other client. And, Contractor shall obtain similar certifications from Contractor's
19 employees, sub-Contractors and contractors.

20 8. MATERIALS. Contractor shall furnish all labor and supervision,
21 supplies, materials, tools, machinery, equipment, appliances, transportation and services
22 necessary to or used in the performance of Contractor's obligations under this Agreement,
23 except as stated in Exhibit "D".

24 9. OWNERSHIP OF DATA. All materials, information and data
25 prepared, developed or assembled by Contractor or furnished to Contractor in connection
26 with this Agreement, including but not limited to documents, estimates, calculations,
27 studies, maps, graphs, charts, computer disks, computer source documentation, samples,
28 models, reports, summaries, drawings, designs, notes, plans, information, material and

1 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,
2 and City shall have the unrestricted right to use and disclose the Data in any manner and
3 for any purpose without payment of further compensation to Contractor. Copies of Data
4 may be retained by Contractor but Contractor warrants that Data shall not be made
5 available to any person or entity for use without the prior approval of City. This warranty
6 shall survive termination of this Agreement for five (5) years.

7 10. TERMINATION. Either party shall have the right to terminate this
8 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
9 prior notice to the other party. In the event of termination under this Section, City shall pay
10 Contractor for services satisfactorily performed and costs incurred up to the effective date
11 of termination for which Contractor has not been previously paid. The procedures for
12 payment in Section 1.B. with regard to invoices shall apply. On the effective date of
13 termination, Contractor shall deliver to City all Data developed or accumulated in the
14 performance of this Agreement, whether in draft or final form, or in process. And,
15 Contractor acknowledges and agrees that City's obligation to make final payment is
16 conditioned on Contractor's delivery of the Data to City.

17 11. CONFIDENTIALITY. Contractor shall keep all Data confidential and
18 shall not disclose the Data or use the Data directly or indirectly, other than in the course of
19 performing its services, during the term of this Agreement and for five (5) years following
20 expiration or termination of this Agreement. In addition, Contractor shall keep confidential
21 all information, whether written, oral or visual, obtained by any means whatsoever in the
22 course of performing its services for the same period of time. Contractor shall not disclose
23 any or all of the Data to any third party, or use it for Contractor's own benefit or the benefit
24 of others except for the purpose of this Agreement.

25 12. BREACH OF CONFIDENTIALITY. Contractor shall not be liable for a
26 breach of confidentiality with respect to Data that: (a) Contractor demonstrates Contractor
27 knew prior to the time City disclosed it; or (b) is or becomes publicly available without
28 breach of this Agreement by Contractor; or (c) a third party who has a right to disclose does

1 so to Contractor without restrictions on further disclosure; or (d) must be disclosed pursuant
2 to subpoena or court order.

3 13. ADDITIONAL SERVICES. The City has the right at any time during
4 the performance of the services, without invalidating this Agreement, to order extra work
5 beyond that specified in the RFP or make changes by altering, adding to or deducting from
6 the work. No extra work may be undertaken unless a written order is first given by the City,
7 incorporating any adjustment in the Agreement Sum, or the time to perform this Agreement.
8 Any increase in compensation of ten percent (10%) or less of the Agreement Sum, or in
9 the time to perform of One Hundred Eighty (180) days or less, may be approved by the
10 City Representative. Any greater increases, taken either separately or cumulatively, must
11 be approved by the City Council. It is expressly understood by Contractor that the
12 provisions of this paragraph do not apply to services specifically set forth in the RFP or
13 reasonably contemplated in the RFP. Contractor acknowledges that it accepts the risk that
14 the services to be provided pursuant to the RFP may be more costly or time consuming
15 than Contractor anticipates and that Contractor will not be entitled to additional
16 compensation for the services set forth in the RFP.

17 14. RETENTION OF FUNDS. Contractor authorizes the City to deduct
18 from any amount payable to Contractor (whether or not arising out of this Agreement) any
19 amounts the payment of which may be in dispute or that are necessary to compensate the
20 City for any losses, costs, liabilities or damages suffered by the City, and all amounts for
21 which the City may be liable to third parties, by reason of Contractor's acts or omissions in
22 performing or failing to perform Contractor's obligations under this Agreement. In the event
23 that any claim is made by a third party, the amount or validity of which is disputed by
24 Contractor, or any indebtedness exists that appears to be the basis for a claim of lien, the
25 City may withhold from any payment due, without liability for interest because of the
26 withholding, an amount sufficient to cover the claim. The failure of the City to exercise the
27 right to deduct or to withhold will not, however, affect the obligations of Contractor to insure,
28 indemnify and protect the City as elsewhere provided in this Agreement.

1 15. AMENDMENT. This Agreement, including all Exhibits, shall not be
2 amended, nor any provision or breach waived, except in writing signed by the parties which
3 expressly refers to this Agreement.

4 16. LAW. This Agreement shall be construed in accordance with the laws
5 of the State of California, and the venue for any legal actions brought by any party with
6 respect to this Agreement shall be the County of Los Angeles, State of California for state
7 actions and the Central District of California for any federal actions. Contractor shall cause
8 all work performed in connection with construction of the Project to be performed in
9 compliance with (1) all applicable laws, ordinances, rules and regulations of federal, state,
10 county or municipal governments or agencies (including, without limitation, all applicable
11 federal and state labor standards, including the prevailing wage provisions of sections 1770
12 *et seq.* of the California Labor Code); and (2) all directions, rules and regulations of any
13 fire marshal, health officer, building inspector, or other officer of every governmental
14 agency now having or hereafter acquiring jurisdiction. If any part of this Agreement is found
15 to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it
16 is in conflict with any applicable laws, but the remainder of the Agreement will remain in full
17 force and effect.

18 17. PREVAILING WAGES.

19 A. Consultant agrees that all public work (as defined in California
20 Labor Code section 1720) performed pursuant to this Agreement (the "Public
21 Work"), if any, shall comply with the requirements of California Labor Code sections
22 1770 *et seq.* City makes no representation or statement that the Project, or any
23 portion thereof, is or is not a "public work" as defined in California Labor Code
24 section 1720.

25 B. In all bid specifications, contracts and subcontracts for any
26 such Public Work, Consultant shall obtain the general prevailing rate of per diem
27 wages and the general prevailing rate for holiday and overtime work in this locality
28 for each craft, classification or type of worker needed to perform the Public Work,

1 and shall include such rates in the bid specifications, contract or subcontract. Such
2 bid specifications, contract or subcontract must contain the following provision: "It
3 shall be mandatory for the contractor to pay not less than the said prevailing rate of
4 wages to all workers employed by the contractor in the execution of this contract.
5 The contractor expressly agrees to comply with the penalty provisions of California
6 Labor Code section 1775 and the payroll record keeping requirements of California
7 Labor Code section 1771."

8 18. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
9 constitutes the entire understanding between the parties and supersedes all other
10 agreements, oral or written, with respect to the subject matter in this Agreement.

11 19. INDEMNITY.

12 A. Consultant shall indemnify, protect and hold harmless City, its
13 Boards, Commissions, and their officials, employees and agents ("Indemnified
14 Parties"), from and against any and all liability, claims, demands, damage, loss,
15 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
16 costs and expenses, arising or alleged to have arisen, in whole or in part, out of or
17 in connection with (1) Consultant's breach or failure to comply with any of its
18 obligations contained in this Agreement, including all applicable federal and state
19 labor requirements including, without limitation, the requirements of California Labor
20 Code section 1770 *et seq.* or (2) negligent or willful acts, errors, omissions or
21 misrepresentations committed by Consultant, its officers, employees, agents,
22 subcontractors, or anyone under Consultant's control, in the performance of work
23 or services under this Agreement (collectively "Claims" or individually "Claim").

24 B. In addition to Consultant's duty to indemnify, Consultant shall
25 have a separate and wholly independent duty to defend Indemnified Parties at
26 Consultant's expense by legal counsel approved by City, from and against all
27 Claims, and shall continue this defense until the Claims are resolved, whether by
28 settlement, judgment or otherwise. No finding or judgment of negligence, fault,

1 breach, or the like on the part of Consultant shall be required for the duty to defend
2 to arise. City shall notify Consultant of any Claim, shall tender the defense of the
3 Claim to Consultant, and shall assist Consultant, as may be reasonably requested,
4 in the defense.

5 C. If a court of competent jurisdiction determines that a Claim was
6 caused by the sole negligence or willful misconduct of Indemnified Parties,
7 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the
8 court determines sole negligence by the Indemnified Parties, or (2) reduced by the
9 percentage of willful misconduct attributed by the court to the Indemnified Parties.

10 D. The provisions of this Section shall survive the expiration or
11 termination of this Agreement.

12 20. FORCE MAJEURE. If any party fails to perform its obligations
13 because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain
14 labor or materials or reasonable substitutes for labor materials, governmental restrictions,
15 governmental regulations, governmental controls, judicial orders, enemy or hostile
16 governmental action, civil commotion, fire or other casualty, or other causes beyond the
17 reasonable control of the party obligated to perform, then that party's performance will be
18 excused for a period equal to the period of such cause for failure to perform.

19 21. AMBIGUITY. In the event of any conflict or ambiguity between this
20 Agreement and any Exhibit, the provisions of this Agreement shall govern.

21 22. NONDISCRIMINATION.

22 A. In connection with performance of this Agreement and subject
23 to applicable rules and regulations, Contractor shall not discriminate against any
24 employee or applicant for employment because of race, religion, national origin,
25 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
26 disability. Contractor shall ensure that applicants are employed, and that employees
27 are treated during their employment, without regard to these bases. These actions
28 shall include, but not be limited to, the following: employment, upgrading, demotion

1 or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay
2 or other forms of compensation; and selection for training, including apprenticeship.

3 23. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
4 accordance with the provisions of the Ordinance, this Agreement is subject to the
5 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
6 Long Beach Municipal Code, as amended from time to time.

7 A. During the performance of this Agreement, the Consultant
8 certifies and represents that the Consultant will comply with the EBO. The
9 Consultant agrees to post the following statement in conspicuous places at its place
10 of business available to employees and applicants for employment:

11 "During the performance of a contract with the City of Long Beach, the
12 Consultant will provide equal benefits to employees with spouses and its
13 employees with domestic partners. Additional information about the City of
14 Long Beach's Equal Benefits Ordinance may be obtained from the City of
15 Long Beach Business Services Division at 562-570-6200."

16 B. The failure of the Consultant to comply with the EBO will be
17 deemed to be a material breach of the Agreement by the City.

18 C. If the Consultant fails to comply with the EBO, the City may
19 cancel, terminate or suspend the Agreement, in whole or in part, and monies due or
20 to become due under the Agreement may be retained by the City. The City may
21 also pursue any and all other remedies at law or in equity for any breach.

22 D. Failure to comply with the EBO may be used as evidence
23 against the Consultant in actions taken pursuant to the provisions of Long Beach
24 Municipal Code 2.93 et seq., Contractor Responsibility.

25 E. If the City determines that the Consultant has set up or used its
26 contracting entity for the purpose of evading the intent of the EBO, the City may
27 terminate the Agreement on behalf of the City. Violation of this provision may be
28 used as evidence against the Consultant in actions taken pursuant to the provisions

1 of Long Beach Municipal Code Section 2.93 et seq., Contractor Responsibility.

2 24. NOTICES. Any notice or approval required by this Agreement shall
3 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
4 postage prepaid, addressed to Contractor at the address first stated above, and to City at
5 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
6 to the City Clerk at the same address. Notice of change of address shall be given in the
7 same manner as stated for other notices. Notice shall be deemed given on the date
8 deposited in the mail or on the date personal delivery is made, whichever occurs first.

9 25. COVENANT AGAINST CONTINGENT FEES. Contractor warrants
10 that Contractor has not employed or retained any entity or person to solicit or obtain this
11 Agreement and that Contractor has not paid or agreed to pay any entity or person any fee,
12 commission or other monies based on or from the award of this Agreement. If Contractor
13 breaches this warranty, City shall have the right to terminate this Agreement immediately
14 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments
15 due under this Agreement or otherwise recover the full amount of the fee, commission or
16 other monies.

17 26. WAIVER. The acceptance of any services or the payment of any
18 money by City shall not operate as a waiver of any provision of this Agreement or of any
19 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
20 Agreement shall not constitute a waiver of any other or subsequent breach of this
21 Agreement.

22 27. CONTINUATION. Termination or expiration of this Agreement shall
23 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
24 18, 21 and 28 prior to termination or expiration of this Agreement.

25 28. TAX REPORTING. As required by federal and state law, City is
26 obligated to and will report the payment of compensation to Contractor on Form 1099-Misc.
27 Contractor shall be solely responsible for payment of all federal and state taxes resulting
28 from payments under this Agreement. Contractor shall submit Contractor's Employer

1 Identification Number (EIN), or Contractor's Social Security Number if Contractor does not
2 have an EIN, in writing to City's Accounts Payable, Department of Financial Management.
3 Contractor acknowledges and agrees that City has no obligation to pay Contractor until
4 Contractor provides one of these numbers.

5 29. ADVERTISING. Contractor shall not use the name of City, its officials
6 or employees in any advertising or solicitation for business or as a reference, without the
7 prior approval of the City Manager or designee.

8 30. AUDIT. City shall have the right at all reasonable times during the
9 term of this Agreement and for a period of five (5) years after termination or expiration of
10 this Agreement to examine, audit, inspect, review, extract information from and copy all
11 books, records, accounts and other documents of Contractor relating to this Agreement.

12 31. THIRD PARTY BENEFICIARY. This Agreement is not intended or
13 designed to or entered for the purpose of creating any benefit or right for any person or
14 entity of any kind that is not a party to this Agreement.

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

3 GRAFFITI PROTECTIVE COATINGS, INC.
4 a California corporation

5 _____, 2016

By [Signature]
Name _____
Title President

7 7/12/16, 2016

By [Signature]
Name STEVEN LOWBOFF
Title SECRETARY

9 "Contractor"

10 CITY OF LONG BEACH, a municipal
11 corporation

12 8/11/16, 2016

By [Signature] EXECUTED PURSUANT
City Manager TO SECTION 301 OF
THE CITY CHARTER.

14 "City" Assistant City Manager

15 This Agreement is approved as to form on July 25, 2016.

17 CHARLES PARKIN, City Attorney

18 By [Signature]
Deputy

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OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664

EXHIBIT “A”

Scope of Work



City of Long Beach
Purchasing Division
333 West Ocean Boulevard, 7th Floor
Long Beach, CA 90802

3. SCOPE OF PROJECT

The services shall consist of providing proactive and reactive professional graffiti removal services throughout the City of Long Beach; specifically high quality workmanship that leaves no traces of past vandalism. The Contractor providing the service shall coordinate work with the appropriate governmental agencies, City staff, private property owners, and/or tenants of properties of the project site(s). For each service call from the community, the Contractor shall complete the requested graffiti removal services within twenty-four (24) hours unless due to inclement weather, size of site, or any other reason, the Contractor shall notify the Project Manager and/or his/her designee with the status of the site prior to the end of the twenty-four (24) hour timeline.

As part of the scope of work for this project, the awarded Contractor shall have both a valid California **C-33 Painting and Decorating License** and a **C-61/D-38 Limited Specialty Classification for Sand and Water Blasting** the time of the proposals being submitted. Contractors shall include a photocopy of the license in the proposal.

I. **SPECIFIC REQUIREMENTS**

Contractor shall:

- a. Remove or paint over all types of graffiti in compliance with all Federal, State, and local laws at locations in the City of Long Beach. Contractor shall provide all labor, materials, and equipment necessary to perform graffiti removal services according to accepted industry standards.
- b. Remove graffiti from public structures, visible right-of-way, including but not limited to:
 - i. Public buildings, monuments, and facilities;
 - ii. Street light poles
 - iii. Traffic signal poles or controller boxes;
 - iv. Concrete structures (i.e. City-owned sidewalks, streets, bridges, overpasses, and flood channel facilities, etc.);
 - v. City-owned utility boxes;
 - vi. Guardrails;
 - vii. Traffic signs (poles and back of signs);
 - viii. Trails
- c. Perform graffiti removal work on private structures. As authorized, remove graffiti from private structures, visible from the right-of-way, including, but not limited to:
 - i. Exterior walls;
 - ii. Fences
 - iii. Sidewalks
 - iv. Windows;
 - v. Trash receptacles;



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- vi. Utility boxes and covers;
- vii. Doors; and
- viii. Flag poles.

Work on private property, as requested by Project Manager and/or his/her designee, may require a Consent form signed by the owner. If required, the Contractor shall obtain the signature of the property owner on the consent form prior to beginning work. When required, original consent forms shall be returned to the Project Manager and/or his designee on a weekly basis and are the property of the City. Consent forms will be provided at the time they are needed, if and when required. The Project Manager and/or his/her designee are the only authorized Requestors for work to be completed on private property.

d. City Parks and Marinas

At the City's discretion, if funded and approved, Proposer will remove graffiti in the Parks not visible from the right-of-way, including, but not limited to:

- i. Restrooms – Interior and Exterior;
- ii. Park Exterior Facilities (snack bars, storage closets, recreation buildings);
- iii. Concrete structures (i.e. sidewalks, paths, bridges, trails);
- iv. Bike Paths;
- v. Walking Paths;
- vi. Bleachers;
- vii. Baseball/Softball Diamonds;
- viii. Trash receptacles;
- ix. Rocks;
- x. Doors;
- xi. Fences;
- xii. Windows;
- xiii. Utility boxes and covers;
- xiv. Signs (poles and back of);
- xv. Playground equipment;
- xvi. Benches, and;
- xvii. Park Trees

The above work will be priced separately from Pricing Section Grand Total Price in **Exhibit 1**.

- e. Unless notified otherwise by the Project Manager and/or his/her designee, graffiti shall be removed so no trace of the pre-existing graffiti remains.
- f. Protect the surfaces adjacent to the area to be abated.



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- g. Abate the entire surface in the event that the graffiti covers a significant area of the surface. The Project Manager or his/her designee shall determine whether or not an entire surface will be abated on a case by case basis.
- h. Ensure protection of the work area at all times, including, but not limited to:
 - i. Barricade the area of work at safe distances, so as to prevent unauthorized access to the area;
 - ii. Barricade area of work within the public right-of-way;
 - iii. Using warning signs and safety cones to inform the public of work being conducted;
 - iv. Immediately correct damage to the work site;
 - v. Leave work site in undamaged condition;
 - vi. Post signage to identify wet paint;
 - vii. Remove all equipment and materials when leaving work each day.
 - viii. Dispose of all packaging, containers and excess materials in accordance with applicable laws, regulations, ordinances, codes, and any other legislative or statutory requirements. Materials rinse residue shall be collected and disposed of appropriately.
- i. Meet with City Project Manager and/or his/her designee when requested at mutually agreed upon dates and times.
- j. Contain and dispose of all sand, water, or other materials used in blasting or pressure washing operations in accordance with local, State, and Federal regulations.
- k. Correct any damage to public or private property as a result of Contractor's operations at the sole expense of the Contractor.
- l. Apply anti-graffiti coatings, as required, by the Project Manager and/or his/her designee.
- m. Conduct operations with least possible obstruction and inconvenience to the public, and barricade no greater area of work than necessary.
- n. Provide and maintain fences, barriers, directional signs, lights, and flag persons as necessary to give adequate warning to the public at all times of any dangerous conditions to be encountered as a result of the work and to give directions to the public. Any road break permits required shall be the responsibility of the Contractor.
- o. Conduct full-time daily proactive surveillance at Contractor's expense.
- p. Working hours shall be no earlier than 6:00 a.m. and no later than 5:00 p.m. On weekends and holidays, the Contractor shall respond to all GO Long Beach mobile phone application and graffiti telephone hotline requests received by 12:00 noon.



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- q. On Weekends and holidays when City Hall is closed, the Contractor shall retrieve and respond to all graffiti telephone hotline requests received by 12:00 noon. On weekends, Contractor will respond to graffiti removal request received between 12:00 noon on Saturdays and 12 noon on Sundays within 24 hours.

City Holidays observed: New Year's Day, Martin Luther King Jr. Birthday, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and following Friday, and Christmas Day.

- r. The Project Manager and/or his/her designee or the Police Department may designate sites as needing an emergency response for profanity and/or hate. An emergency work order will be issued immediately and will have first priority for graffiti removal on the same day, within four hours.
- s. Should the Contractor fail to correct deficiencies or public nuisances that have been created because of their operations, the City will proceed to take corrective measures and this project will be considered an emergency. Such work will be done on a staff account basis with an additional call out charge of \$75.00 for each call out. It should be noted that there is a minimum of a two-hour charge for labor for any call out.

II. WEB BASED WORK ORDER MANAGEMENT SYSTEM

- a. Contractor shall provide a real-time web based work order system for receiving, tracking, and closing work orders which City personnel may access. System must allow multiple photos per work order number. Systems shall be capable of receiving and responding to GO Long Beach mobile application requests.
- b. Work orders shall include:
- i. Location or address;
 - ii. Before and after photos;
 - iii. Date and time of work order creation;
 - iv. Date and time of removal performed;
 - v. Response time in hours;
 - vi. City department;
 - vii. City contact name;
 - viii. Date and time of request;
 - ix. Date and time of work performed;
 - x. Square footage;
 - xi. Surface type;
 - xii. Public or private property;
 - xiii. Brief description of graffiti;
 - xiv. Description of remedy, and
 - xv. Gang tag ID



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- c. Work order system shall include personalized secure client logins, and City personnel may monitor City work orders and projects.
- d. Location shall include a Global Positioning System (GPS) link attached to Google or other commonly used online mapping application.
- e. Web based system must be able to show:
 - i. All work order status;
 - ii. Maps of zones as provided by City;
 - iii. Response time to work orders;
 - iv. Costs by zones;
 - v. Square footage cleaned by zones;
 - vi. Custom graphs and reports to include, but not limited to;
 - vii. Total Locations received from Graffiti Hotline;
 - viii. Total Location received from App
 - ix. Total square footage removed
 - x. Average response time for service calls through Graffiti Hotline/App
 - 1. Same Day Response
 - 2. Within 24 Hours
 - 3. Within 48 Hours
 - 4. Over 48 Hours and/or referred to other Agencies
 - xi. Maps in Google Earth;
 - xii. Provide reports to be used for auditing purposes as requested by the Project Manager and/or his/her designee as mutually agreed upon between Contractor and City of Long Beach.
 - xiii. Provide reports to Project Manager and/or his/her designee on a quarterly basis of Contractor's personnel with access to application (Go Long Beach) and web based work order management system including level of access for each individual.
- f. The City shall have access to this data following completion of the work order for a period of three years. In the case of FEMA cost recovery for any disaster related costs, the City shall have access to this data until case(s) are closed.
- g. All data collected in the database for this project is the property of the City of Long Beach.

III. MOBILE APPLICATION TOOL

- a. Contractor shall provide a mobile application free for City personnel and the general public.
- b. The application shall allow for the submission of photos of graffiti electronically into the Contractor's Work Order System.



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- c. Reporting party shall automatically receive an electronic response with all before and after photos once the work has been completed.
- d. The application shall be available in iOS and Android platforms, including, but not limited to Apple iPhone and Google Android mobile devices.
- e. Mobile requests are to be electronically submitted to work order system and assigned a work order number in real time.
- f. Upon completion, a "Thank You" note with all before and after photos are to be transmitted electronically to the resident's email address.
- g. Responding email must have a feedback link to an electronic survey that allows residents to rate services and response time.
- h. App shall have flexibility to allow reporting of other Public Services Requests at no additional cost to the City.
- i. App must be available on the App Store and Android marketplace at the cost of the Contractor.
- j. App must be a native iOS and Android app, mobile webpages requiring the public's data usage from their browser are not acceptable alternatives.
- k. A web link is to be included that allows residents to submit their requests directly on the City's website.
- l. Contractor must be able to demonstrate all aspects of the web based work order system and mobile app through a working version of the software prior to award of RFP, and must include Smartphone app names and contact information for a minimal of three (3) municipal customers of similar size that have used the Contractor's software for at least 12 months.

IV. DELIVERABLES

- a. A minimum of at least two hundred (200) hours of weekly weekday service by way of work orders, surveillance and necessary abatement will be required as part of the contract for the City. This shall be furnished by providing five (5) trucks with each truck performing forty (40) hours of weekly service during weekdays.
- b. A minimum of at least forty (40) hours of weekly weekday service by way of work orders, surveillance and necessary abatement will be required as part of the contract for Department of Parks, Recreation and Marine. This will be furnished by providing one (1) truck with each truck performing forty (40) hours of weekly service during weekdays.



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- c. In addition, a minimum of eight (8) hours of daily weekend and Holiday surveillance will be required as part of this contract. The surveillance activities will be done at the Contractor's cost.
- d. Contractor(s) shall provide online access to before and after digital photograph files, mapped locations, billing information, etc. in a real-time environment for graffiti removal work done for the City. Digital photographs shall be clearly labeled as public or private, before or after, and with the exact location of the graffiti, and shall reference any work order number associated with the removal. All photographs shall be date and time stamped. All photographs shall show enough of the surrounding area of structure to determine size and location on the facility. Contractor is to provide real-time mapping of all graffiti removal via Google maps or other commonly used mapping.
- e. The Contractor will prepare and submit to each City department or agency a report of surveillance activities performed during the month. This report will provide the following basic information:
 - i. Amount of time spent on surveillance per week;
 - ii. Areas covered in the surveillance;
 - iii. Dates and time that surveillance took place; and
 - iv. Graffiti found and location of the graffiti

V. INVOICING

- a. Contractor shall invoice the requesting department monthly unless otherwise advised, upon satisfactory receipt of product and/or performance of services.
- b. City will use best efforts to make payment within thirty days following receipt and review of invoice and upon complete satisfactory receipt of product and performance of services.
- c. City shall notify Contractor of any adjustments required to invoice.
- d. Invoices shall contain Blanket PO number, invoice number, remit to address and itemized products and/or services description and price as quoted and shall be accompanied by acceptable proof of delivery.
- e. Contractor shall utilize standardized invoice template upon request.
- f. Invoices shall only be issued by Contractor who is awarded a contract.
- g. Payments will be issued to and invoices must be received from the same Contractor whose name is specified on the PO's.



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- h. The City will pay Contractor monthly or as agreed upon, not to exceed the total quoted in the RFP response.
- i. Contractor(s) shall provide a spreadsheet with each month invoice showing the following;
 - i. Showing each location or address serviced;
 - ii. Number of the service request associated with removal if any;
 - iii. Type of removal;
 - iv. Date;
 - v. Notes;
 - vi. Square footage cleaned; and
 - vii. Method of removal

VI. PERFORMANCE REQUIREMENTS

The successful Contractor(s) shall clearly demonstrate ability to:

- a. Receive service requests on a twenty-four (24) hour basis via app, fax, or e-mail;
- b. Prepare surfaces and paint over graffiti with a color matching the existing covering, or remove graffiti with appropriate cleaners, removers, etc.;
- c. Protect surfaces, landscaping, and personal property adjacent to graffiti removal locations;
- d. Properly clean-up work areas, and dispose of paints, chemicals, solvents and cleaning agents utilized in performing the graffiti removal per local, state and Federal regulations; and
- e. Accurately track and report the work location, scope, quantity of work performed, and employment utilization.

VII. ACCOUNT MANAGER / SUPPORT STAFF / WORK TRUCK CREW

- a. Contractor shall provide a dedicated competent account manager who shall be responsible for the City account/contract. The account manager shall receive orders from City and shall be the primary contact for all issues regarding Proposer's response to this RFP and any contract which may arise pursuant to this RFP.
- b. Contractor shall designate one specific truck/individual to oversee and inspect work performed by Contractor's personnel assigned to this contract. The representative shall be immediately available during work activities to receive communications from the Project Manager and/or his/her designee. All Contractor staff shall have a cell phone in order to be contacted by the Project Manager and/or his/her designated staff.



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- c. The Contractor shall utilize only trained, competent employees in the performance of this contract. At the request of the City, the Contractor shall remove from assignment to this contract any incompetent, abusive, or disorderly employee whether supervisory or non-supervisory.
- d. Any person assigned to this contract found to be in possession of and/or under the influence of intoxicants or narcotics shall be removed from assignment to this contract. This person may be subject to arrest and criminal prosecution.
- e. Personnel employed by the Contractor shall be screened and are not to perform services under the contract without prior approval from the Contract Representatives. All employees' performing services must undergo a criminal background investigation by the Long Beach Police Department prior to service under this contract.
- f. Contractor shall also provide adequate, competent support staff that shall be able to service the City during normal working hours, Monday through Friday. Such representative(s) shall be knowledgeable about the contract, products offered and able to identify and resolve quickly any issues including but not limited to order and invoicing problems.
- g. Contractor account manager shall be familiar with City requirements and standards and work with the Project Manager and/or his/her designee to ensure that established standards are adhered to.
- h. Contractor account manager shall keep the City Project Manager informed of requests from departments as required.

VIII. EQUIPMENT

- a. The Contractor's vehicles and equipment shall be neat in appearance and easily identified. Identification of the contractor's vehicles shall consist of, at minimum, company name, local telephone number, and contract services provided by City of Long Beach in print no less than eight (8) inches tall.
- b. The Contractor shall maintain its vehicles and equipment in safe and mechanically sound condition.
- c. The Contractor shall provide all personnel, vehicles, supplies, and equipment necessary to perform services.

EXHIBIT “B”

Rates or Charges

Graffiti Abatement Long Beach

EXHIBIT 1

**CITY OF LONG BEACH
REQUEST FOR PROPOSALS GRAFFITI REMOVAL AND ABATEMENT**

PROPOSER'S CERTIFICATION and PROPOSAL ITEM PRICING

Certification – I certify that I have read, understand, and agree to the terms and conditions of this Request for Proposals. I have examined the Scope of Project and I am familiar with the scope of work locations. I am familiar with all the existing condition and limitation that may impact work requests. I understand and agree that I am responsible for reporting any errors, omissions, or discrepancies to the City for clarification prior to the submission of my proposal.

Proposal Item Price – Pricing shall be based on a unit cost for services described in Scope of Project. Fee must be inclusive of all costs, including but not limited to, direct and indirect costs for labor, overhead, incidental supplies, travel, mileage, and fuel. Any special materials will be purchased by the contractor only after discussed and authorized by the City projects manager or designee in writing.

COST SHALL BE SUBMITTED ON ATTACHMENT F AS IS. NO ALTERATIONS OR CHANGES OF ANY KIND ARE PERMITTED. RFP responses that do not comply will be subject to rejection in total. The cost quoted below shall include all taxes and all other charges, including travel expenses, and is the cost the City will pay for the three-year term of any contract that is a result of this RFP.

- Price increase shall not exceed 2 % during the first renewal period.
- Price increase shall not exceed 2 % during the second renewal period.
- Price increase shall not exceed 2 % during the third renewal period.
- Price increase shall not exceed 2 % during the fourth renewal period.
- Price increase shall not exceed 2 % during the fifth renewal period.

Quantities listed herein are annual estimates based on past usage and are not to be construed as commitment. No minimum or maximum is guaranteed or implied.

Proposer hereby certifies to City that all representations, certifications, and statements made by Proposer, as set forth in this RFP Form and attachments are true and correct and are made under penalty of perjury pursuant to the laws of California.

Graffiti Protective Coatings

EXHIBIT 1

GRAFFITI REMOVAL - CITY		A	B	C	D
Item No.	Description	UNIT	UNIT PRICE	TOTAL WEEKLY	TOTAL ANNUAL PRICE
1	Weekly cost for one truck, for 40 hours per week (8 hours per day), for weekday service to perform proactive graffiti abatement (as outlined in Section I; a, b and c of RFP) for the City of Long Beach (Public Works).	Weekly Weekday for 1 service truck; 40 hours per week	\$ 3,810	B times (x) 5 trucks \$ 19,050	C times (x) 52 weeks \$ 990,600
2	Daily cost per truck for 8 hours a day for weekend (Saturday & Sunday) and Holiday service to perform proactive graffiti abatement (as outlined in Section I; a, b and c of RFP) for the City of Long Beach (Public Works).	Daily Weekend and Holiday for 1 service truck	\$ 800	B times (x) 1 trucks \$ 800	C times (x) 113 days \$ 90,700

PRICING SECTION - GRAND TOTAL PRICE - CITY GRAFFITI ABATEMENT

GRAND TOTAL PRICE (Column C) \$ 19,850

GRAFFITI REMOVAL - CITY PARKS AND MARINAS		A	B	C	D
Item No.	Description	UNIT	UNIT PRICE	TOTAL WEEKLY	TOTAL ANNUAL PRICE
1	Weekly cost per truck, for 40 hours per week, for weekday service to perform proactive graffiti removal in the Parks and Marinas for services as outline in Section I; d in Scope of Project of RFP.	Weekly Weekday for 1 service truck; 40 hours per week	\$ 3,810	B times (x) 1 trucks \$ 3,810	\$ 198,120 ANNUAL C times (x) 12 months \$ 45,720
2	Daily cost per truck for 8 hours a day for weekend (Saturday & Sunday) and Holiday service to perform proactive graffiti removal in the Parks and Marinas for services as outline in Section I; d in Scope of Project of RFP..	Daily Weekend and Holiday for 1 service truck	\$ 800	B times (x) 1 trucks \$ 800	C times (x) 113 days \$ 90,400

PRICING SECTION - GRAND TOTAL PRICE - PARKS & MARINAS GRAFFITI ABATEMENT

GRAND TOTAL PRICE (Column C) \$ 4,610

EXHIBIT 1

GRAFFITI REMOVAL - OTHER DEPARTMENTS		A	B
Item No.	Description	UNIT	UNIT PRICE
1	Hourly rate for weekday service to perform proactive graffiti abatement (as outlined in Section I; a, b and c) for other departments within the City on an as-needed basis.	Hourly <u>Weekday</u> for 1 service truck	\$ 88.00
2	Hourly rate for weekend (Saturday & Sunday) and Holiday service to perform proactive graffiti abatement (as outlined in Section I; a, b and c) for other departments within the City on an as-needed basis.	Hourly <u>Weekend</u> and Holiday for 1 service truck	\$ 108.00

EXHIBIT “C”

City’s Representative:

Arthur Cox, Superintendent

(562) 570-2784

EXHIBIT “D”

Materials/Information Furnished: None