

## AGREEMENT TO PERFORM PROFESSIONAL SERVICES

This agreement for the provision of an operational management and inspection software system ("Agreement") is made and entered in this 8th day of January, 2020 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and PSTrax ("Consultant"). City and Consultant are sometimes individually referred to herein as a "Party" and, together, as the "Parties." In consideration of the mutual promises contained herein, City and Consultant agree as follows:

### ARTICLE 1 – ENGAGEMENT OF CONSULTANT

- 1.1 City hereby engages Consultant to provide an operational management and inspection software system for City's Fire Department (the "Services").
- 1.2 The Services shall be performed by Consultant in a professional manner, and Consultant represents that it has the skill and the professional expertise necessary to provide the Services to City at a level of competency presently maintained by other practicing professional consultants in the industry providing like and similar types of Services.

### ARTICLE 2 – SERVICES OF CONSULTANT

- 2.1 The Services that Consultant shall perform are more particularly described in Exhibit "A," titled "Scope of Services," which is attached hereto and incorporated herein by reference.
- 2.2 Consultant shall comply with applicable federal, state and local laws and regulations in the performance of this Agreement including, but not limited to, State prevailing wage laws.

### ARTICLE 3 – RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Consultant public information in its possession that may assist Consultant in performing the Services.
- 3.2 City designates City's Fire Chief as City's representative with respect to the performance of the Services, and such person shall have the authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to performance of the Services.

### ARTICLE 4 – PERFORMANCE OF SERVICES

- 4.1 The term of this Agreement shall be for a period of five (5) years commencing as of its Effective Date, unless terminated earlier as provided herein.
- 4.2 If Consultant's Services include deliverable electronic visual presentation materials, such materials shall be delivered in a form, and made available to the City, consistent with

City Council adopted policy for the same. It shall be the obligation of Consultant to obtain a copy of such policy from City staff.

#### ARTICLE 5 – PAYMENTS TO CONSULTANT

- 5.1 The compensation for Consultant's performance for the first year of the Service shall not exceed the amount of one thousand fifty dollars (\$1,050) and the annual payment for subsequent years shall not exceed the amount seven hundred dollars (\$700) per consecutive each twelve (12) month period during the term hereof, for a total amount of three thousand eight hundred fifty dollars (\$3,850). City shall pay Consultant in accordance with Exhibit "B," titled "Price Proposal," which is attached hereto and incorporated herein by reference.
- 5.2 Consultant shall submit to City an invoice for the first year of Service to City within twenty (20) days of the Effective Date of this Agreement, and subsequently coinciding with the beginning of any additional one-year terms describing the Services performed. The first invoice will be issued within twenty (20) days after the Effective Date of this Agreement. After the first year of Service, Consultant's invoices shall include the dates the Services that were performed. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant's invoice.
- 5.3 Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the date of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a Party may provide notice in accordance with this section:

City

Jeanne Donaldson  
City Clerk  
City of Redlands  
P.O. Box 3005  
Redlands, CA 92373  
jdonaldson@cityofredlands.org

Consultant

Scott Bergeron  
President  
PSTrax  
7312 Firehorn  
Littleton, CO 80125  
info@pstrax.com

#### ARTICLE 6 – INSURANCE AND INDEMNIFICATION

- 6.1 The following insurance coverage required by this Agreement shall be maintained by Consultant for the duration of its performance of the Services. Consultant shall not perform any Services unless and until the required insurance listed below is obtained by Consultant. Consultant shall provide City with certificates of insurance and endorsements evidencing such insurance prior to commencement of the Services. Insurance policies

shall include a provision prohibiting cancellation or modification of the policy except upon thirty (30) days prior written notice to City.

- A. Workers' Compensation and Employer's Liability insurance in the amount that meets statutory requirements with an insurance carrier acceptable to City, or certification to City that Consultant is self-insured or exempt from the workers' compensation laws of the State of California. Consultant shall execute and provide City with Exhibit "C" titled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference prior to performance of the Services.
  - B. Comprehensive General Liability insurance with carriers acceptable to City in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, for public liability, property damage and personal injury is required. City shall be named as an additional insured and such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
  - C. Consultant is expressly prohibited from assigning or subcontracting any of the Services without the prior written consent of City. In the event of mutual agreement by the Parties to assign or subcontract a portion of the Services, Consultant shall add such assignee or subcontractor as an additional insured to the insurance policies required hereby and provide City with the insurance endorsements prior to any Services being performed by the assignee or subcontractor.
- 6.2 Consultant shall defend, indemnify and hold harmless City and its elected officials, employees and agents from and against any and all claims, losses or liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by any negligent act or omission by, or the willful misconduct of, Consultant, or its officers, employees and agents in performing the Services.

#### ARTICLE 7 – CONFLICTS OF INTEREST

- 7.1 Consultant covenants and represents that it does not have any investment or interest in any real property that may be the subject of this Agreement or any other source of income, interest in real property or investment that would be affected in any manner or degree by the performance of Consultant's Services. Consultant further covenants and represents that in the performance of its duties hereunder, no person having any such interest shall perform any Services under this Agreement.
- 7.2 Consultant agrees it is not a designated employee within the meaning of the Political Reform Act because Consultant:
- A. Does not make a governmental decision whether to:
    - (i) approve a rate, rule or regulation, or adopt or enforce a City law;

- (ii) issue, deny, suspend or revoke any City permit, license, application, certification, approval, order or similar authorization or entitlement;
  - (iii) authorize City to enter into, modify or renew a contract;
  - (iv) grant City approval to a contract that requires City approval and to which City is a party, or to the specifications for such a contract;
  - (v) grant City approval to a plan, design, report, study or similar item;
  - (vi) adopt, or grant City approval of, policies, standards or guidelines for City or for any subdivision thereof.
- B. Does not serve in a staff capacity with City and in that capacity, participate in making a governmental decision or otherwise perform the same or substantially the same duties for City that would otherwise be performed by an individual holding a position specified in City's Conflict of Interest Code under Government Code section 87302.
- 7.3 In the event City determines that Consultant must disclose its financial interests, Consultant shall complete and file a Fair Political Practices Commission Form 700, Statement of Economic Interests, with the City Clerk's office pursuant to the written instructions provided by the City Clerk.

#### ARTICLE 8 – GENERAL CONSIDERATIONS

- 8.1 In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.
- 8.2 Consultant shall not assign any of the Services, except with the prior written approval of City and in strict compliance with the terms and conditions of this Agreement. Any assignment or attempted assignment without such prior written consent may, in the sole discretion of City, result in City's immediate termination of this Agreement.
- 8.3 Consultant is for all purposes under this Agreement an independent contractor and shall perform the Services as an independent contractor. Neither City nor its agents shall have control over the conduct of Consultant or Consultant's employees, except as herein set forth. Consultant shall supply all necessary tools and instrumentalities required to perform the Services. Assigned personnel employed by Consultant are for its account only, and in no event shall Consultant or personnel retained by it be deemed to have been employed by City or engaged by City for the account of, or on behalf of City. Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind City to any obligation.
- 8.4 This Agreement may be terminated by City, in its sole discretion, by providing not less than five (5) days prior written notice to Consultant of City's intent to terminate. If this Agreement is terminated by City, an adjustment to Consultant's compensation shall be

made, but (1) no amount shall be allowed for anticipated profit or unperformed Services, and (2) any payment due Consultant at the time of termination may be adjusted to the extent of any additional costs to City occasioned by any default by Consultant. Upon receipt of a termination notice, Consultant shall immediately discontinue its provision of the Services and, within five (5) days of the date of the termination notice, deliver or otherwise make available to City, copies (in both hard copy and electronic form, where applicable) of project related data, design calculations, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by Consultant in performing the Services. Consultant shall be compensated on a pro-rata basis for Services completed up to the date of termination.

- 8.5 Consultant shall maintain books, ledgers, invoices, accounts and other records and documents evidencing costs and expenses related to the Services for a period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement. Such books shall be available at reasonable times for examination by City at the office of Consultant.
- 8.6 This Agreement, including the Exhibits incorporated herein by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein, and any prior negotiations, written proposals or verbal agreements relating to such matters are superseded by this Agreement. Except as otherwise provided for herein, any amendment to this Agreement shall be in writing, approved by City and signed by City and Consultant.
- 8.7 This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 8.8 If one or more of the sentences, clauses, paragraphs or sections contained in this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate the remaining sentences, clauses, paragraphs or sections contained herein, unless to do so would deprive a Party of a material benefit of its bargain under this Agreement.

IN WITNESS WHEREOF, duly authorized representatives of City and Consultant have signed in confirmation of this Agreement.

CITY OF REDLANDS

By:



Janice McConnell,  
Assistant City Manager

PSTRAX

By:



Scott Bergeron, President

Attest:



Jeanne Donaldson, City Clerk

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

1. **Scope of Work:** PSTrax is responsible for the initial setup and ongoing maintenance of all purchased modules as indicated on the Pricing Proposal (Exhibit "B") of this Agreement. This includes the import of all vehicle, equipment, and inventory inspections provided by City of Redlands into PSTrax, as well as any ongoing adjustments to these inspections upon request. The scope of work is based on "active counts" which means no additional fees will be charged to setup and load new item when they are replacing a retired item. The only time additional fees may apply is when new items are setup and loaded, but no items are retired.
2. **Setup & Build:** PSTrax shall assign a Project Manager to the City of Redlands, whose responsibility is to gather City of Redlands' inspections, discuss specifics related to its checks, and set a timeframe for launch. It is the responsibility of City of Redlands to provide the Project Manager all existing documentation for each inspection it wishes to include. City of Redlands shall have the opportunity to approve the system prior to launch.
3. **Travel:** All builds, trainings, and roll outs are typically done through virtual meetings. However, any travel required are excluded in the pricing provided in the Pricing Proposal (page 1), and shall be billed separately to City of Redlands. Should travel be necessary, PSTrax shall have all travel requests approved in writing by City of Redlands.
4. **Adding additional modules through the year:** Client may add modules at any time through the first year at the same price and setup fees as the last proposal price quoted (if applicable). All modules added can be synced up with existing modules on the anniversary renewal invoice so only one invoice would be issued (client preference).

**EXHIBIT "B"****PRICE PROPOSAL****Pricing Proposal for City of Redlands**

PSTrax is an automated system for operational management and inspection system custom built for City of Redlands. The system has six modules – Vehicle, PPE, SCBA, Station, Narcotics, Assets – that may be purchased independently or bundled together. The software license fee is based on a pre-set term of five (5) years. The setup fee can be split up over the term of the Agreement and includes PSTrax custom building the system to the all-inclusive specs of City of Redlands.

| <b>NARCOTICS<br/>MODULE</b>                                                                                         | <b>SCOPE OF WORK</b> | <b>SOFTWARE LICENSE<br/>FEE</b>    | <b>SETUP FEE</b>           |
|---------------------------------------------------------------------------------------------------------------------|----------------------|------------------------------------|----------------------------|
| Track hand-offs, usage, expiration, electronic signature, and inventory levels for all managed narcotics locations. | <b>7 Locations</b>   | <b>\$ 700</b>                      | <b>\$ 350 One-time Fee</b> |
| <b>SOFTWARE LICENSE AND SETUP FEE</b>                                                                               |                      |                                    |                            |
| <b>TOTAL PRICED</b>                                                                                                 |                      | <b>\$ 3,850</b><br>(U.S. Currency) |                            |

**\*The total payment for the first year shall be \$1050 (\$700+\$350) and the annual payment for subsequent years shall be seven hundred dollars (\$700) per year for a total amount of three thousand eight hundred fifty dollars (\$3,850).**

**EXHIBIT "C"****WORKERS' COMPENSATION INSURANCE CERTIFICATION**

Every employer, except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

CHECK ONE

☒ I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work and activities required or permitted under this Agreement. (Labor Code §1861).

☒ I affirm that at all times, in performing the work and activities required or permitted under this Agreement, I shall not employ any person in any manner such that I become subject to the workers' compensation laws of California. However, at any time, if I employ any person such that I become subject to the workers' compensation laws of California, immediately I shall provide the City with a certificate of consent to self-insure, or a certification of workers' compensation insurance.

I certify under penalty of perjury under the laws of the State of California that the information and representations made in this certificate are true and correct.

PSTrax

Date: 2/10/2020

By:  \_\_\_\_\_  
Scott Bergeron, President