



City of Carson

Report to Mayor and City Council

April 19, 2011
New Business Consent

SUBJECT: CONSIDER APPROVAL OF A ONE-YEAR SOLE SOURCE AGREEMENT WITH GRAFFITI TRACKER INC. FOR PROFESSIONAL GRAFFITI TRACKING SERVICES

Submitted by Raymond R. Cruz
Public Services General Manager

Approved by Clifford W. Graves
Interim City Manager

I. SUMMARY

Staff is requesting that a new sole source professional services agreement (Exhibit No. 1) be approved for Graffiti Tracker, Inc., for a period of one year, from July 1, 2011 through June 30, 2012, based upon the unique experience, qualifications and familiarity with the existing program that is provided by Graffiti Tracker, Inc.

This agreement will continue the city's model graffiti tracking program to apprehend and convict graffiti vandals previously established by federal grant funds in 1999. This program has continued, with funds approved by City Council, since FY 2002/03.

II. RECOMMENDATION

TAKE the following actions:

1. APPROVE the one-year agreement with Graffiti Tracker Inc. to provide professional graffiti tracking services for the city of Carson for the period of July 1, 2011 through June 30, 2012.
2. WAIVE the requirements of Carson Municipal Code Section 2610 (a).
3. AUTHORIZE the Mayor to execute the agreement following approval as to form by the City Attorney.

III. ALTERNATIVES

1. CHOOSE NOT to continue the Graffiti Offender Apprehension Program with the services provided by Graffiti Tracker, Inc.
2. TAKE another action the City Council deems appropriate.

IV. BACKGROUND

This contract before Council will continue the efforts of the city's graffiti program to apprehend and convict graffiti vandals, which was first established by federal grant funds through the Office of Community Oriented Policing Services (COPS) from August 1999 to January 2002. The purpose of the grant was to implement

and measure strategies that assisted graffiti reduction, prevention, and apprehension within the city. Since the expiration of the grant in 2003, City Council has approved a budget every year that has included funding for the Graffiti Offender Apprehension Program by utilizing the Graffiti Tracker, Inc. system.

Staff is specifically requesting that the sole source professional services agreement with Graffiti Tracker, Inc. be approved and to waive the requirements of Section 2610 (a) of the Carson Municipal Code (Exhibit No. 2). This request for approval of a sole source agreement is made based upon the unique qualifications, extensive experience and familiarity with the program and community stakeholders provided by the owner of Graffiti Tracker, Inc., Timothy Kephart. Mr. Kephart has demonstrated his competence and professionalism through his continued strong relationships with city employees, school personnel and the following local law enforcement teams: Community Oriented Policing Services (COPS), Operation Safe Streets (OSS), Gang Enforcement Team (GET), Park Enforcement Team (PET), Gang Task Force, and Community Relations staff.

Mr. Kephart has thoroughly demonstrated his understanding of the specific work required of the city's Graffiti Offender Apprehension Program through his work history as the city's former grant-funded Crime Analyst. He is also the current provider of Graffiti Offender Apprehension Program services. Working closely with the city's Geographic Information System (GIS) staff, he created the graffiti database. Using this program, graffiti incidents are recorded and "geocoded" into this database and are used for mapping and analysis by Mr. Kephart to assist law enforcement in identifying taggers for investigation, prosecution and restitution purposes.

Currently, there were no other firms that provide the same elements or exhibit the track record of success as Graffiti Tracker, Inc. Furthermore, numerous Sheriff sub-stations and city police departments are now using Graffiti Tracker. The city will be able to share graffiti intelligence with other law enforcement agencies, as graffiti taggers routinely cross city boundaries. As Graffiti Tracker, Inc. is the primary provider of software utilized by law enforcement agencies and the company continues to establish contracts with new agencies, the city will be able to share its graffiti intelligence on a larger scale.

As a result of this program, over one hundred graffiti sting operations have been conducted, over forty arrests have been made as a result of those operations, over one hundred graffiti cases have been prosecuted or settled, and over \$48,000.00 in restitution has been ordered by the courts to be paid to the city of Carson. The approval of a new agreement with Graffiti Tracker, Inc. to provide services for the Graffiti Offender Apprehension Program will ensure the continuity of the program and its continued success. The cost of this service for the period of July 1, 2011 through June 30, 2012 is \$19,200.00. This cost represents a twenty per cent

reduction from previous years based on the consideration of Mr. Kephart for the current economic climate and the budget concerns of the city.

V. FISCAL IMPACT

Funds for the Graffiti Offender Apprehension Program are included in the proposed FY 2011/12 budget in account number 01-90-920-120-6005.

VI. EXHIBITS

1. Professional Services Agreement for Graffiti Tracker, Inc. (pgs. 4–14)
2. Carson Municipal Code Section 2610. (pg. 15)

Prepared by: Brent Gesch, Public Safety Administrative Analyst

TO:Rev032811

Reviewed by:

City Clerk	City Treasurer
Administrative Services	Development Services
Economic Development Services <i>Jaquelyn Acosta</i>	Public Services

Action taken by City Council

Date _____ Action _____

PROFESSIONAL SERVICES AGREEMENT

(City of Carson and Graffiti Tracker Inc.)

THIS PROFESSIONAL SERVICES AGREEMENT is effective as of July 1, 2011, by and between the city of Carson, ("City"), 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.

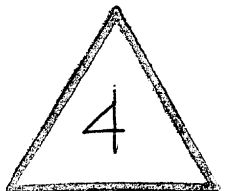
NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained, the parties hereto agree as follows:

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. City 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 City and any federal, state or local governmental agency having jurisdiction in effect at the time service is rendered.



4. **Term of Agreement.** The term of this agreement shall be one year. The term of this Agreement shall commence on July 1, 2011 and shall conclude on June 30, 2012, unless earlier terminated pursuant to Section 15.

5. **Compensation.** City 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 \$19,200.00 for the contract term, unless specifically approved by the City Council.

6. **Ownership of Work Product.** All reports, documents or other written material developed by Contractor in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City.

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 City 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 City.
- b. **Contract Administrator.** The Contract Administrator and City's representative shall be the Public Safety and Community Services Manager of the City of Carson, or in his/her absence, an individual designated in writing by the Contract Administrator. 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 City to the Contract Administrator. Unless otherwise specified herein, any approval of City 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 City. 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 City, a wholly independent contractor. Contractor shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither



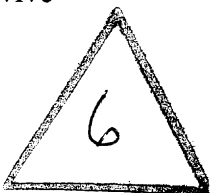
City nor any of its agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. Contractor shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner, employees of City. Contractor agrees to pay all required taxes on amounts paid to Contractor under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City 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 City harmless from any failure of Contractor to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any fees due to Contractor under this Agreement any amount due to City from Contractor as a result of Contractor's failure to promptly pay to City any reimbursement or indemnification arising under this section.

10. Confidentiality. Contractor or employees of Contractor, in the course of their duties, may have access to personal, medical, and other similar information about suspects of the City of Carson. Contractor covenants that all data, documents, discussion, or other information developed or received by Contractor or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Contractor without written authorization by City. City shall grant such authorization if disclosure is required by law. Upon request, all City data shall be returned to City upon the termination of this Agreement. Contractor's covenant under this section shall survive the termination of this Agreement. City 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.

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 City and the Redevelopment Agency ("Agency"), and their respective officers, employees, volunteers, and agents serving as independent contractors in the role of City or Agency officials, (collectively, "Indemnitees"), 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. City does not, and shall not, waive any rights that it may possess against Contractor because of the acceptance by City, or the deposit with City, 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



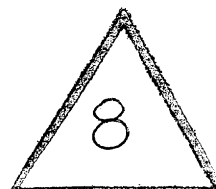
the termination of this Agreement.

13. Insurance.

- a. **Liability Insurance.** Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by Contractor, his/her agents, representatives, employees or subcontractors.
- b. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:
 - (1) Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001).
 - (2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
 - (3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. (Worker's Compensation and Employer's Liability insurance is not required if Contractor certifies that it has no employees.)
- c. **Minimum Limits of Insurance.** Contractor shall maintain limits no less than:
 - (1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this Agreement or the general limit shall be twice the required occurrence limit.
 - (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
 - (3) Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- d. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City's Risk Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its officers, officials, employees and volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- e. **Other Insurance Provisions.** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:



- (1) City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects liability arising out of: activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor, except for professional liability insurance. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents or volunteers.
 - (2) For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
 - (3) Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City, its officers, officials, employees, agents or volunteers.
 - (4) Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - (5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested, has been given to City.
- f. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A, unless waived by City's Risk Manager.
- g. Verification of Coverage. Contractor shall furnish City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by City. All endorsements are to be received and approved by City before work commences. As an alternative to City forms, Contractor's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.



- h. **Subcontractors.** Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

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

15. Termination.

- a. City 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 City, 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 City 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 City, and Contractor shall be paid for services satisfactorily rendered to the last working day this Agreement is in effect.

16. Suspension. City may, in writing, order Contractor to suspend all or any part of Contractor's services under this Agreement for the convenience of City or for work stoppages beyond the control of City or Contractor. Subject to the provisions of this Agreement relating to termination, a suspension of the services does not void this Agreement.

17. 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.

City:

City of Carson
701 E. Carson St.
Carson, CA 90745



Contractor:

Graffiti Tracker Inc.
12165 West Center Rd, Suite 80
Omaha, NE 68144

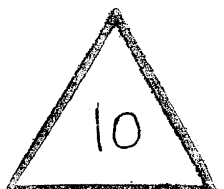
18. Nondiscrimination and Equal Employment Opportunity. In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental 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.

19. 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 City, 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.

20. 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.

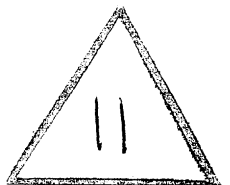
21. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Contractor constitute or be construed as a waiver by City 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 City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

22. 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.



23. 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.

24. Entire Agreement. This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between City 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”

ATTEST:

CITY OF CARSON

By: _____
City Clerk

By: _____
Mayor

Approved as to form:

By: _____
City Attorney

“Contractor”

By: _____
Timothy M. Kephart

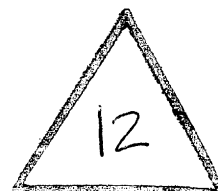


EXHIBIT A

SCOPE OF SERVICES

Contractor shall perform the following services for the City of Carson:

Responsibilities

1. Train designated personnel on how to use GPS cameras.
2. Establish graffiti tracking protocols.
3. Train personnel on how to upload graffiti data to the Graffiti Analysis Intelligence Tracking System (GAITS).
4. Provide access to GAITS to all designated personnel twenty-four hours a day, seven days a week, until contract ends.
5. On a daily basis, graffiti data will be uploaded to the GAITS system from the City of Carson staff. Graffiti Tracker Inc. will be responsible for analyzing all of that data and making the results of that analysis available to the GAITS system.
6. Provide training to all designated personnel (City staff/law enforcement/District Attorney's Office) on how to utilize the GAITS system.
7. Graffiti Tracker Inc. will be responsible for collecting and tracking information relating to arrests of offenders and any restitution made by offenders.

This contract constitutes a lease for access to the Graffiti Analysis Intelligence Tracking System (GAITS). Permission from the Contract Administrator will be required for anyone to have access to this system. Upon permission being granted for access to the system, a username and password will be given to those individuals and they will be granted an "Operator" level access to the GAITS system. This lease will be in effect for the duration of the contract.

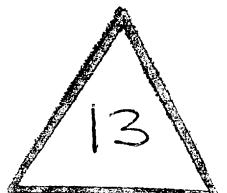


EXHIBIT B
SCHEDULE OF FEES

Contractor will not be required to work on the following ten holidays:

1. January 1 (New Year's Day)
2. The third Monday in January (Dr. Martin Luther King Jr. Day)
3. The third Monday in February (President's Day)
4. March 31st (Cesar Chavez Day)
5. The last Monday in May (Memorial Day)
6. July 4 (Independence Day)
7. The first Monday in September (Labor Day)
8. November 11 (Veteran's Day)
9. The fourth Thursday in November (Thanksgiving Day)
10. December 25 (Christmas Day)

The total contract amount for the twelve-month time period commencing July 1, 2011 and ending June 30, 2012 will be an amount not to exceed \$19,200.00.

Invoices will be submitted on a monthly basis, on or shortly following the first of each month following the completion of the previous month's services, for the months covered by this contract. Payments should be processed and received no later than 30 calendar days from the date invoices are submitted. Monthly invoices will be in the amount of \$1,600.00.



§ 2610 Services.

Procurement of services of an estimated value in the amount of \$25,000 or less may, with the written approval of the City Manager, be made by the Purchasing Manager. Procurement of services of more than \$25,000 shall be approved by the City Council.

(a) Minimum Number of Proposals. Procurement of services of an estimated value of less than \$10,000 shall require at least one (1) written proposal; procurement of services of an estimated value of \$10,000 or more but less than \$25,000 shall require at least two (2) written proposals; and procurement of services of an estimated value of \$25,000 or more shall require at least three (3) written proposals.

(b) Retention of Proposals. Proposals shall be submitted to the Purchasing Manager who shall keep a record of all proposals for a period of two (2) years after submission of proposals. This record, while so kept, shall be open to public inspection, except that proposer proprietary data shall not be open to public inspection except as otherwise required by law. (Ord. 98-1134, § 1; Ord. 00-1216, §§ 8, 9. Formerly 2611)

