

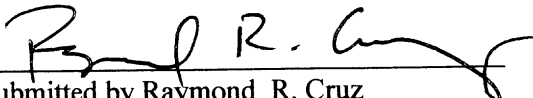


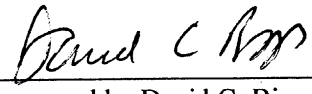
# City of Carson

## Report to Mayor and City Council

March 6, 2012  
New Business Consent

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

  
Submitted by Raymond R. Cruz  
Public Services General Manager

  
Approved by David C. Biggs  
City Manager

### **I. SUMMARY**

Staff is requesting that a new professional services agreement (Exhibit No. 1) be approved with Graffiti Tracker, Inc., for a period of one year, from July 1, 2012 through June 30, 2013. The recommendation is based upon the Sheriff's endorsement and the unique experience, qualifications and familiarity with the existing program that is provided by Graffiti Tracker, Inc.

### **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, 2012 through June 30, 2013.
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 any other 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: 1) the professional services agreement with Graffiti Tracker, Inc. be approved, and 2) the City Council waive the request for proposal requirements of Section 2610 (a) of the Carson Municipal Code (Exhibit No. 2). The request for approval of this 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 local law enforcement teams, such as 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 are no other firms that provide the same elements or exhibit the same 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, 2012, through June 30, 2013 is \$19,200.00. This cost is a continuation of the reduced cost from FY 2011/12 and represents a twenty percent 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 will be included in the proposed FY 2012/13 budget in account number 01-90-920-120-6005. It is anticipated that this contract will be funded by FY 2012/13 operating revenues and is consistent with the sound financial principles outlined in Resolution No. 12-014.

**VI. EXHIBITS**

1. Professional Services Agreement with Graffiti Tracker, Inc. (pgs. 4–12)
2. Carson Municipal Code Section 2610. (pg. 13)

Prepared by: Brent Gesch, Public Safety Administrative Analyst

TO:Rev091911

Reviewed by:

City Clerk	City Treasurer
Administrative Services <i>Jackie Ann</i>	Development Services
Economic Development	Public Services

**Action taken by City Council**

Date \_\_\_\_\_ Action \_\_\_\_\_

## CITY OF CARSON

### CONTRACT SERVICES AGREEMENT FOR GRAFFITI TRACKING SERVICES

This CONTRACT SERVICES AGREEMENT FOR GRAFFITI TRACKING SERVICES ("Agreement") is made and entered into this 1<sup>st</sup> day of July 2012, by and between the City of Carson, a general law city & municipal corporation ("City"), and GRAFFITI TRACKER INC., a California corporation ("Consultant").

NOW, THEREFORE, the parties hereto agree as follows:

#### 1.0 SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, Consultant shall perform the work or services set forth in the "Scope of Services" attached hereto as *Exhibit "A"* and incorporated herein by reference. Consultant warrants that all work or services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as *Exhibit "B"* and incorporated herein by this reference. In the event of a conflict between the provisions of *Exhibit "B"* and any other provisions of this Agreement, the provisions of *Exhibit "B"* shall govern.

1.2 Compliance With Law. All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules and regulations of the City and any federal, state or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Consultant shall obtain, at its sole cost and expense, such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement.

#### 2.0 COMPENSATION

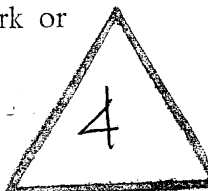
2.1 Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the "Schedule of Compensation" attached hereto as *Exhibit "C"* and incorporated herein by this reference, but not exceeding the maximum contract amount of Nineteen Thousand, Two-Hundred dollars, exactly (19,200.00) ("Contract Sum").

2.2 Method of Payment. Provided that Consultant is not in default under the terms of this Agreement, Consultant shall be paid fee and payment schedule set forth in *Exhibit "C"* to this Agreement.

#### 3.0 COORDINATION OF WORK

3.1 Representative of Consultant. Mr. Timothy M. Kephart is hereby designated as being the representative of Consultant authorized to act on its behalf with respect to the work or services specified herein and make all decisions in connection therewith.

# EXHIBIT NO. 1



3.2 Contract Officer. The City's City Manager is hereby designated as being the representative of the City authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith ("Contract Officer"). The City may designate another Contract Officer by providing written notice to Consultant.

3.3 Prohibition Against Subcontracting or Assignment. Consultant shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

3.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth on *Exhibit "A."* Consultant shall perform all services required herein as an independent contractor of City and shall remain under only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

#### 4.0 INSURANCE AND INDEMNIFICATION

4.1 Insurance. Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

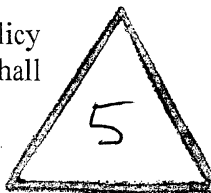
(a) Commercial General Liability Insurance. A policy of commercial general liability insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01, with an edition date prior to 2004, or the exact equivalent. Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits. Limits shall be no less than \$1,000,00.00 per occurrence for all covered losses and no less than \$2,000,000.00 general aggregate.

(b) Workers' Compensation Insurance. A policy of workers' compensation insurance on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses.

(c) Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than \$1,000,000.00 per accident, combined single limit. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability or Error and Omissions Insurance. A policy of errors and omissions insurance in an amount not less than \$1,000,000.00 per claim with respect to loss arising from the actions of Consultant performing professional services hereunder on behalf of the City.

All of the above policies of insurance shall be primary insurance. The general liability policy shall name the City's officers, employees and agents ("City Parties") as additional insureds and shall



waive all rights of subrogation and contribution it may have against the City and the City's Parties and their respective insurers. All of said policies of insurance shall provide that said insurance may be not cancelled without providing ten (10) days prior written notice by registered mail to the City. In the event any of said policies of insurance are cancelled or amended, Consultant shall, prior to the cancellation or amendment date, submit new evidence of insurance in conformance with this Section 4.1 to the Contract Officer. No work or services under this Agreement shall commence until Consultant has provided City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by City.

Consultant agrees that the provisions of this Section 4.1 shall not be construed as limiting in any way the extent to which Consultant may be held responsible for the payment of damages to any persons or property resulting from Consultant's activities or the activities of any person or persons for which Consultant is otherwise responsible.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances.

In the event that the Consultant is authorized to subcontract any portion of the work or services provided pursuant to this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to this Section 4.1.

#### 4.2 Indemnification.

(a) Indemnity for Professional Liability. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and the City's Parties from and against any and all losses, liabilities, damages, costs and expenses, including attorneys' fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subcontractors (or any entity or individual for which Consultant shall bear legal liability) in the performance of professional services under this Agreement.

(b) Indemnity for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City and City's Parties from and against any liability (including liability for claims, suits, actions, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, defense costs and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

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## 5.0 TERM

5.1 Term. Unless earlier terminated in accordance with Section 5.2 below, this Agreement shall continue in full force and effect from and after July 1, 2012 and shall conclude at the close of business on June 30, 2013.

5.2 Termination Prior to Expiration of Term. Either party may terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to the other party. Upon receipt of the notice of termination, the Consultant shall immediately cease all work or services hereunder except as may be specifically approved by the Contract Officer. In the event of termination by the City, Consultant shall be entitled to compensation for all services rendered prior to the effectiveness of the notice of termination and for such additional services specifically authorized by the Contract Officer and City shall be entitled to reimbursement for any compensation paid in excess of the services rendered.

## 6.0 MISCELLANEOUS

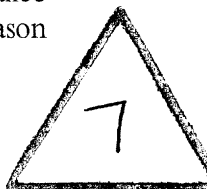
6.1 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through it, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin or ancestry.

6.2 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

6.3 Conflict of Interest. No officer or employee of the City shall have any financial interest in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any state statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement. When requested by the Contract Officer, prior to the City's execution of this Agreement, Consultant shall provide the City with an executed statement of economic interest.

6.4 Notice. Any notice or other communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, City of Carson, 701 East Carson Street, Carson, California 90745, and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement.

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



6.6 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and that this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by a writing signed by both parties.

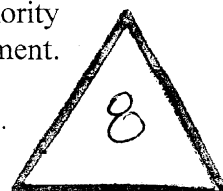
6.7 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

6.8 Waiver. No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

6.9 Attorneys' Fees. If either party to this Agreement is required to initiate, defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to reasonable attorneys' fees, whether or not the matter proceeds to judgment.

6.10 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

6.11 Warranty & Representation of Non-Collusion. No official, officer, or employee of the Authority has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of the Authority participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code §§ 1091 or 1091.5. Consultant warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any Authority official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any Authority official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement.



Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant's Authorized Initials TK

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

**CITY:**  
CITY OF CARSON,  
a municipal corporation

\_\_\_\_\_  
James "Jim" Dear, Mayor

ATTEST:

\_\_\_\_\_  
Wanda Higaki, Chief Deputy City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
William W. Wynder, City Attorney

**CONSULTANT:**  
GRAFFITI TRACKER INC.

By: \_\_\_\_\_

Name: Timothy Kepner  
Title: CEO

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: Graffiti Tracker Inc.  
12165 West Center Rd, Suite 80  
Omaha, NE 68144  
Telephone: 877-678-3872 x4  
Fax: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

[END OF SIGNATURES]

GRAFFITI TRACKER INC.



## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

A.1 Consultant shall perform the following Scope of Services for City:

A.1.1 Train designated personnel on how to use GPS cameras.

A.1.2 Establish to the satisfaction of the Contract Officer graffiti tracking protocols.

A.1.3 Train to the satisfaction of the Contract Officer personnel on how to upload graffiti data to the Graffiti Analysis Intelligence Tracking System ("GAITS").

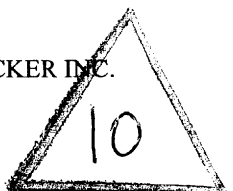
A.1.4 Provide access to GAITS to all designated personnel twenty-four hours a day, seven days a week, until contract ends.

A.1.5 On a daily basis, graffiti data will be uploaded to the GAITS system from the City staff. Consultant shall be responsible for analyzing all of that data and making the results of that analysis available to the GAITS system.

A.1.6 Provide training to the satisfaction of the Contract Officer to all designated personnel (City staff/law enforcement/District Attorney's Office) on how to utilize the GAITS system.

A.1.7 Consultant shall be responsible for collecting and tracking information relating to arrests of offenders and any restitution made by offenders.

A.1.8 It is understood by the parties that Consultant shall grant to City, and its representatives, limited access to the Graffiti Analysis Intelligence Tracking System ("GAITS"). Permission from the Contract Officer will be required for any City representatives to have access to this system. Upon permission being granted for access to GAITS, a username and password will be granted to those representatives of City at the "Operator" level access to the GAITS system. This license for access to the GAITS system will be in effect for the duration of this Agreement.

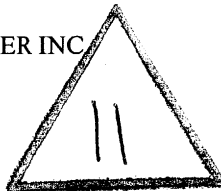


## **EXHIBIT "B"**

### **SPECIAL REQUIREMENTS**

B.1 City hereby waives the requirement of Section 4.1(c) & (d) of this Agreement.

GRAFFITI TRACKER INC.



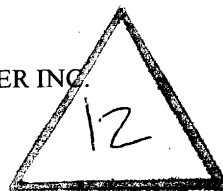
## EXHIBIT "C"

### SCHEDULE OF COMPENSATION

C.1 Consultant shall submit a detailed invoice, on a form approved by the Contract Officer, on a monthly basis, on or before the 5<sup>th</sup> business day following the completion of the previous calendar month's services, for each month for which services are rendered pursuant to this Agreement. City shall, within thirty (30) calendar days, pay such monthly invoices, which will be in an amount not to exceed \$1,600.00 per month.

C.2 Consultant shall not be required to perform services under this Agreement 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)



**§ 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)

**EXHIBIT NO. 2**

