

City of Union Gap Graffiti Removal and Deterrent Services Contract

**CONTRACT BETWEEN CITY OF UNION GAP AND GRAFFITI GONE!
FOR GRAFFITI REMOVAL AND DETERRENT SERVICES**

THIS CONTRACT is made and entered into this 16th day of May, 2008, by and between the City of Union Gap, a Washington municipal corporation, and Graffiti GONE!, a DBA of City Solutions LLC, a Washington limited liability company.

WITNESSETH:

WHEREAS, the City of Union Gap desires to eliminate graffiti in all residential areas and school zones in Union Gap; and

WHEREAS, the majority of graffiti is on unpainted surfaces and sufficient City personnel resources and skills are not available to provide such removal; and

WHEREAS, Graffiti GONE! possesses sufficient skills, resources, technical, and professional expertise necessary to perform the services and/or tasks set forth in this CONTRACT;

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

1) SCOPE OF SERVICES:

- a) Graffiti GONE! shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Graffiti GONE! responsibilities throughout the **“City of Union Gap Graffiti Removal and Deterrent Services Contract”** (hereinafter **“CONTRACT”**).
- b) Graffiti removal services should be provided on all property in Union Gap’s residential areas viewable from city right of way including porous and non-porous surfaces, and the abatement of street signs in residential areas. If the removal or cover of graffiti shall damage the base structure/substrate that removal shall be deemed exempt from this contract. The commercial, retail, industrial properties, and the La Salle school zone are excluded. This Graffiti will be removed within 72 hours of notification from the city.
- c) Graffiti GONE! will supply a 24-hour graffiti removal hotline, manage a dedicated email address **“report@graffiti-gone.com”**, and a web page whereby citizens of Union Gap may report graffiti incidents (hereafter referred to as **“the Graffiti Reporting Methods”**). Graffiti GONE! will monitor the resulting voice/E-Mail messages on a weekly basis. The City of Union Gap or its agent is solely responsible for the publication & distribution of **“the Graffiti Reporting Methods”**
- d) The City of Union Gap or its agent shall be responsible to gather & maintain permission slips from the public, a list of approved abatement properties shall be provided to Graffiti GONE! (hereinafter referred to as **“the approved list”**). Said agent shall provide Graffiti GONE! a list of properties & locations to be abated.

- i) Graffiti GONE! shall make a reasonable effort to find and abate graffiti on its own, provided that property is found on the approved list.
- e) Graffiti GONE! will be required to display a City supplied magnetized sign "**Serving the City of Union Gap**".
- f) Abated Graffiti will be recorded & made available to the police department.
- g) If the removal or cover of graffiti shall damage the base structure it shall be deemed exempt from this CONTRACT.
- h) Reasonable effort will be taken by Graffiti GONE! to secure a Hold Harmless/Permission Slip, from all affected Utility Agency's. The City shall assist this process by providing a letter as to the extent, scope, and urgency of compliance! Removal of graffiti from property owned by Utilities refusing to cooperate is to be excluded from the contract.
- i) Graffiti GONE! shall apply a graffiti repellent upon factory painted surfaces, at its own discretion. All street signs that require graffiti removal shall have said repellent applied following abatement.
- j) The damage to signs, and other abated surfaces, is considered "the course of doing business". Graffiti GONE! is not liable to replace or repair these structures/materials. Graffiti GONE! will however take every precaution not to damage said surfaces.
- k) Graffiti GONE! will be required to display a City supplied magnetized sign "**Serving the City of Union Gap**" provided the sign is of a practicable size.
- l) Abated graffiti will be recorded and made available to the police department.

2) **TERM:**

- a) The term of this CONTRACT shall commence on the date of execution and terminate six (6) months from the date of commencement.

3) **COMPENSATION AND METHOD OF PAYMENT:**

- a) The City shall compensate Graffiti GONE! as follows: The total cost for the CONTRACT shall not exceed Three Thousand Seven Hundred Fifty Dollars (\$3,750.00), not including applicable taxes. Graffiti GONE! shall invoice the city each month for the actual services performed. Any remainder of the \$3,750.00 due and owing at the end of the contract period shall be paid upon completion of the contract. The City shall pay Graffiti GONE! for the work performed each month within one week of receipt of the invoice for that month.
- b) If payment is not received by Graffiti GONE! within one week of receipt of the invoice, the City shall immediately pay to the contractor a monthly late charge equal to five percent (5%) of the amount of such payment or Seventy-five Dollars (\$75.00), whichever is greater. Should the city pay said late charge but fail to pay contemporaneously therewith all unpaid amounts due, the Contractor's acceptance of this late charge shall not constitute a waiver of the City's default with respect to the City's nonpayment nor prevent the Contractor from exercising all other rights and remedies available to the Contractor under this CONTRACT or under the law.
- c) No compensation shall be provided for any service(s) rendered by Graffiti GONE! except for services specifically identified and set forth in this CONTRACT.
- d) Graffiti GONE! reserves the right to suspend or terminate work and this CONTRACT if any unpaid account exceeds thirty (30) days.

- e) Graffiti GONE! shall submit before and after photos, as documentation of work performed.

4) REPRESENTATIONS AND WARRANTIES:

- a) **Materials and Workmanship:** Graffiti GONE! is a professional graffiti removal company with trained and experienced technicians. The materials and services furnished under this CONTRACT will be of reasonably good quality unless otherwise required or permitted. The removal/cover-up of graffiti will attempt to be invisible but do to the nature of the surface and other factors, ie oxidized paint etc., it will not be perfect. Graffiti GONE! will exercise normal and reasonable professional skills to attempt to avoid damaging a surface but on occasion damage could occur. Graffiti GONE! is not liable for damages to surfaces caused during the course of removal/cover-up under this CONTRACT.
- b) **Copyright:** No components or any other element of the CONTRACT infringe or violate any copyright or patent right legally claimed by any person or entity.
- c) **No Finders Fees:** All negotiations relative to this CONTRACT and the transactions contemplated by and under this CONTRACT have been carried on without the intervention of any person whose act or acts would give rise to any valid claim against the City for a finder's fee, brokerage commission, or other like payment.
- d) **Licensing:** Graffiti GONE! shall possess and maintain in good standing throughout the term of this CONTRACT all licensing/certification necessary to legally perform all services provided for in this CONTRACT, including but not limited to applicable state contractor licenses/certifications.
- e) **Warranty:** No Warranty is given.
- f) **Advertizing:** Wherever practicable, the City will make reasonable efforts to include Graffiti GONE!'s name in any such advertisement, brochure, media publicity, catalog or other similar publication in which the "Union Gap's Graffiti Removal CONTRACT" is sited.

5) INDEPENDENT CONTRACTOR RELATIONSHIP:

- a) The parties intend that an independent Graffiti GONE!/City relationship will be created by this CONTRACT. No agent, employee, subcontractor or representative of Graffiti GONE! shall be deemed to be an employee, agent, or representative of the City for any purpose, and the agents, employees, subcontractors or representatives of Graffiti GONE! are not entitled to any of the benefits the City provides for its employees. Graffiti GONE! shall be solely and entirely responsible for its acts and for the acts of its agents, employees, subcontractors or representatives during the performance of this CONTRACT.
- b) In the performance of the services herein contemplated Graffiti GONE! is an independent contractor with the authority to control and direct the performance of the details of the work. However, the results of the work contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory completion thereof.

6) GRAFFITI GONE! EMPLOYEE/AGENTS:

- a) The City may at its sole discretion require Graffiti GONE! to remove an employee(s), agent(s), subcontractors or representative(s) from employment on this Project. Graffiti

GONE! may, however, employ that (those) individuals(s) on other non-City related projects.

- b) It is anticipated that Graffiti GONE! will have within their capacity the resources, personnel, and equipment to manage the level of service required by the city through the duration of the CONTRACT.

7) **HOLD HARMLESS MUTUAL INDEMNIFICATION:**

- a) Graffiti GONE! agrees to indemnify, defend and hold harmless the City of Union Gap and its officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands attributable solely and exclusively to acts or omissions of Graffiti GONE!, and Graffiti GONE!'s officers, agents and employees, in performance of this CONTRACT.
- b) The City of Union Gap agrees to indemnify, defend and hold harmless Graffiti GONE! and its officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands attributable solely and exclusively to acts or omissions of the City, and the City's officers, agents and employees, in performance of this CONTRACT.

8) **INSURANCE:**

- a) Graffiti GONE! shall procure and maintain for the duration of the CONTRACT, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Graffiti GONE!, its agents, representatives, employees, or subcontractors. Graffiti GONE! shall provide a Certificate of Insurance evidencing:
 - i) Commercial Liability Insurance: On or before the date this CONTRACT is fully executed by the parties, Graffiti GONE! shall provide the City with a certificate of insurance as proof of commercial liability insurance with a minimum liability limit of Two Hundred Thousand Dollars (\$200,000.00) per occurrence/aggregate limit bodily injury and property damage. The certificate shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this CONTRACT. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.
 - ii) Commercial Automobile Liability Insurance: On or before the date this CONTRACT is fully executed by the parties, Graffiti GONE! shall provide the City with a certificate of insurance as proof of commercial automobile liability insurance with a minimum liability limit of One Hundred Thousand Dollars (\$100,000.00) per occurrence/aggregate limit bodily injury and property damage. The certificate shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this CONTRACT. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.
 - iii) Insurance Provided by Subcontractors: Graffiti GONE! shall ensure that all subcontractors it utilizes for work/services required under this CONTRACT shall comply with all of the above insurance requirements.

9) REPAIR OR RESTORATION:

- a) Where, in the opinion of the City or Graffiti GONE!, repairs and/or restoration to areas identified in the Scope of Work for this CONTRACT are required for which Graffiti GONE! is not responsible pursuant to the terms of this CONTRACT, the City shall, when reasonably practicable, give Graffiti GONE! the opportunity to accomplish such repairs and/or restoration if a reasonable fee can be agreed upon between the City and Graffiti GONE!. Nothing herein shall obligate the City to make such repairs and/or restoration nor to CONTRACT with Graffiti GONE! to accomplish such repairs and/or restoration. Graffiti GONE! acknowledges that the City is required to comply with applicable competitive bidding practices.

10) COMPLIANCE WITH LAWS:

- a) In the performance of this CONTRACT, Graffiti GONE! shall comply with all applicable federal, state and/or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this CONTRACT to assure quality of services and safety.
- b) Costs must reflect adherence to Federal Davis-Bacon Prevailing wages and/or state labor code prevailing wages, whichever is higher, and will be required of Graffiti GONE!. Graffiti GONE! must provide to the City a manpower worksheet (provided by the City), which lists all positions billed to this CONTRACT. Currently Graffiti GONE! is exempt from the prevailing wage law because it does not have any employees working on this CONTRACT. The work for this CONTRACT will be performed by the three members of the LLC, each owning one-third of the business.
- c) The City agrees to waive all normally applicable municipal fees associated with this graffiti removal CONTRACT.

11) NONDISCRIMINATION:

- a) The City is an equal opportunity employer.
- b) In the performance of this CONTRACT, Graffiti GONE! will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. Graffiti GONE! shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. Graffiti GONE! shall take such action with respect to this CONTRACT as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment. Graffiti GONE! will not discriminate against any recipient of any services or benefits provided for in this CONTRACT on the grounds of race, creed, color, national origin, sex, marital status, age

or the presence of any sensory, mental or physical handicap. Graffiti GONE! shall comply with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (ADA) and its implementing regulations and Washington State's anti-discrimination law as contained in RCW Chapter 49.60 and its implementing regulations with regard to the activities and services provided pursuant to this CONTRACT. The ADA provides comprehensive civil rights to individuals with disabilities in the area of employment, public accommodations, public transportation, state and local government services, and telecommunications.

- c) If any assignment or subcontracting has been authorized in writing by the City, said assignment or subcontract shall include appropriate safeguards against discrimination. Graffiti GONE! shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

12) CHANGES:

- a) Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this CONTRACT shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this CONTRACT.

13) POLITICAL ACTIVITY PROHIBITED:

- i) None of the funds, materials, property or services provided directly or indirectly under the CONTRACT shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

14) PROHIBITED INTEREST:

- a) No elected official, officer, or employee of the City shall have any interest, direct or indirect, in this CONTRACT or the proceeds thereof.

15) TERMINATION:

- a) Either party may terminate this CONTRACT at any time, with or without cause, by providing the other party with written notice of termination ten (10) calendar days prior to the termination date. Graffiti GONE!'s failure to comply with any of the provisions stated herein shall constitute material breach of CONTRACT and cause for immediate termination. Both parties recognize time is of the essence in the performance of the provisions of this CONTRACT. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this CONTRACT does not constitute a waiver of the provisions of this CONTRACT. The City hereby expressly reserves the right to all remedies available in law or equity to enforce the provisions of this CONTRACT, including but not limited to specific performance of the terms of this CONTRACT without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. City's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies not or hereafter existing at law or in equity.

16) NOTICE:

- a) Notice provided for in this CONTRACT shall be sent by certified mail to the addresses designated for the parties on the last page of this CONTRACT.

17) ATTORNEYS FEES AND COSTS:

- a) If any legal proceeding is brought for the enforcement of this CONTRACT, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this CONTRACT, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

18) JURISDICTION AND VENUE:

- a) This CONTRACT has been and shall be construed as having been made and delivered within the state of Washington, and it is agreed by each party hereto that this CONTRACT shall be governed by the laws of the state of Washington, both as to interpretation and performance.
- b) Any action of law, suit in equity, or judicial proceeding for the enforcement of this CONTRACT, or any provisions thereof, shall be instituted and maintained only in the courts of competent jurisdiction in Yakima County, Washington.

19) SEVERABILITY:

- a) If, for any reason, any part, term, or provision of this CONTRACT is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the CONTRACT did not contain the particular provision held to be invalid.
- b) If it should appear that any provision hereof is in conflict with any statutory provision of the state of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform in such statutory provisions.

20) FORCE MAJURE:

- a) If any party to this CONTRACT shall be delayed or prevented from the performance of any act required hereunder by reason of a strike, labor dispute, acts of God or any other cause beyond the reasonable control of such party (financial inability excepted), and such party is otherwise without fault, then performance of such act shall be excused for the period of the delay.

21) ASSIGNMENT:

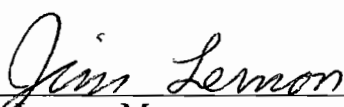
- a) This CONTRACT, or any interest herein or claim hereunder, shall not be assigned or transferred in whole or in part by Graffiti GONE! to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of Graffiti GONE! stated herein.

22) **ENTIRE CONTRACT:**

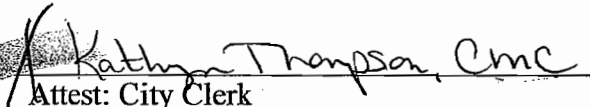
- a) The parties agree that this CONTRACT is the complete expression of the terms hereto and any oral representatives or understandings not incorporated herein are excluded. Further, any modification of this CONTRACT shall be in writing and signed by both parties.

IN WITNESS WHEREOF the parties hereto have caused this CONTRACT to be executed the day and year first hereinabove written.

City of Union Gap Washington
102 West Ahtanum Road
Union Gap, WA 98903

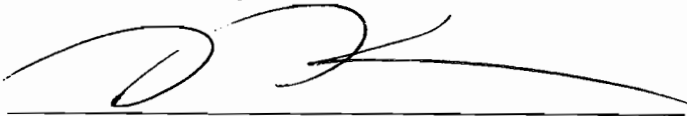
 ^{5-16-08 KT}
~~4-30-08~~

Jim Lemon, Mayor



Attest: City Clerk

City Solutions LLC dba GRAFFITI GONE!
WA Contractor# GRAFFG*935LK
3208 Tacoma Street
Union Gap, WA 98903

Lorene L. Blakely
 ⁵⁻¹⁶⁻⁰⁸

Nathan A. Kwak

Ralph H. Blakely, III

**CITY OF UNION GAP, WASHINGTON
RESOLUTION NO. 712**

A RESOLUTION authorizing the Mayor to enter into a 6-month contract with Graffiti Gone for graffiti removal.

WHEREAS, the City of Union Gap, like other cities in the region, suffers from vandalism to its property, business properties, and private properties, in the form of graffiti;

WHEREAS, it is the desire of the City to combat graffiti and the persons responsible for the graffiti;

WHEREAS, quick removal of graffiti serves to curb and combat the reoccurrence of graffiti;

WHEREAS, Graffiti Gone offers graffiti removal services;

WHEREAS, Graffiti Gone has approached the City with an offer to remove graffiti;

WHEREAS, the City Council desires to enter into a contract with Graffiti Gone for graffiti removal services consistent with its offer;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNION GAP, WASHINGTON, HEREBY RESOLVES as follows:

The Mayor is authorized to enter into a 6-month contract with Graffiti Gone for graffiti removal within the City consistent with the offer made by Graffiti Gone.

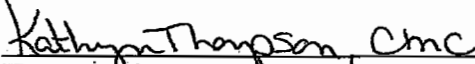
PASSED this 14th day of April 2008.



Jim Lenson
Mayor

ATTEST:

APPROVED AS TO FORM:



Kathryn Thompson, CMC
City Clerk



Robert F. Noe
City Attorney