

**AGREEMENT BETWEEN
THE CITY OF SAN JOSE
AND
GOOD GUARD SECURITY, INC.
FOR SECURITY GUARD SERVICES
FOR THE DEPARTMENT OF TRANSPORTATION**

This Agreement is entered into as of the City’s execution date (“Effective Date”) and is between the City of San José, a municipal corporation (“City”), and Good Guard Security, Inc., a California corporation (hereinafter “Contractor”). Each of City and Contractor are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, City issued a Request for Proposal ("RFP") to acquire Security Guard Services (the “Services”); and

WHEREAS, Contractor has an in depth understanding of City’s requirements through Contractor’s examination of the RFP documents and the exchange of information; and

WHEREAS, Contractor proposed Services in response to the RFP; and

WHEREAS, Contractor warrants that the proposed Services will meet the City’s specifications and requirements as described in the Scope of Services; and

WHEREAS, Contractor’s proposal demonstrates Contractor’s knowledge and expertise with public organizations; and

WHEREAS, the recitals are true and correct and are incorporated into this Agreement;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1 AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of this Agreement including:

- Exhibit A - Scope of Services
- Exhibit B - Compensation
- Exhibit C - Insurance Requirements
- Exhibit D - Change Order Form
- Exhibit E - Notice of Exercise of Option to Extend Agreement
- Exhibit F - Supplemental Work Order Form
- Exhibit G-1 - Wage Requirements and Information
- G-2 - City of San José Classification Determination
- G-3 - Labor Compliance Addendum

In the event any discrepancies or inconsistencies between the provisions of this Agreement and any of the above-referenced documents arise, the provisions of this Agreement will prevail. The provisions in the Exhibits shall prevail over conflicting terms in any Attachments to the Exhibits. Contractor and City hereby acknowledge that they have drafted and negotiated the Agreement jointly and that the Agreement will be construed neither against nor in favor of either, but rather in accordance with its fair meaning.

This Agreement and the Exhibits set forth above, contain all of the agreements, representations, and understandings of the Parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written. Any other terms or conditions included in any shrink-wrap or boot-screen license agreements, quotes, invoices, acknowledgments, bills of lading, or other forms utilized or exchanged by the Parties shall not be incorporated in this Agreement or be binding upon the Parties unless the Parties expressly agree in writing or unless otherwise provided for in this Agreement.

2 TERM OF AGREEMENT

2.1 Term

The term of this Agreement is from Effective Date to March 31, 2024 (“Initial Term”), inclusive, subject to the provisions of Section 12 TERMINATION and subsection 2.2 “Options to Extend.”

2.2 Options to Extend

After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for four additional one-year terms (“Option Periods”) through March 31, 2028. City shall provide Contractor written notice in the form of Exhibit E of its intention to exercise its option prior to the end of the then current term.

2.3 No Waiver

City’s agreement to extend the term of this Agreement is not a waiver of the “time is of the essence” provision in Section 5.

3 SCOPE OF SERVICES

3.1 Scope of Work

Contractor shall perform the Services as set forth in the Scope of Services (the “Scope of Services” or “Scope”) which is attached hereto as Exhibit A and incorporated as though fully set forth herein.

3.2 Notification

Contractor agrees to notify City promptly of any factor, occurrence, or event coming to its attention that may affect Contractor’s ability to meet the requirements of the Agreement or that is likely to occasion any material delay in completion of the projects contemplated by this Agreement. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure.

3.3 Labor Compliance

This Agreement is subject to the City’s Prevailing/Living Wage Policy and the applicable implementing regulations. Contractor shall comply with the provisions of the attached Labor Compliance documentation specified in Exhibits G-1 and G-2, which set forth Contractor’s obligations with regard to this Policy.

4 WAGE THEFT

- 4.1 **Definition:** For purposes of this provision, “Wage Theft” means a final judgement, order, or other determination of a federal or state court, or of a federal, state, or local administrative agency that a contractor or subcontractor failed to pay its workers in accordance with any applicable federal, state, or local wage and hour laws, regulations, or other requirements. A judgement, order, or other determination is “final” if the contractor or subcontractor has exhausted all appeals, and the time period to appeal has expired.
- 4.2 **Compliance with Wage and Hour Laws:** The Contractor must comply with all applicable federal, state, and local wage and hour laws, regulations, and policies, as required by City Council Policy 0-44 <https://www.sanjoseca.gov/home/showdocument?id=12945>. The Contractor must include this requirement in each of its subcontracts.
- 4.3 **Representations in Wage Theft Disclosure Certification Forms:** The City awarded this Agreement to the Contractor, in part, based on the representations made by the Contractor and its listed subcontractors in the Proposal Certification or Wage Theft Disclosure Certification Form that they completed as part of the of procurement process.
- 4.3.1 **Contractor Warranty:** By executing this Agreement, the Contractor affirms the accuracy of the representation it made in its Proposal Certification or Wage Theft Disclosure Certification Form. It is a material breach of this Agreement if the City determines that the Proposal Certification or Wage Theft Disclosure Certification Form contained any material inaccuracies.
- 4.3.2 **Listed Subcontractors:** The Contractor must include in the subcontract of all subcontractors that it listed during the procurement, a provision that does the following:
- 4.3.2.1 Requires the subcontractor to warrant the accuracy of the Proposal Certification or Wage Theft Disclosure Certification Form that it submitted during the procurement of this Agreement, and
- 4.3.2.2 Allows the Contractor to terminate the subcontract if the City or the Contractor determines that the Proposal Certification or Wage Theft Disclosure Certification Form contained any material inaccuracies.
- 4.3.3 **Termination of Subcontractor:** The Contractor must terminate a listed subcontractor if requested by the City based on the subcontractor’s submittal of a materially inaccurate Proposal Certification or Wage Theft Disclosure Certification form.
- 4.4 **Subcontractors Not Listed:** Before contracting with a subcontractor not listed during the procurement process, the Contractor will require the subcontractor to complete a Wage Theft Disclosure Certification Form provided by the City’s Office of Equality Assurance through their website at <https://www.sanjoseca.gov/home/showdocument?id=64354>. The Contractor must provide the completed certification form to the City within 10 calendar days of executing the subcontract.
- 4.4.1 The Contractor cannot use any subcontractor that has one or more Wage Theft violations, or has one outstanding, unpaid Wage Theft violation, within five years before the date it certified the Wage Theft Disclosure Certification Form.

- 4.4.2 The Contractor must include a provision in each subcontract allowing the Contractor to terminate the subcontract based on the subcontractor's submission of a materially inaccurate Wage Theft Disclosure Certification Form. The Contractor must terminate a subcontractor if requested by the City based on the subcontractor's submittal of a materially inaccurate Wage Theft Disclosure Certification Form.
- 4.5 **Occurrence or Discovery of Wage Theft:** The Contractor must notify, in writing, the City's Office of Equality Assurance no more than 15 calendar days after either of the following events: (1) any Wage Theft that occurs during the term of the Agreement involving the Contractor or a subcontractor, and (2) the Contractor becomes aware of Wage Theft by the Contractor or a subcontractor that should have been previously disclosed but was not.
- 4.5.1 **Satisfaction by Contractor:** The Contractor must promptly satisfy and comply with a Wage Theft judgement, order, or other determination against it. The Contractor must provide the City's Office of Equality Assurance with documentary evidence that it satisfied and complied with the Wage Theft judgement, order, or other determination within five calendar days of doing so.
- 4.5.2 **Satisfaction by Subcontractor:** The Contractor must include appropriate provisions in each subcontract requiring the subcontractor to do the following: (a) promptly satisfy and comply with a Wage Theft judgement, order, or other determination against it and (b) provide the Contractor and the City's Office of Equality Assurance with documentary evidence that it satisfied and complied with the Wage Theft judgement, order or other determination within five calendar days of doing so.
- 4.5.3 **City's Right to Withhold Payment:** The City has the right to withhold any moneys owing the Contractor in the amount of the Wage Theft against the Contractor or a subcontractor.
- 4.6 **Material Breach:** Failure to comply with any part of this Section 4 constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.
- 4.7 **Notice:** Notice provided to the Office of Equality Assurance as required under this Section 4 shall be addressed to: Office of Equality Assurance, 200 East Santa Clara Street, 5th Floor, San José, CA 95113. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

5 SCHEDULE OF PERFORMANCE

Contractor shall perform the Services according to the terms and provisions in the Scope of Services. Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

6 DATA AND FACILITIES

Contractor acknowledges that it has in its possession all information and applicable documentation to enable Contractor to fairly determine its ability to perform the work called for herein at the price and in accordance with the schedule set forth herein. Contractor represents that it now has or can readily procure, without assistance of City, all supplies, facilities, equipment, tools, materials, and vehicles necessary for satisfactory performance of the work set forth in this Agreement.

7 STANDARDS OF SERVICE

In connection with the performance of any Services pursuant to this Agreement:

7.1 Number of Employees

Contractor warrants it will provide sufficient employees to complete the Services ordered within the applicable time frames established pursuant to this Agreement. Furthermore, Contractor shall, at its expense, supply all tools, equipment, and other materials necessary to perform the Services contemplated in this Agreement.

7.2 Skill of Employees

Contractor warrants that its employees shall have sufficient skill, knowledge, credentials, and training to perform the Services and that the Services shall be performed in a professional and workmanlike manner.

7.3 Duty of Confidentiality

All data, documents, discussions, or other information developed or received by or for Contractor in the performance of this Agreement are confidential and must not be disclosed to any person except as authorized by the City or as required by law. Contractor warrants that all employees utilized by it in performing the Services herein are under a written obligation to maintain the confidentiality of the information to the extent permitted by law.

7.4 Security and Safety

Contractor shall require employees providing Services at a City location to comply with applicable City security and safety regulations and policies. City may require each employee providing Services to undergo a background investigation, including, but not limited to, a criminal records and fingerprint check. Contractor shall promptly replace any employee found to be unacceptable to City, in its sole discretion, on the basis of a significant infraction found in the background investigation.

7.5 Contractor's Obligations to Employees

Contractor shall provide for and pay the compensation of its employees and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of employees. City shall not be liable to Contractor or to any employee for Contractor's failure to perform its compensation, benefit, or tax obligations. Contractor shall indemnify, defend, and hold City harmless from and against all such taxes, contributions, and benefits and will comply with all associated governmental regulations, including the filing of all necessary reports and returns.

7.6 Contractor-Initiated Staffing Changes

The qualifications of the Contractor's staffing for this Agreement are material considerations to the City's selection and decision to enter into this Agreement. For this reason, the City Project Manager identified in Exhibit A must approve any changes to Contractor assigned personnel prior to removal, replacement, or addition.

7.7 City-Initiated Staffing Changes

The City reserves the right to request replacement of an employee or a proposed employee for reasonable cause, including, but not limited to, willful misconduct, inadequate performance or lack of skill, knowledge, or training. Contractor's replacement staff must be qualified to perform the Scope of Services and available to the City within five working days of receipt of such request from City. If, within the first 30 days after an employee's commencement of Services, City notifies Contractor (1) such employee's level of performance is unacceptable, (2) such employee has failed to perform as

required, or (3) such employee, in City's sole opinion, lacks the skill, knowledge, or training to perform at the required level, then Contractor must review the work performed by said employee, confirm the quality of work, and correct any items the Contractor deems incorrect. If the City requests replacement of an employee and the Contractor has not replaced the employee within the 30-day time period, City shall not be required to pay for, and shall be entitled to a refund of, any sums paid to Contractor for such employee's Services after the date of City's requested replacement of such employee.

8 CHANGE ORDER PROCEDURE AND AUTHORIZATION

8.1 Changes

Any changes to this Agreement after the Effective Date that relate to (i) deleting products or Services, (ii) adding products or Services, (iii) changing or modifying products or Services, or (iv) making other changes that materially alter the Scope of this Agreement or the deliverables required under this Agreement, including approval of all performance and/or payment schedules, shall be made by the Director of Finance in accordance with the procedures set forth below.

8.2 Contract Change Requests

Either Party hereto may, from time to time, and at any time during the term hereof, request a change, as defined in Section 8.1. Requests for changes shall be in writing and shall be addressed and delivered to the other Party as provided herein. Such writing shall be identified as a "Contract Change Request," shall carry a sequential number for ease of tracking, shall set forth in detail the nature of the change requested and the costs associated therewith, and shall identify the products, Services, deliverables, or schedules to be changed.

8.3 Procedures

As soon as practical after receipt by the notified Party of copies of the request, the Parties shall meet as necessary to discuss the change and to ascertain its cost and schedule impacts, if any.

8.4 Change Orders

If the Parties decide to implement a change request, a standard form Change Order ("CO") shall be prepared under the direction of the Director of Finance (or designee) in a form substantially similar to the form attached hereto as Exhibit D, which CO shall describe the change, delineate the cost, schedule, and other impacts of the change, and include the payment terms for any price increase. Only the City's Director of Finance and Contractor's Authorized Representative shall have authority to execute COs to this Agreement. Execution of a CO by City's Director of Finance and Contractor's Authorized Representative shall constitute a modification hereof and shall be binding on both Parties hereto.

9 COMPENSATION

9.1 Contract Maximum

The total contract price in U.S. dollars shall not exceed **One Million Six Hundred Seven Thousand Six Hundred Ninety-Seven Dollars (\$1,607,697)** during the Initial Term ("Maximum Compensation"). The terms, rates, and schedule of payment are set forth in the attached Exhibit B, entitled "Compensation." Contractor shall submit to City invoices at the completion of each milestone, but no more frequently than monthly, with a breakdown of Services as provided in Exhibit B. City will make payments to Contractor within 30 days after the date of approval of each invoice. City will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution.

9.2 Non-Funding

Each payment obligation of City is conditioned upon the availability of state or local government funds which are apportioned or allocated for the payment of such an obligation. If the funds are not allocated and available for the continuance of the function performed by Contractor, the product or service directly or indirectly involved in the performance of that function may be terminated by City at the end of the period for which funds are available. City shall notify Contractor at the earliest possible time of any products or services which will or may be affected by a shortage of funds.

No penalty shall accrue for City in the event this provision is exercised, and City shall not be liable for any future payments due or for any damages as a result of termination under this Section 9.2. This provision shall not be construed so as to permit City to terminate this Agreement or any products or services in order to acquire similar equipment or service from another party. Contractor agrees to render any assistance which City may seek in affecting a transfer of any right of City in this Agreement, or any part hereof, that is required of City pursuant to the securing of financing hereunder. Despite the foregoing, the City shall pay Contractor for any Services performed or product delivered in accordance with this Agreement up to the date of termination.

10 TAXES AND CHARGES

Contractor shall be responsible for payment of all taxes, fees, contributions, or charges applicable to the conduct of Contractor's business.

11 CONTRACTOR REPRESENTATIONS AND WARRANTIES

11.1 Contractor Responsibility

Contractor understands and accepts full responsibility for all requirements and deliverables defined in this Agreement. Contractor warrants it:

- 11.1.1 Has read and agrees with the specifications contained in the Scope of Services (Exhibit A);
- 11.1.2 Fully understands the facilities, difficulties, and restrictions attending performance of the Services; and
- 11.1.3 Agrees to inform the City of any unforeseen conditions which will materially affect performance of the work within 45 days of the execution of this Agreement and shall not proceed until written instructions are received from City.

11.2 Authority to Make Agreement

Contractor represents and warrants that Contractor has full right and authority to perform its obligations under this Agreement.

11.3 Contractor Agreements with City Employees

Contractor agrees to not enter into a relationship that may result in a financial conflict of interest with any employee or agent of the City who participated in the making of governmental decisions related to this Agreement.

11.4 Warranty for Services

Contractor warrants to City that Contractor shall render all Services provided under this Agreement with reasonable care and skill. Additionally, Contractor shall warrant its Services for a period of one year after services are completed ("Warranty Period").

12 TERMINATION

12.1 Termination for Convenience

City shall have the right to terminate this Agreement, without cause, by giving not less than 30 days' written notice of termination.

12.2 Termination for Default

If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

12.3 Termination Authority

The Director of Finance ("Director") is empowered to terminate this Agreement on behalf of City.

12.4 Consequences of Termination

In the event of termination, Contractor shall deliver to City copies of all reports, documents, and other work performed by Contractor under this Agreement, and upon receipt thereof, City shall pay Contractor for services performed and reimbursable expenses incurred to the date of termination.

13 INDEMNIFICATION

Contractor shall defend, indemnify, and hold harmless City, its officers, employees, and agents against any claim, loss, damages, expenses, or liability that - directly or indirectly or in whole or in part – arise out of, pertain to, or result in any way from work performed under this Agreement due to the willful, reckless, or negligent acts (active or passive) or omissions by Contractor's officers, employees, agents, or subcontractors. The acceptance of said Services and duties by City shall not operate as a waiver of such right of indemnification. This provision shall survive the termination of this Agreement.

14 INSURANCE REQUIREMENTS

Contractor agrees to have and maintain the policies set forth in Exhibit C, entitled "Insurance Requirements," which is attached hereto and incorporated herein. All certificates and/or endorsements shall be subject to approval by the Risk Manager of the City of San José as to form and content. These requirements are subject to amendment or waiver if approved in writing by the Risk Manager. Contractor agrees to provide City with a copy of said certificates and/or endorsements before work commences under this Agreement.

15 WAIVER

Contractor agrees that City's waiver of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. City's acceptance of the performance of any of Contractor's services will not be a waiver of any provision of this Agreement.

16 INDEPENDENT CONTRACTOR

Contractor, in the performance of this Agreement, is an independent contractor. Contractor shall maintain complete control over all of Contractor's employees, any subcontracting subcontractors, and Contractor's operations. Neither Contractor nor any person retained by Contractor may represent, act, or purport to act as the agent, representative or employee of City. Neither Contractor nor City is granted any right or authority to assume or create any obligation on behalf of the other.

17 COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws, ordinances, codes, and regulations (collectively, “laws”) of the federal, state, and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

Additionally, Contractor shall comply with applicable Federal requirements as set forth in Exhibit H, entitled “Federal Requirements for Airport” which is attached hereto and incorporated herein.

18 CONFLICT OF INTEREST

Contractor shall avoid all conflict of interest or the appearance of conflict of interest in performance of this Agreement.

19 NONDISCRIMINATION

Contractor agrees that there shall be no discrimination against, or segregation of, any person, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, marital status, or family status, in connection with or related to the performance of this Agreement including each subcontract Contractor enters into in furtherance of the Agreement.

20 GIFTS

20.1 Prohibition on Gifts

Contractor acknowledges that Chapter 12.08 of the San José Municipal Code prohibits City's officers and designated employees from accepting gifts as defined in Chapter 12.08.

20.2 No Offer

Contractor agrees not to offer any City officer or designated employee any gift prohibited by Chapter 12.08.

20.3 Breach of Agreement

Contractor's offer or giving of any gift prohibited by Chapter 12.08 will constitute a material breach of this Agreement. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 12 TERMINATION of this Agreement.

21 DISQUALIFICATION OF FORMER EMPLOYEES

Contractor is familiar with Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance") relating to the disqualification of City's former officers and employees in matters which are connected with their former duties or official responsibilities. Contractor shall not utilize either directly or indirectly any officer, employee, or agent of Contractor to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

22 CONFIDENTIAL AND PROPRIETARY INFORMATION

22.1 Confidentiality

All data and information generated, collected, developed, discovered or otherwise saved exclusively for the City (collectively the “Data”) by the Contractor in the performance of this Agreement are confidential and must not be disclosed to any person except as authorized by City or as required by law.

22.2 Ownership of Work Product

The City owns all rights in and to the following work product (including electronic equivalents) without restriction or limitation on use: reports, drawings, plans, data, software, models, documents, or other materials developed or discovered (collectively "Work Product"). City's ownership rights arise immediately when and as the Work Product is created by the Contractor or any other person engaged by the Contractor in furtherance of the Agreement.

- 22.2.1 Copyright: To the extent permitted by Title 17 of the United States Code, the Work Product is deemed a work for hire and all copyrights in such Work Product are the City's property. If it is ever determined that any Work Product is not a work for hire under United States law, the Contractor hereby assigns to the City all copyrights to such works when and as created.
- 22.2.2 Ownership of Materials: All reports, documents, or other materials developed or discovered by Contractor or any other person engaged directly or indirectly by Contractor to perform Contractor's services are City's property without restriction or limitation upon their use.
- 22.2.3 Contractor's Reuse: With the City's prior written consent, the Contractor can retain and use copies of the Work Product for reference and to document experience and capabilities.

22.3 Enforcement

The City and Contractor agree that damages are not adequate and no adequate remedy at law exists for any threatened or actual disclosure or use of information by Contractor in violation of the provisions of this Agreement. Accordingly, Contractor consents to the entry of an injunction against threatened or actual disclosure or use of the information in violation of any provision of this Agreement.

23 CONTRACTOR'S BOOKS AND RECORDS

23.1 Maintenance during Term

Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of four years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Agreement.

23.2 Maintenance after Term

Contractor shall maintain all documents which demonstrate performance under this Agreement for a minimum period of four years, or for any longer period required by law, from the date of termination or completion of this Agreement.

23.3 Inspection

Any documents required to be maintained pursuant to this Agreement must be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Contractor shall provide copies of such documents to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

23.4 Custody of Records

Where City has reason to believe that any of Contractor's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, City may, by written request by any of the above-named officers, require that custody of the Contractor's

documents be given to City and that these documents be maintained in City Hall. City agrees to grant access to Contractor's documents to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

24 ASSIGNABILITY

The parties agree that the expertise and experience of Contractor are material considerations for this Agreement. Unless specifically authorized by this Agreement, Contractor may not assign the performance of any obligation or interest under this Agreement without the prior written consent of City. Any attempt by Contractor to assign this Agreement, in violation of this Section 24, will be voidable at City's sole option.

25 SUBCONTRACTORS

25.1 Authorized Subcontractors

Notwithstanding Section 24 ASSIGNABILITY, Contractor may use designated subcontractors approved in advance by City in performing Contractor's Services. Contractor must obtain City's prior written consent in order to change or add subcontractors. Contractor shall be responsible for directing the work of the approved subcontractors and for any compensation due to subcontractors. City assumes no responsibility whatsoever concerning such compensation.

25.2 Compliance with Agreement

Contractor shall ensure that Contractor's subcontractors comply with this Agreement. At City's request, Contractor shall require any or all of Contractor's subcontractors to sign an agreement with Contractor requiring compliance with this Agreement.

26 GOVERNING LAW

This Agreement must be construed -- and its performance enforced--under California law.

27 JURISDICTION AND VENUE

In the event that suit is brought by either Party to this Agreement, the Parties agree that venue must be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

Contractor further agrees that in the event a lawsuit involving this Agreement is filed by City, Contractor will unconditionally accept the jurisdiction of a federal or state court located in Santa Clara County, California.

28 NOTICES

28.1 Manner of Giving Notice: All notices and other communications required by this Agreement must be in writing and must be made via e-mail, personal service, trackable delivery service, or United States mail, postage prepaid.

28.2 When Effective: A notice or other communication that is e-mailed is effective when sent provided the sender receives an acknowledgement from the intended recipient (e.g., return receipt, return e-mail, or other written acknowledgement). A notice or other communication that is personally served is effective when personally delivered. A notice or other communication that is delivered by a trackable delivery service is effective when signed for. A notice or other communication that is mailed is effective three business days after deposit in the United States mail.

28.3 To Whom Given: All notices and other communications between the Parties required or permitted to be given under this Agreement must be given to the individuals identified below:

To the City: City of San José
Attention: Director of Finance
200 East Santa Clara St., 13th Floor
San José, CA 95113
purchasing@sanjoseca.gov

To the Contractor: Good Guard Services, Inc.
Attention: Ahmed Elgazery
3031 Tisch Way, Suite 101
San Jose, CA 95128
(800) 651-0491 x 1010
ahmed@goodguardsecurity.com

28.4 Changing Contact Information: Either Party may change its contact information for receiving written notices and communications regarding the Agreement by providing notice of such change to the other Party pursuant to Section 28.

29 OTHER PUBLIC AGENCY PURCHASES

This Agreement resulted from a competitive bid through RFP PUR-RFP2022.02.10017 for Security Guard Services issued on March 30, 2022 pursuant to Chapter 4.12 of the San José Municipal Code. Other local and state government agencies may enter into separate agreement(s) directly with the Contractor based on the same material terms and conditions, and pricing. The local or state government agency shall accept sole responsibility for placing orders, arranging deliveries and/or services, and making payments to the Contractor. The City of San José will not be liable or responsible for any obligations, including but not limited to, financial responsibility in connection with these agreement(s) between the Contractor and other local and state government agency(ies).

30 MISCELLANEOUS

30.1 Survival of Provisions

If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable.

30.2 Assignment

Subject to the provisions of Section 24 ASSIGNABILITY, this Agreement binds and inures to the benefit of the Parties and their respective successors and assigns.

30.3 Headings

The headings of the Sections and Exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

30.4 Counterparts

This Agreement may be executed in any number of counterparts and by each Party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

30.5 Use of Electronic Signatures

Unless otherwise prohibited by law or City policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.

City of San José
a municipal corporation



By Email: luz.cofresi-howe@sanjoseca.gov
Date: 02/26/2023 GMT
Luz Cofresí-Howe
Assistant Director of Finance

Good Guard Security, Inc.
a California corporation



By Email: shawn@goodguardsecurity.com
Date: 02/25/2023 GMT
Shawn Helmandi
Region President

APPROVED AS TO FORM:



Email: johnny.phan@sanjoseca.gov
Date: 02/26/2023 GMT
Johnny V. Phan
Chief Deputy City Attorney



By Email: iesha@goodguardsecurity.com
Date: 02/25/2023 GMT
Iesha Helmandi
Chief Financial Officer

EXHIBIT A SCOPE OF SERVICES

The following Scope of Services defines the principal activities and responsibilities of Contractor and the City for Security Guard Services for the Department of Transportation.

To the extent not inconsistent with the Agreement between the City and Contractor, City’s RFP PUR-RFP2022.02.10017 (including all addenda and updates) issued on March 30, 2022, Contractor’s proposal response dated June 1, 2022, and Contractor’s Best and Final Offer (BAFO) response dated September 29, 2022 are incorporated herein by reference to provide context and supplemental information.

1 PROJECT STAFF

1.1 City’s Project Manager

Name: Arian Collen	Phone No.: 408-975-3246
Department: Transportation	E-mail: arian.collen@sanjoseca.gov
Address: 200 E. Santa Clara Street, 7 th Floor, San Jose CA 95119	

1.2 Contractor’s Project Manager and Other Staffing

Identified below are the Contractor’s project manager and subcontractor(s) and/or employee(s) of the Contractor who will be principally responsible for delivering the work set forth in this Scope of Services.

Contractor’s Project Manager	
Name: Ahmed Elgazery	Phone No.: (800) 651-0491 x 1010
Address: 3031 Tisch Way, Suite 101 San José, CA 95128	E-mail: ahmed@goodguardsecurity.com

2 CONTRACTOR GENERAL REQUIREMENTS

- 2.1 Contractor shall comply with all applicable employee retention requirements set forth in Exhibit G-1 – Wage Requirements and Information and City Council Policy 3-3 (<https://www.sanjoseca.gov/home/showpublisheddocument/12845/636669965245930000>).
- 2.2 Contractor and Contractor personnel shall provide all Services throughout the term of the Agreement in compliance with all applicable federal, state, and local laws and regulations, including licensing, certifications, permits, training, and background clearance requirements, as well as valid credentials for Security Guard Registration (commonly known as a “guard card”) with the Bureau of Security and Investigative Services of the California Department of Consumer Affairs to perform the assigned unarmed and armed Services as applicable.
- 2.3 Credentials must always be in the possession of Contractor’s personnel and must be presented when requested by City representatives or law enforcement. The City reserves the right to inspect, at any time, any Contractor personnel to ensure they are properly attired in uniforms supplied by the Contractor, have all required equipment, and are carrying all credentials (e.g., guard card, certifications, etc.), badges, and/or documentation as required. Contractor shall be

responsible for any applicable fines and/or fees due to non-compliance and shall immediately provide replacement personnel as required for non-complying Contractor personnel.

- 2.4 Contractor is solely responsible for payment of all salaries, social security taxes, federal and state unemployment insurance, workers compensation, and any and all other taxes or other incidental expenses relating to Contractor's employees.
- 2.5 Contractor shall provide, maintain, repair, replace and sanitize (as needed) all equipment and tools (including flashlights, uniforms, personal protective equipment, radios, pagers, cell phones, traffic safety vests, foul weather gear, etc.), materials and supplies (including cleaning supplies, facility access cards, keys, blank report forms, pens, grease pencil/crayon, clipboards, logbooks, etc.), and vehicles (marked and fueled) as required for Contractor personnel to satisfactorily deliver these Services. Contractor shall provide all required items prior to the beginning of each shift.
- 2.6 Contractor shall provide a means of communication between Contractor personnel and designated City staff (e.g., cell phones, radios, etc.) as required.
- 2.7 Contractor personnel shall wear uniforms as provided by the Contractor and approved by the City that uniquely identify the personnel by clearly displaying the Contractor's Logo and/or the word "Security." Contractor-provided uniforms must consist of a top with proper identifying markings, pants, close-toe shoes that are industry standard for non-slip, and an identification badge/name tag that clearly indicates the Contractor name, personnel name, and identification/badge/employee number (if applicable). If jackets, sweaters, or other similar are worn, they must coordinate with the uniform and clearly bear the same identifying marks and information. Contractor shall ensure personnel have access to and/or are provided with replacement uniforms as needed.
- 2.8 Contractor is solely responsible for any loss or damage to equipment, tools, and materials owned or provided by Contractor or operated by Contractor's agents, personnel, or employees.
- 2.9 Contractor and Contractor's agents, personnel, and/or employees shall not communicate with the media or any organization outside of the City regarding any items related the Services without the express prior written permission of City.
- 2.10 Contractor shall assign a Contractor Project Manager to manage Services as specified herein, including escalation management as applicable.
- 2.11 Contractor Project Manager's (and/or designated Contractor supervising personnel where applicable) responsibilities shall include, but are not limited to:
 - 2.11.1 Serve as the contact person for the City in the administration of this Agreement and attend regular meetings with City personnel as required by each department;
 - 2.11.2 Be available to respond to City inquiries during designated Service hours;
 - 2.11.3 Administer Contractor's training program;
 - 2.11.4 Effectively supervise Contractor security guards and administer personnel duties, such as hiring, firings, assignments, timekeeping/payroll, quality standards, employee evaluations, and make changes to schedules, as needed, to compensate for scheduled and unscheduled absences;
 - 2.11.5 Review, verify, and approve all personnel reports to ensure completeness/accuracy and that they have been signed off on by the appropriate supervisory staff. Reports shall be turned in to the City within 24 hours (or the next business day) after completion of each shift;

- 2.11.6 Ensure that each daily activity report includes, at minimum, reporting personnel name, assignment, equipment check, date/time/facility/location, break start/end times, vehicle start and end mileage (if applicable), customer interactions, deficiencies with City facilities (i.e., malfunctioning/broken lights, doors, windows, etc.), related incident report/case numbers and descriptions of patrol activities. Contractor shall record each hourly communication between personnel and supervisors on the daily activity report;
 - 2.11.7 Ensure that each security incident report includes, at a minimum, date/time/facility, descriptions of the incident and all actions taken, time and identity of City staff contacted, and any other relevant information (i.e., license plate numbers, names, phone numbers, witness statements, locations, police case numbers, etc.);
 - 2.11.8 Review all security operations under this Agreement and make any recommendations for improvements to the City's Project Manager in person or in writing;
 - 2.11.9 Have a working knowledge of Contractor's organization, training, and additional resources that may be available to the City;
 - 2.11.10 Ensure Contractor personnel adherence to all post orders, policies, procedures, protocols, communications, standards, and requirements listed herein; and
 - 2.11.11 Conduct quality assurance audits and provide monthly management reports to City, the contents of which shall be as determined by the City Project Manager.
- 2.12 The City will work with the Contractor Project Manager to develop post orders for every post to which Contractor personnel are assigned. Post orders will describe the duties and responsibilities for each security post and may be revised by the City from time to time as required. Post orders are considered sensitive security information per the Code of Federal Regulations (CFR) 1520 and will only be disclosed to Contractor prior to beginning services.
 - 2.13 Contractor shall prepare and provide to City security incident reports for all crimes committed in assigned locations, medical aid calls when advanced medical aid needs to be summoned or any injury where the City may be considered liable, and any irregular or suspicious activity which needs to be documented outside the daily activity report.
 - 2.14 Contractor shall prepare activity reports, e.g., inspection logs, training records, logbooks, warning forms, accidents, incidents, safety inspections, safety violations, etc., as requested by the City. Some reports may be deemed confidential by the City and must be treated by Contractor as such.
 - 2.15 Contractor shall maintain a centralized repository (e.g., binder or similar) of all current post orders, reports, and process documentation as applicable and required, and this information shall be available for inspection and/or audit by the City at any time without prior notice and prior to making payment for the Services rendered.
 - 2.16 Contractor shall maintain all audit data and management reports for the duration of the Agreement and four years after termination. The City reserves the right to request this information at any time, and Contractor must provide within 48 hours of City's request.
 - 2.17 Contractor shall direct and maintain adequate staffing to execute assigned duties in the manner and time required by these specifications and all post orders.
 - 2.18 Contractor shall provide to City a weekly schedule no less than seven calendar days in advance demonstrating complete Services coverage.

- 2.19 With 24-hour advance notice to Contractor by City, Contractor shall have available for assignment additional Contractor personnel sufficient to cover the requested additional Services such as special events or additional staff for current assignments, as well as all continue to provide the regular Services and assignments already in place.
- 2.20 Contractor shall also make available additional staff as requested by City for urgent or emergency situations. In these cases, the City shall endeavor to provide Contractor with as much advance notice as possible.
- 2.21 No additional charges or overtime will be assessed beyond the base rate for the additional Services to the City unless approved by the City in advance.
- 2.22 Contractor shall manage and institute all staffing adjustments as required by the City to meet various needs, including, but not limited to, daily security/safety requirement changes, seasonal demands, and budgetary changes.
- 2.23 Contractor shall direct and control the work of its employees, including applicable disciplinary measures and incentives as required.
- 2.24 Contractor shall have, maintain, and use an automated guard tour reporting and verification system, at no additional cost to the City. The system shall log hours and locations of assigned Contractor personnel to ensure compliance with post orders and other requirements. The system must be fully and properly operational as Service commences and throughout the term of the Agreement. In the event of technical issues with the system, phone calls to the City's Project Manager (or delegate) to report arrivals and departures may be used on a limited basis.
- 2.25 Contractor shall ensure a physical presence of Contractor personnel at all times to visually demonstrate that City facilities are safe and secure. No gaps in coverage are permissible unless specified in writing by the City. All relief staff required to ensure continual coverage of required areas shall be included in the basic hourly rate and will not be reimbursable as separate positions.
- 2.26 Contractor shall have established comprehensive standards for its personnel in maintaining professional conduct and a neat personal appearance.
- 2.27 The City reserves the right to request replacement of Contractor's personnel who have not complied with City's requirements as specified herein. Contractor shall provide replacement Contractor personnel within seven calendar days of City's request.
- 2.28 Contractor shall ensure that all assigned Contractor personnel:
 - 2.28.1 Quickly assess situations and exercise sound judgment to immediately render appropriate responses under stressful and emergency conditions and can proactively address other issues, questions, and situations as required;
 - 2.28.2 De-escalate situations as required to defuse disruptive situations and/or persons in a professional manner and contact appropriate City staff;
 - 2.28.3 Immediately call 911 if emergency conditions are present or if there is evidence of a crime;
 - 2.28.4 Immediately notify City staff of emergencies, conflicts, or issues and clearly communicate what actions were taken to respond and/or resolve these incidents as they occurred in the field;
 - 2.28.5 Manage multiple priorities simultaneously;
 - 2.28.6 Possess good communication skills in English, both oral and written;

- 2.28.7 Provide legible, complete, and accurately written daily activity reports;
- 2.28.8 Can bend, squat, twist, kneel, walk three miles, navigate stairwells, consistently lift 30 pounds throughout an eight-hour period, and are in good physical condition;
- 2.28.9 Are alert, attentive, and professional in conduct, behavior, and attitude;
- 2.28.10 Take orders, follow instructions, and assume responsibility for their actions;
- 2.28.11 Do not use personal devices (such as cell phones and other Bluetooth devices), socialize, conduct personal business, or eat while on duty;
- 2.28.12 Do not use tobacco products, illegal drugs, alcohol, vape, or smoke on City premises, within 25 feet of City property, or other designated areas;
- 2.28.13 Provide general directions and information to customers (including City employees, City tenants/vendors, law enforcement, the public, and others) in a professional, courteous, and helpful manner;
- 2.28.14 Are outgoing and focused on providing excellent customer service as a critical part of their security function;
- 2.28.15 Are well-groomed, neat in appearance, and have good personal hygiene;
- 2.28.16 Wear an approved uniform that is clean, pressed, neat, and free from tears, holes, frayed edges, and body odor at all times while on duty; and
- 2.28.17 Shall not share, discuss, or otherwise disclose their duty assignments or other sensitive security information with anyone unless there is an official need to know.
- 2.28.18 Contractor Recruitment Requirements:
 - 2.28.18.1 Contractor shall have an established comprehensive personnel recruitment program for new and replacement Contractor personnel, such as interview/test procedures, background checks (by type and degree), physical exams, psychological tests, drug testing, education, and work experience verification, etc. as required to provide the Services.
 - 2.28.18.2 Contractor recruitment processes must be documented and available to the City upon request in electronic format.
 - 2.28.18.3 Contractor personnel may be required to submit to additional background checks to meet security access requirements for individual City Departments.
- 2.28.19 Contractor Training Requirements:
 - 2.28.19.1 Contractor shall have an established, comprehensive personnel training program to be completed by all personnel prior to performance of the Services to ensure that all assigned personnel are competent to perform the required Services.
 - 2.28.19.2 Contractor training programs shall include, at a minimum, the following:
 - Workplace safety;
 - Material safety data sheets;
 - California Occupational Safety and Health Administration regulations;

- Training required to obtain and maintain a Security Guard Registration with the Bureau of Security and Investigative Services;
 - Proper use of any required personal protective equipment; and
 - All other applicable safety regulations.
- 2.28.19.3 All employees or agents of Contractor shall be fully trained and qualified to perform the Services in a satisfactory manner.
- 2.28.19.4 Contractor personnel assigned to provide armed guard Services if requested by City shall complete all training and certifications as required by law.
- 2.28.19.5 Additional training for Contractor personnel may be required, at the City's sole discretion.
- 2.28.19.6 Upon request, Contractor shall provide the City a report in electronic format showing the training completed for Contractor personnel assigned to the City.
- 2.28.19.7 The City reserves the right to observe and audit training classes.

3 DEPARTMENT OF TRANSPORTATION (DOT) SPECIFIC REQUIREMENTS

In addition to the General Requirements specified in Section 2, the following additional requirements are specific to the Department of Transportation (DOT).

3.1 General Information and Requirements:

- 3.1.1 Contractor shall ensure less potential exposure to liability and damage as measured by no increase in claims to the City arising out of incidents occurring in City parking facilities.
- 3.1.2 Contractor personnel shall assist the City's parking compliance unit with addressing the significant number of requests for parking compliance services received on an annual basis.
- 3.1.3 Assigned Contractor personnel shall be dedicated to providing Services for DOT properties and therefore shall not service other accounts unless outside of DOT Service hours.
- 3.1.4 Contractor personnel shall facilitate, and lawfully substantiate, proper follow up and potential parking enforcement actions taken by City staff including citation issuance, warning and/or removal of vehicles. Contractor shall ensure accurate and complete documentation of action taken by City and/or Contractor personnel.
- 3.1.5 Contractor shall ensure all Contractor personnel have a copy of the City key contact list.
- 3.1.6 Contractor shall provide Contractor personnel to perform vehicle patrol Services as specified herein and shall provide each assigned vehicle patrol with their own vehicle meeting the following requirements:
- 3.1.6.1 Clearly marked patrol units using only newer model vehicles (within five years), in good, operating condition. Vehicles which have over 150,000 miles or five years of age will be considered unacceptable.

- 3.1.6.2 All Contractor vehicles must be equipped with amber hazard lights, GPS navigation. Vehicles deployed to do traditional security work in the City's parking facilities (excluding VA) must also be equipped with a PA system and spotlights.
 - 3.1.6.3 The City reserves the right to change patrol vehicle signage and markings. Any additional cost for re-marking vehicles will be reimbursed by the City.
 - 3.1.7 The City shall provide safety traffic vests and iPads to assigned Contractor personnel which will include software and access to City systems required to provide the Services.
 - 3.1.8 Contractor shall ensure Contractor personnel have an individual and unique Contractor email address (e.g., using Contractor domain address) that will be utilized to facilitate user account set up and access to the City's vehicle abatement service request system.
 - 3.1.9 Contractor shall ensure that all Contractor personnel operate vehicles in accordance with DOT and parking compliance unit regulations, policies, and procedures
 - 3.2 **Specific Services Requirements:**
 - 3.2.1 Contractor shall provide Services at the parking garage facilities and surface lots listed below, or as may be adjusted by City:
 - 3.2.1.1 Market/San Pedro Garage – 1386 parking spaces
 - 3.2.1.2 Third Street Garage – 836 parking spaces
 - 3.2.1.3 Second/San Carlos Garage – 503 parking spaces
 - 3.2.1.4 Fourth Street & San Fernando Garage – 745 parking spaces
 - 3.2.1.5 Fourth Street & St. John Garage (Employee Garage) – 1,113 parking spaces
 - 3.2.1.6 Convention Center Garage, 150 West San Carlos Street – 1,140 parking spaces.
 - 3.2.1.7 Almaden/Woz Parking Lot, 282 Almaden Blvd – 390 spaces
 - 3.2.1.8 Woz/87 Parking Lot, 180 Woz Way – 267 spaces
 - 3.2.1.9 South Hall Lot, 435 S Market Street – 155 spaces
 - 3.2.1.10 I-280 Parking Lot, 630 South First Street – 113 spaces
 - 3.2.1.11 Third & Santa Clara Street Garage (Globe), 25 S Third Street – 67 spaces
- Note: Additional information on individual parking properties can be found at <https://parksj.org/>.
- 3.2.2 City has one parking security office located at the 4th & St. John Street Garage that will be provided to Contractor for use. City will provide the power utilities to the parking office with exception of phone and internet services. Phone and internet services may be activated at Contractor's expense (including any installation and monthly fees) upon written approval by the City.

- 3.2.3 Contractor shall have one onsite supervisor per shift responsible for scheduling, field checks and other support as needed. At a minimum, the onsite supervisor shall conduct four field-checks, making in-person contact with all Contractor personnel per shift, and respond to Contractor personnel requests for assistance in person or by phone as appropriate within five minutes of request.
- 3.2.4 Contractor shall ensure assigned Contractor personnel abide by the following standard operating procedures:
 - 3.2.4.1 At the start and end of each shift, Contractor personnel shall report to the 4th & St. John Street Garage security office for briefing/debriefing and equipment and vehicle pick-up/drop-off. Contractor personnel shall report to their scheduled location or patrol route immediately after briefing.
 - 3.2.4.2 During briefing/debriefing, Contractor personnel shall review and analyze the logbook of the previous shift to see what happened, which actions need to be taken and any special instructions.
 - 3.2.4.3 Contractor personnel shall perform data entry in real time using City-supplied iPads to the City's vehicle abatement service request system. Contractor personnel shall immediately notify City staff if real time data entry is not possible due to Wi-Fi/internet or other service disruptions and shall manually document necessary information as an attachment to the daily activity report so that City can manually enter at a later date.
 - 3.2.4.4 Contractor personnel shall wear City-provided traffic safety vests at all times while on duty.
- 3.2.5 Contractor personnel shall make regular hourly patrols, using random patrol patterns, of assigned locations. Patrol shall include all areas at the assigned location including the exterior perimeter, parking aisles and spaces, stairwells, public restrooms, lobbies, basements or anywhere that a person could hide or sleep. During parking facility patrols, Contractor personnel shall:
 - 3.2.5.1 Observe and report any loitering, abandoned vehicles, sleeping persons, burnt out lights, problems with revenue control equipment, offensive odors/litter, or any other facility deficiencies and/or suspicious behavior.
 - 3.2.5.2 Report any City facility and equipment malfunctions, problems, safety, and/or maintenance concerns to the City staff.
 - 3.2.5.3 Check in with designated City parking operator staff, if applicable, to assist with any problems or concerns. It may be required to help parking operator staff including but not limited to directing traffic and emergency situations.
 - 3.2.5.4 Contractor personnel shall engage/greet visitors in each parking facility or lot; if they linger in the parking facility or lot, Contractor personnel shall inquire whether they need assistance and, if necessary, escort them off the property.
 - 3.2.5.5 Contractor personnel shall engage any persons sleeping in the parking facility or lot to inform them that this behavior is prohibited and escort them from the premises or, in the case of a non-cooperative or repeat offender, contact law enforcement.

- 3.2.5.6 Contractor personnel shall engage persons urinating or defecating in the parking facility or lot and inform them that this behavior must cease immediately, is unacceptable, illegal, and subject to citation. In the case of a non-cooperative or repeat offender, Contractor personnel shall immediately contact law enforcement.
- 3.2.5.7 After fully checking a facility or lot, Contractor personnel shall document observations/actions taken and proceed to the next assignment.
- 3.2.6 During regular patrols, Contractor personnel shall provide vehicle abatement services at designated locations as assigned by the City. Contractor shall be staffed appropriately to ensure continual coverage of vehicle abatement services in the event of no-shows, sick, etc. In performance of these Services, Contractor personnel shall:
 - 3.2.6.1 Locate, identify, and thoroughly document the status of vehicles potentially stored, abandoned, inoperative or otherwise non-compliant with California Vehicle Code and/or City Municipal Code.
 - 3.2.6.2 Follow first visit/first mark protocols established by the City for any potentially non-compliant vehicles including leaving written warnings for possible parking violations, documenting the position of the vehicle's tire valve stems, writing the date/time of the inspection, and drawing tire-to-ground markings using Contractor-supplied grease pen/crayon/chalk.
 - 3.2.6.3 Document any action taken and the status of the vehicle on both the daily activity report and the City's vehicle abatement service request system.
 - 3.2.6.4 NOT take or attempt to take enforcement action of any kind including towing and/or citing vehicles.
 - 3.2.6.5 Close out the associated vehicle abatement service request as appropriate when unable to locate a vehicle.
 - 3.2.6.6 Provide information if approached by a member of the public on the City's vehicle abatement and other programs, and if appropriate, provide information on how to submit a vehicle abatement service request.
 - 3.2.6.7 Efficiently and accurately complete entry of information into the vehicle abatement services request system which serves as the City's official record and legal evidence should the vehicle receive enforcement action at a later date.
 - 3.2.6.8 Comply with quarterly accuracy audits conducted by Contractor and submitted to the City to ensure vehicles are being located and appropriate action is being taken and documented. Contractor and all Contractor personnel shall participate in accuracy, efficiency and productivity audits conducted by the City as required.
- 3.2.7 In addition to regular patrols, Contractor personnel shall:
 - 3.2.7.1 Respond within 15 minutes to calls for assistance (i.e., noise complaints, trespassing, loitering, public drinking, homeless, parking violations, and

general public safety.) Response times outside this 15-minute parameter may be subject to liquidated damages.

- 3.2.7.2 Perform light traffic control duties in City parking facilities or lots for large special events downtown, as required. For example, this will include the Market Street Garage egress after San José Sharks games when over 500 vehicles will exit the facility in a 30-minute period.
- 3.2.7.3 Respond to emergencies and intervene when appropriate and immediately contact the proper authorities as needed.

3.3 Training and Knowledge Requirements:

Contractor's personnel shall take and pass DOT-required training and certifications and demonstrate knowledge in the specified areas before beginning assigned duties. These requirements must be met at Contractor's expense (i.e., Contractor personnel time and applicable fees) unless otherwise noted. Contractor shall ensure all assigned Contractor personnel:

- 3.3.1 Pass 25-35 hours of parking compliance and vehicle abatement training. The City will provide parking compliance and vehicle abatement training for up to six Contractor personnel; additional personnel training shall be at the Contractor's expense.
- 3.3.2 Demonstrate a knowledge of City parking facilities and lots (including processes and procedures, hours of operation, layout of ramps, and location of exits, doors, fire extinguishers, and stairwells) and the geographical layout of the City to efficiently and effectively navigate to assigned locations.
- 3.3.3 Have training and/or experience in basic computer and data entry skills enabling the use of the City's vehicle abatement service request system (Salesforce platform).

EXHIBIT B COMPENSATION

1 COMPENSATION AND PAYMENT TERMS

- 1.1 The maximum amount payable for all products and services provided under this Agreement shall not exceed **One Million Six Hundred Seven Thousand Six Hundred Ninety-Seven Dollars (\$1,607,697)** during the Initial Term. Any additional services requested by the City that would exceed the preceding maximum amount will be addressed in accordance with the Change Order Procedures. No additional services will be performed unless both Parties execute a Change Order outlining the services requested and the compensation agreed for such services.
- 1.2 Contractor shall submit to City a monthly invoice within 15 working days of the last day of each month, in arrears, for payment for Services performed pursuant to this Agreement. The monthly invoice shall include, at a minimum, an itemized list of labor hours worked by shift, employee, and assignment and applicable hourly rates as set forth in Table B1 below. All invoices shall be made in writing and in a form prescribed by the City. City shall review the monthly invoice submitted by Contractor and notify Contractor of any discrepancies or deficiencies in said invoice.
- 1.3 City shall make monthly payments within 30 calendar days of City’s approval of Contractor’s invoice. If City makes any payments or incurs any costs for which City is entitled to reimbursement from Contractor, the City may deduct such reimbursement from any payment due to Contractor. City shall submit to Contractor written documentation in support of such deduction upon Contractor’s request. In the event City does not deduct such reimbursement from Contractor’s payment but instead submits to Contractor an invoice for reimbursement, Contractor shall reimburse City within 30 calendar days of receipt of such invoice.
- 1.4 Contractor shall also submit monthly certified payrolls to the City’s Office of Equality Assurance as specified in Exhibits G-1 through G-3.
- 1.5 For work deemed by the City as not meeting or fully meeting the requirements of the Scope of Services, the City shall withhold monthly payments or percentages thereof for work not completed or until work is completed as per the Scope of Services. The City shall withhold monthly payments or percentages thereof for work that is not completed on schedule. Contractor shall not stop work as a result of City’s withholding of payments as provided in this Agreement. Additionally, the City reserves the right to collect (or credit against outstanding invoices) liquidated damages as specified below.
- 1.6 The Parties hereto agree that it would be impractical and extremely difficult to determine the actual damage to City if Contractor were to breach this Agreement. In addition to the services provided, City expects to receive other benefit from Contractor’s Services. The Parties mutually agree that liquidated damages set forth in this section are acceptable to each Party and are a reasonable estimate of City’s loss if Contractor fails to complete services in accordance with the Schedule of Performance.

DESCRIPTION	AMOUNT PAYABLE
No on-site supervisor	\$100 per hour
Failure to comply with law enforcement officer summoning policies in accordance with TSA mandates and security protocols	\$50 for each occurrence

DESCRIPTION	AMOUNT PAYABLE
Failure to respond in writing to complaint against Contractor personnel within five calendar days of such complaint (Contractor shall provide City a copy of such written response)	\$50 for each day past the five-calendar day response period
Failure of Contractor personnel to be attired in the City-approved uniform	\$50 for each day and immediate removal and replacement of involved Contractor personnel
Failure of Contractor personnel to conduct themselves in a professional and courteous and cooperative manner as determined by the City	\$100 for each occurrence
Failure of Contractor personnel to wear, carry, and/or produce required credentials upon request	\$100 for each occurrence
Number of complaints against Contractor personnel exceeds three in any one calendar month	\$50 for each complaint more than three in one calendar month, and immediate dismissal of involved Contractor personnel
Failure to follow the directions of designated City staff	\$100 for each occurrence
Failure to meet specified response time requirements	1-15 minutes beyond requirement, \$35 each occurrence
	16-30 minutes beyond requirement, \$100 each occurrence
	Over 30 minutes beyond requirement; \$250 each occurrence (this will be considered a non-response and City will not incur any associated charges.)
Failure to visit each of the identified check-in points	Contractor will only be allowed to miss one check-in per week; subsequent misses, \$10 per occurrence for each missed check-in.
Failure to provide Contractor personnel sufficient to cover specified Services	\$100 for each occurrence
Violations of applicable rules and regulations	\$100 for each occurrence
Contractor personnel fails to check in upon coming on duty, abandons or leaves post unattended without proper notice (i.e., getting approval from City's Project Manager or designee)	\$150 for each occurrence
Violation of post orders	\$100 for each occurrence

DESCRIPTION	AMOUNT PAYABLE
Failure to follow rules and regulations as stipulated by City or as defined in post orders	\$100 for each occurrence
Loss of or failure to provide centralized repository (see Section 2.15 of Exhibit A - Scope of Services)	\$1,000 per incident


City of San José



Email: luz.cofresi-howe@sanjoseca.gov
Date: 02/26/2023 GMT

Luz Cofresi-Howe
Assistant Director of Finance

Good Guard Security, Inc.



By Email: shawn@goodguardsecurity.com
Date: 02/25/2023 GMT

Shawn Helmandi
Region President



By Email: iesha@goodguardsecurity.com
Date: 02/25/2023 GMT

Iesha Helmandi
Chief Financial Officer

- 1.7 Any City facilities or property damaged by Contractor shall be repaired at Contractor’s cost. The City shall withhold monthly payments or percentages thereof until the damages are repaired to the City’s satisfaction.

2 PROJECT PERFORMANCE AND PAYMENT SCHEDULE

- 2.1 The City agrees to compensate Contractor for the Services performed in accordance with the terms and conditions of this Agreement. Contractor shall invoice City in accordance with the Pricing set forth in Table B1 below:

Table B1: Payment Schedule and Pricing

Description	Standard Hourly Rate*	Holiday Hourly Rate*	Estimated Hours per Year	Not to Exceed Cost
Security Guard	\$32.43	\$48.65	16,120	\$522,771.60
Patrol Guard (with Contractor Vehicle)	\$38.12	\$57.18	22,880	\$872,185.60
Supervisor	\$39.12	\$58.68	4,160	\$162,739.20
STANDARD SERVICES SUBTOTAL				\$1,557,696.40
Provision for Supplemental Services (See Exhibit B, Section 4)				\$50,000
MAXIMUM COMPENSATION (INITIAL TERM)				\$1,607,697

*Rates provided above are fully burdened and inclusive of all overhead (i.e., taxes, equipment, tools, materials, supplies, vehicle costs, travel, etc.) needed to achieve the requirements in Exhibit A - Scope of Services. Holiday rates will only apply when a Service falls on a City Holiday. The City will not pay overtime for regularly scheduled services (i.e., Contractor shall be staffed appropriately to ensure continual coverage in the event of no-shows, sick, etc.)

All amounts stated above are in United States Currency.

3 RENEWAL PERIOD COMPENSATION

- 3.1 After the Initial Term, the City reserves the right to extend the term of this Agreement pursuant to Section 2.2 (“Options to Extend”) at the same rates as the Initial Term unless otherwise requested and agreed to in writing by the Parties.
- 3.2 Price Renegotiation. Contractor may request adjustments to compensation rates 60 days prior to an option term. Contractor shall provide information justifying reasons for any increase, and City shall not unreasonably withhold approval of any increase provided the renewal quote for ongoing services does not increase by more than the Consumer Price Index (CPI) for all items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted-CUURS49BSA0 (<https://data.bls.gov/timeseries/CUURS49BSA0>) and does not exceed 3% over the previous year’s fees, unless the City’s Living and/or Prevailing Wage, if applicable, increases by more than 3% or unless otherwise negotiated. Increases based on Living Wage will be at 80% of the total Living Wage increase to remove Contractor overhead, etc. that are included in the fully burdened hourly rates.
- 3.3 City shall provide Contractor prior written notice in the form of Exhibit E of its intention to exercise its option for the next term prior to the end of the then current term. The City’s Director of Finance or designee is authorized to exercise options on behalf of the City.

4 ADDITIONAL SERVICES

- 4.1 In the event the City requires additional services, Contractor shall provide a written quotation, at no cost to the City, of the type of Additional Service requested and the time required to complete the requested work.
- 4.2 Service rates shall not exceed the following:

Additional Services	Standard Hourly Rate	Overtime Hourly Rate	Holiday Hourly Rate
Security Guard	\$32.43	\$48.65	\$48.65
Patrol Guard (with Contractor Vehicle)	\$38.12	\$57.18	\$57.18
Patrol Guard (without Vehicle) ³	\$32.43	\$48.65	\$58.68
Supervisor	\$39.12	\$58.68	\$58.68
Armed Security Guard	\$39.34	\$59.01	59.01
Post 832 Unarmed Certified Security Guard	\$39.34	\$59.01	59.01
Body Camera	\$1.75	\$1.75	1.75
Golf Cart	\$2.50	\$2.50	2.5
Bike	\$1.85	\$1.85	1.85

- 4.3 The City reserves the right to request a fixed priced quote in lieu of time and materials. Any fixed price quotes shall be consistent with or less than the agreed-upon additional service rates in Section 4.2 above and must be good for at least 90 days.
- 4.4 Quotes must be approved by the City through an executed Supplemental Work Order Form (Exhibit F) prior to any work being performed.
- 4.5 Any Services deemed out of scope by the City or that will exceed (or cumulatively exceed) the Provision for Supplemental Services provided in Table B1 shall be subject to an executed Change Order Form (Exhibit D) in accordance with Section 8 of the Agreement.

EXHIBIT C INSURANCE REQUIREMENTS

Contractor, at Contractor’s sole cost and expense, 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, its agents, representatives, employees or subcontractors or suppliers.

I. Minimum Scope and Limit of Insurance

Contractor shall maintain insurance coverage at least as broad as and maintain limits no less than:

Type of Insurance	Minimum Limit
1 Commercial General Liability The coverage provided by Insurance Services Office “occurrence” form CG 0001, including coverages for contractual liability, personal injury/advertising injury, products/completed operations, broad form property damage, independent contractors, products and completed operations.	\$10,000,000 per occurrence for bodily injury, personal injury and property damage or \$20,000,000 annual aggregate.
2 Automobile Liability The coverage provided by Insurance Services Office form number CA 0001. Coverage shall be included for all owned, non-owned and hired automobiles.	\$5,000,000 combined single limit per accident for bodily injury and property damage.
3 Workers’ Compensation and Employer Liability A: Workers Compensation as required by Statute and as required by the Labor Code of the State of California. B: Employers’ Liability	Coverage A: Statutory Coverage B: \$1,000,000 each accident/ each employee injury by disease
4 Professional Liability Including coverage for negligent acts, errors, or omissions arising from professional services provided under the contract.	Not less than \$1,000,000 each claim and annual aggregate.

There shall be no endorsements reducing the scope of coverage required below unless approved by the City’s Risk Manager.

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

II. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City’s Risk Manager.

III. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

- a. The City, its officials, employees, and agents are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.
- b. Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officials, employees, and agents shall be excess of Contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or agents.
- d. Coverage shall state that 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.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.

2. Workers' Compensation and Employers Liability

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, and agents.

3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

4. Claims Made Coverage

If coverage is obtained on a "claims made" policy form, the retroactive date shall precede the date services were initiated with the City and the coverage shall be maintained for a period of three (3) years after termination of services under this Agreement.

IV. Acceptability of Insurance

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

V. Verification of Coverage

Contractor shall furnish the City with certificates of insurance and with endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by Contractor's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov::

Certificate Holder
City of San José – Finance Department
Risk & Insurance
200 East Santa Clara St., 14th Floor
San José, CA 95113-1905

VI. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT D CHANGE ORDER FORM

CHANGE ORDER # ___

Pursuant to Section 8 of the Agreement between _____ (“Contractor”) and the City of San José (“City”) for _____, the Agreement is hereby amended as follows:

(The following language is provided as an example of how to complete this form.)

1. Contractor shall provide the following additional services at the costs indicated below:

TOTAL	
-------	--

2. The following services, products, or deliverables are hereby deleted and the associated costs in amounts set forth below are also deleted.

TOTAL	
-------	--

3. Exhibit ___ is hereby amended to read as set forth in the Revised Exhibit ___ which is attached hereto.

4. All of the terms and conditions of the Agreement not modified by Change Order shall remain in full force and effect.

	Total Cost of Change	
	Total Credit of Change	
	Previous Amendments and/or Change Orders	
	Original Contract	

ACCEPTANCE

Contractor hereby agrees to accept the amount set forth herein as payment in full for the work described and further agrees that Contractor is entitled to no additional time or compensation for such work other than as set forth herein.

Contractor

Name Title Date

APPROVED AS TO FORM

Name Title

City of San José

Name Title Date

EXHIBIT E
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE:	Agreement for Security Guard Services for the Department of Transportation
CONTRACTOR Name and Address:	Good Guard Services, Inc. Attention: Ahmed Elgazery 3031 Tisch Way, Suite 101 San Jose, CA 95128

Pursuant to Section ____ of the Agreement referenced above, the City of San José hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
------------	--

OPTION TERM

Begin date:	
End date:	

CHANGES IN RATE OF COMPENSATION

Percentage change in CPI upon which adjustment is based:	
--	--

Pursuant to Section ___ of the Agreement the Rates of Compensation are hereby adjusted as follows: (use attachment if necessary)

MAXIMUM COMPENSATION for Option Term:	
---------------------------------------	--

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the maximum compensation set forth above for Contractor’s services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation and funds are available for the option term specified above.

<p>CITY OF SAN JOSE a municipal corporation</p> <p>By _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>

**EXHIBIT F
SUPPLEMENTAL WORK ORDER FORM**

Date:

Pre-approval required before start of work:

_____ **(City Project Manager Printed Name)**

Supplemental Services (Labor)					
Date	Description of Service	Location	Hours	Hourly Pay Rate	Amount
Total Amount Due					\$

CITY PROJECT MANAGER SIGNATURE

CONTRACTOR SIGNATURE

EXHIBIT G-1 WAGE REQUIREMENTS AND INFORMATION

Pursuant to City of San José Prevailing Wage and Living Wage Policies, Contractor and any subcontractor shall be obligated to pay not less than the prevailing wage or living wage in accordance with the requirements of this policy document, and the Wage Determination as indicated in Attachment D-2.

1 CITY COUNCIL WAGE POLICIES

1.1 Living Wage Policy

- 1.1.1 Under City Council Policy 3-3, contractors who are awarded certain City service and labor contracts are required to pay a minimum level of compensation and provide a minimum number of days of compensated time off to covered employees who work on these projects.
- 1.1.2 Living wages shall mean the wages paid under a collective bargaining agreement between the Contractor and a recognized union representing employees who will perform services pursuant to the Agreement.
- 1.1.3 If the wage rates set forth in the collective bargaining agreement fall below the then current Living Wage Rate set by the City of San José, the required rate of pay shall be the City's Living Wage Rate unless the collective bargaining agreement expressly provides that the agreement shall supersede the requirements of the Living Wage Policy.
- 1.1.4 If there is no collective bargaining agreement as described above, not less than the current Living Wage Rate must be paid to covered employees performing work identified in the applicable wage determination issued by the City of San José's Office of Equality Assurance.
- 1.1.5 Contractors shall provide twelve (12) days of compensated time off to full time covered employees, and six (6) days of compensated time off to part time covered employees. Paid holidays, paid sick days, paid vacation, and paid personal days are allowed to count towards the 12 or 6 required days.

1.2 Prevailing Wage Policy

- 1.2.1 California Labor Code and/or Resolutions of the City of San José require the payment of not less than the general rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations.
- 1.2.2 Prevailing Wages established by the California Department of Industrial Relations shall be the General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement.
- 1.2.3 Prevailing Wages established by the City of San José shall mean the wages paid under a collective bargaining agreement between the Contractor and a recognized union representing workers who perform services pursuant to this agreement; or
- 1.2.4 If there is no collective bargaining agreement as described above, not less than the prevailing rate of per diem wages for the employee craft/classification as determined by the City of San José's Office of Equality Assurance.

- 1.2.5 The City's Prevailing Wage will be subject to annual adjustment on the anniversary date of the agreement. Adjustment will be based on the U.S. Department of Labor/Bureau of Labor Statistics Consumer Price Index, All Items, for all Urban Consumers [CPI-U] for San Francisco-Oakland-San José.

Please see Exhibit G-2 for City of San José Classification Determination.

2 REPORTS

- 2.1 The Office of Equality Assurance will monitor the payment of prevailing and living wages by requiring the awarded Contractor and all Subcontractors to file a LABOR COMPLIANCE WORKFORCE STATEMENT and LABOR COMPLIANCE FRINGE BENEFIT STATEMENT with supporting documentation.
- 2.2 The awarded Contractor and Subcontractors shall also report such other additional information, including certified payrolls, as requested by the Director of Equality Assurance to ensure adherence to the Policies.
- 2.3 Labor compliance statements must be filed in the Office of Equality Assurance within 10 days of execution of this Agreement at the address below.

City of San José
Office of Equality Assurance
200 East Santa Clara Street
Fifth Floor, San José, CA 95113
Phone: 408-535-8430

3 LIVING WAGE POLICY PROVISIONS

On November 17, 1989, by Resolution No. 68554, amended on June 8, 1999 by Resolution No. 68900, amended on May 27, 2003 by Resolution No. 71584, amended on June 4, 2013 by Resolution No. 76653 and amended on January 28, 2014 by Resolution No. 76911 the San José City Council adopted its Living Wage Policy to meet the employment and economic development needs of low wage workers by mandating:

- 3.1 A minimum level of compensation and a minimum number of days of compensated time off for workers employed by contractors and subcontractors who are awarded certain City of San José service and labor contracts with an expenditure in excess of \$20,000 and recipients who receive direct monetary financial assistance from the City in the amount of \$100,000 or more in any twelve-month period, excluding non-profit corporations;
- 3.2 The provision of health insurance benefits or the ability to afford health insurance;
- 3.3 Retention of employees when certain new contractors take over a continuing City service;
- 3.4 An environment of labor peace; and
- 3.5 Employee Work Environment Evaluation (Third Tier Review)

4 WAGE REQUIREMENTS

For the purpose of this provision, Covered Employees means any person employed by the Contractor or Subcontractor who meets the following conditions:

- 4.1 The person does not provide volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;

- 4.2 The person expends at least half of his/her time on work for the City;
- 4.3 The person is at least eighteen (18) years of age; and
- 4.4 The person is not in training for the period of training specified under training standards approved by the City of San José.

5 ENFORCEMENT

5.1 General

Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Contract, it is required to pay workers either a prevailing or living wage (“Wage Provision”) and to submit certain documentation to the City establishing its compliance with such requirement.

(“Documentation Provision.”) Contractor further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively “Goals”):

- 5.1.1 It protects City job opportunities and stimulates the City’s economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- 5.1.2 It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
- 5.1.3 Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San José because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San José.
- 5.1.4 It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

5.2 Remedies for Contractor’s Breach of Prevailing Wage/Living Wage Provisions

5.2.1 **Withholding of Payment:** Contractor agrees that the Documentation Provision is critical to the City’s ability to monitor Contractor’s compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor’s compliance with this Provision, as well as the Wage Requirement, is an express condition of City’s obligation to make each payment due to the Contractor pursuant to this Agreement. The City is not obligated to make any payment due the Contractor until Contractor has performed all of its obligations under these Provisions. This Provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor’s failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.

5.2.2 **Restitution:** Contractor agrees that in the event of a breach of its obligations it will pay any amounts underpaid in violation of the required payments and City’s administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.

- 5.2.3 **Liquidated Damages for Breach of Wage Provision:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing/living wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impractical and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, Contractor shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.
- 5.2.4 **Additional Remedies:** Contractor agrees that in addition to the remedies set forth above City retains the right to suspend or terminate the Agreement for cause and to debar Contractor or subcontractors from future City contracts and/or deem the recipient ineligible for future financial assistance.

6 AUDIT RIGHTS

All records or documents required to be kept pursuant to this Contract to verify compliance with the Wage Provision shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

7 COEXISTENCE WITH ANY OTHER EMPLOYEE RIGHTS

These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

EXHIBIT G-2

CITY OF SAN JOSÉ CLASSIFICATION DETERMINATION

Description of Services: Citywide Security Guard Services

ATTENTION: City Funded Construction, Maintenance, and Qualifying Living Wage Service Projects are subject to the City of San Jose Prevailing Wage and Living Wage Ordinances.

The Wage Policy Checked Below Shall Apply to This Solicitation:

Contracts subject to City of San Jose Living Wage and Prevailing Wage Policies must apply the higher wage rate.

- | | |
|--|---|
| <input type="checkbox"/> PREVAILING WAGE POLICY | <input type="checkbox"/> The Living Wage Rate applied due to being the Higher Wage Rate |
| <input checked="" type="checkbox"/> LIVING WAGE POLICY | <input type="checkbox"/> The Prevailing Wage Rate applied due to being the Higher Wage Rate |

Wage indexes are published semiannually and assigned according to Purchasing Contract/Agreements' Bid initial advertising date.

Contract/Agreement Bid Advertised between Feb 22 to Aug 22 are Assigned Wage Index 2022 – 1

Citywide Security Guard Services Determination

Living Wage Requirements. Any person employed by CONTRACTOR or sub-CONTRACTOR or City financial recipient or any sub recipient whose compensation is attributable to the City's financial assistance, who meets the following requirements is considered a covered employee. The employee: 1) is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; 2) spends at least half of his or her time on work for the City [4 hours a day or 20 hours a week]; 3) is at least eighteen (18) years of age; and 4) is not in training for the period of training specified under training standards approved by the City.

Reports. CONTRACTOR shall file a completed and executed copy of this Addendum with the Department of Finance/Purchasing Division. Upon award the Department of Finance/Purchasing Division shall provide the CONTRACTOR with compliance documents to be completed and returned (with supporting documentation) to the Office of Equality Assurance. These documents must be returned within 10 days of receipt. CONTRACTOR shall not perform on site work on this contract until labor compliance documents are filed. CONTRACTOR shall also report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Policy.

**Please refer to the bid packet for full scope of service.*

PREVAILING WAGE	SAN JOSE PREVAILING WAGE WEBSITE
	DIR PREVAILING WAGE RATES DIR APPRENTICE WAGE RATES

(All public works contracts valued at \$30,000 or more carry an obligation to hire apprentice)

[DIR Apprenticeship Programs, Requirements, & Forms](#)

CLASSIFICATION: **NORTHERN CALIFORNIA BASIC WAGE RATE**

The following Classifications have been determined for this project.

City of San Jose Living Wage:

The Living Wage rates for the period July 1, 2022 through June 30, 2023 are:
 Living Wage with Health Benefits: \$25.71
 Living Wage Without Health Benefits: \$26.96

CITY OF SAN JOSE PREVAILING AND LIVING WAGE REQUIREMENTS

- ❖ Submit Labor Compliance Documents to Office of Equality Assurance (OEA) within ten (10) days of a formal request and no later than the day before work begins:
 - Workforce Statement
 - List of Subcontractors
 - Fringe Benefit Statement
 - Certificate of Posting
- ❖ **Monthly:** Submit Certified Payroll Reports (CPR) with a statement of compliance to OEA Labor Compliance Specialist assigned to project.
- ❖ **Pay workers** the correct Prevailing Wage Rate for each Classification from Wage Index, dated at the time of initial bid advertisement.
 - Wage Rate and Classification are determined by **Type of Work** performed. Misclassification resulting in underpayment is a Wage Violation.
- ❖ Living Wage Ordinance requires workers' wages to be set **not less than the Living Wage Rate**, even if the relevant Prevailing Wage Index for a given Classification is lower. The Living Wage Rate is adjusted on July 1 or each year and is published on the Office of Equality Assurance website.
- ❖ Submit a **Non-Performance Statement** to verify payroll weeks in which no work was performed.
- ❖ Weekend and Night Shift Wages:
 - **Saturday:** Work performed on Saturday is assigned a wage-rate one and one-half (1.5) times the regular rate for the first eight (8) hours of work and two (2) times the regular rate for all subsequent hours. A shift beginning on or after 1:00am on Saturday morning and before 1:00am on Sunday morning is deemed Saturday work for the entire shift.
 - **Sunday:** Work performed on Sunday is assigned a wage-rate two (2) times the regular rate. A shift beginning on or after 1:00am on Sunday morning and before 1:00am on Monday morning is deemed Sunday work for the entire shift.
 - **Night Shift:** Employees assigned to perform work on Night Shift receive a twelve and one-half percent differential (12.5%) in addition to total wages for that shift. A Night Shift is a shift that commences between 2:00pm and 4:00am.
- ❖ OEA Contract Compliance Specialists have the right to conduct unannounced job site inspections and to access employees, time sheets, inspection logs, payroll records, and employee paychecks.



**EXHIBIT G-3
LABOR COMPLIANCE ADDENDUM**

AGREEMENT TITLE:	Agreement for Security Guard Services for the Department of Transportation
CONTRACTOR Name and Address:	Good Guard Services, Inc. Attention: Ahmed Elgazery 3031 Tisch Way, Suite 101 San Jose, CA 95128

By executing this Addendum, Contractor acknowledges and agrees that the work performed pursuant to the above referenced Agreement or Purchase Order, including all renewals and extensions, is subject to all applicable provisions.

Payment of Minimum Compensation to Employees. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate and/or Living Wage Rate as indicated in the attached Exhibit(s) titled **“Work Classification and/or Living Wage Determination.”**

- A. *Prevailing Wage Requirements.*** California Labor Code and/ or Resolutions of the San Jose City Council require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Contractor shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.
- B. *Living Wage Requirements.*** Any person employed by Contractor or subcontractor or City financial recipient or any sub recipient whose compensation is attributable to the City’s financial assistance, who meets the following requirements is considered a covered employee. The employee: 1) is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; 2) spends at least half of his or her time on work for the City; 3) is at least eighteen (18) years of age; and 4) is not in training for the period of training specified under training standards approved by the City.
- C. *Reports.*** Contractor shall file a completed and executed copy of this Addendum with the Department of Finance/Purchasing Division. Upon award the Department of Finance/Purchasing Division shall provide the contractor with compliance documents to be completed and returned (with supporting documentation) to the Office of Equality Assurance. **These documents must be returned within 10 days of receipt.** Contractor shall not perform on site work on this contract until labor compliance documents are filed. Contractor shall also report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Policy.
- D. *Coexistence with Any Other Employee Rights.*** These provisions shall not be construed to limit an employee’s ability to bring any legal action for violation of any rights of the employee.

E. Audit Rights. All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

F. Enforcement.

1. **General.** Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Requirement promotes each of the following (collectively "Goals"):
 - a. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
 - b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
 - c. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
 - d. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions.

- a. **WITHHOLDING OF PAYMENT:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Agreement. **THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. THIS PROVISION MEANS THAT CITY CAN WITHHOLD ALL OR PART OF A PAYMENT TO CONTRACTOR UNTIL ALL REQUIRED DOCUMENTATION IS SUBMITTED.** Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Requirement or the Documentation Provision.

- b. **RESTITUTION:** Require the employer to pay any amounts underpaid in violation of the required payments and City’s administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- c. **SUSPENSION OR TERMINATION:** Suspend and/or terminate Agreement for cause;
- d. **DEBARMENT:** Debar Contractor or subcontractor from future City contracts and/or deem the recipient ineligible for future financial assistance.
- e. **LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City’s damage would not be remedied by Contractor’s payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City’s damages as a result of Contractor’s breach of the Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.**

City of San José



Email: luz.cofresi-howe@sanjoseca.gov
Date: 02/26/2023 GMT

Luz Cofresi-Howe
Assistant Director of Finance

Good Guard Security, Inc.



By Email: shawn@goodguardsecurity.com
Date: 02/25/2023 GMT

Shawn Helmandi
Region President



By Email: iesha@goodguardsecurity.com
Date: 02/25/2023 GMT

Iesha Helmandi
Chief Financial Officer