

**SERVICES AGREEMENT BETWEEN THE CITY OF SUNNYVALE AND
BASTION SECURITY SERVICES FOR UNARMED SECURITY PATROL SERVICES**

THIS AGREEMENT dated 03/22/2024 is by and between the CITY OF SUNNYVALE, a California chartered municipal corporation ("CITY"), and BASTION SECURITY SERVICES ("CONTRACTOR"), A Private Patrol Operator in the State of California.

WHEREAS, CITY is in need of unarmed security patrol services; and

WHEREAS, CITY solicited a Request for Quotations (RFQ) on March 27, 2023, for Unarmed Security Patrol Services; and

WHEREAS, CONTRACTOR submitted a quotation on April 26, 2023; and

WHEREAS, CITY accepted CONTRACTOR's quotation submitted on May 8, 2023; and

WHEREAS, in reliance upon CONTRACTOR's representations regarding its qualifications, CITY finds that CONTRACTOR possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Contract Documents

The complete Contract consists of the following documents: Instructions to Bidders; Specifications; Terms and Conditions; and CONTRACTOR's completed Quotation. These documents are all incorporated herein by reference. All exhibits, including all associated attachments, are attached hereto and incorporated herein by reference. The documents and exhibits comprising the complete contract are collectively referred to as the Contract Documents.

Any and all obligations of the CITY and the CONTRACTOR are fully set forth and described therein.

All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all documents.

2. Services by CONTRACTOR

It is understood and agreed that tools, equipment, apparatus, facilities, labor, transportation, and material shall be furnished and work performed and completed as required in the bid documents under the sole direction and control of the CONTRACTOR, and subject to approval of the City.

CONTRACTOR shall provide services in accordance with Exhibit "A" entitled "Scope of Services."

3. Time for Performance

The term of this Agreement shall be one year, from May 15, 2024, through May 14, 2025, unless otherwise terminated in accordance with Section 16 below. Contract may be renewed for up to three (3) additional one-year periods at the sole option of the City.

4. Compensation

In no event shall the total amount of compensation paid by CITY to CONTRACTOR under this agreement exceed the sum of Eighty Thousand and No/100 Dollars (\$80,000.00), unless upon written modification of this Agreement. CONTRACTOR shall submit invoices to CITY no more frequently than monthly for services provided to date, and in accordance with the compensation schedule outlined in Exhibit "B". All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707 or accountspayable@sunnyvale.ca.gov. Payment shall be made within thirty days upon receipt of an accurate itemized invoice by CITY's Accounts Payable unit.

5. Wage Rates

CONTRACTOR shall comply with the minimum wage provisions set forth in Section 3.80.040 of the Sunnyvale Municipal Code.

6. Conflict of Interest

CONTRACTOR shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to immediately notify CITY of any facts that may give rise to a conflict of interest. CONTRACTOR is aware of the prohibition that no officer of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONTRACTOR shall not accept employment or an obligation which is inconsistent or incompatible with CONTRACTOR'S obligations under this Agreement.

7. Confidential Information

CONTRACTOR shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONTRACTOR may become aware in the performance of its services.

8. Compliance with Laws

- A. CONTRACTOR shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of CONTRACTOR or applicant for employment because of an individual's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status, or any other protected characteristic in violation of federal or state law. This prohibition shall apply to all of CONTRACTOR's employment practices and to all of CONTRACTOR's activities as a provider of services to the City.
- B. CONTRACTOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

9. Independent Contractor

CONTRACTOR is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONTRACTOR. CONTRACTOR is responsible for paying all required state and federal taxes.

10. Indemnity

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the services described herein, caused in whole or in part by any negligent act or omission of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful acts of the CITY. The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement. CONTRACTOR's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement.

11. Insurance

The City requires that CONTRACTOR maintain insurance requirements on the Pacific Insurance Network System (PINS). CONTRACTOR shall procure and maintain, at its own expense during the life of this Agreement, policies of insurance as specified in Exhibit "C" attached and incorporated herein by reference and shall provide all certificates and endorsements as specified in Exhibit "C" through PINS for approval by the City Risk Manager prior to CONTRACTOR (or subcontractor) commencing any work under this Agreement.

12. CITY Representative

Diana Castro, Supervising Librarian, as the City Manager's authorized representative ("CITY representative"), shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

13. CONTRACTOR Representative

William Markson, Qualified Manager shall represent CONTRACTOR ("CONTRACTOR representative") in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CONTRACTOR pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONTRACTOR representative.

14. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and sent by first class with postage prepaid, or sent by commercial courier, to address below as follows:

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by email, to accomplish timely communication. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three business days after mailing.

To CITY: Michelle Perera, Director
Library and Recreation Services
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONTRACTOR: Gary Mills, President
Bastion Security Service
2232 N First St.
San Jose, CA

15. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

16. Termination

- A. If CONTRACTOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of satisfactory services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONTRACTOR shall present CITY with any work product completed at that point in time.
- B. Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONTRACTOR shall present CITY with any work product completed at that point in time.
- C. If CITY fails to pay CONTRACTOR, CONTRACTOR at its option may terminate this Agreement if the failure is not remedied by CITY within 30 days after written notification of failure to pay.

17. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing as an amendment to this Agreement signed by all parties. If the amendment is signed electronically, the digital signatures must comply with the requirements of California Government Code Section 16.5.

18. Governing Law, Jurisdiction and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

19. Miscellaneous

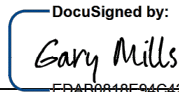
Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF SUNNYVALE ("CITY")

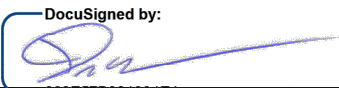
BASTION SECURITY SERVICES ("CONTRACTOR")

By 
06C53AD2C660410...
City Manager

By 
EDAB0818E94C42B...
Gary Mills President

Name and Title

ATTEST:

By 
663E57B921394E1...
City Clerk

APPROVED AS TO FORM:

By 
09A1ACB0C30245F...
City Attorney

EXHIBIT "A"
SCOPE OF SERVICES

Contractor shall furnish all labor, supervision, methods and processes, implements, tools, machinery, equipment, transportation, and materials to provide unarmed security patrol services.

Contractor shall assign Security Guard personnel to the Sunnyvale Public Library ("Library") with regular hours assigned.

Contractor shall provide a Qualified Manager for their Security Guards who are assigned to the Library. The Qualified Manager is the contact and liaison with library staff. The Qualified Manager will monitor the correct filling in of logs and timesheets for the Contractor. Except in extreme scheduling emergencies, back-up Security Guards shall be trained by Library staff before acting as substitutes. Contractor shall notify Library staff in advance of any changes to schedule or personnel. Contractor shall also equip Security Guards with a mobile device which Library staff may use to contact them during their shift.

Hours of Work - Except for Library holidays when the facility is closed, services shall be provided throughout the contract term, as follows:

| | |
|-------------------|--|
| Monday – Thursday | 1:15 p.m. - 5:15 p.m. (30 min lunch break); 5:45 p.m. - 9:15 p.m. |
| Friday – Saturday | 10:15 a.m. - 2:15 p.m. (30 min lunch break); 2:45 p.m. - 6:15 p.m. |
| Sunday | 1:15 p.m. - 6:15 p.m. |

The hourly rate submitted by the Contractor shall be used for all shifts unless otherwise stated.

Service Requirements - Security Guards shall regularly provide the following services:

1. Walk through the Library continuously, including restrooms, mezzanine, and basement to see that library rules are enforced, and a calm environment is maintained.
2. Walk around the outside of the building every hour.
3. Observe the behavior of Library patrons, inform patrons of behavior expectations as described in A-11 Public Conduct Policy (incorporated by reference), and discuss inappropriate behavior or use of Library equipment and/or materials (books, magazines, computers, printers, copiers, furniture, etc.) with the offending library patron. Verbally inform Library in-charge personnel of each interaction and provide enforcement assistance when needed.

4. Assist in monitoring compliance with Internet computer usage.
5. Report observed life and death or other very serious situations directly to Public Safety (call 911). Report other problems for which you need assistance to the Library in-charge personnel. Verbally inform Library in-charge personnel about incidents that required your attention, even if you did not involve him/her.
6. Assist Library staff in closing the Library at the end of the day. Examples of tasks to be performed include but are not limited to: ensuring restrooms are clear of patrons and locking them shortly before closing, checking to be certain all patrons have left the facility and escorting Library staff to their vehicles if requested to do so.
7. Assist with miscellaneous assignments, such as reporting maintenance problems, helping with crowd control, etc.
8. Keep Library in-charge personnel informed of all incidents and problems.

Contractor Responsibilities

1. Contractor shall not discriminate against, or engage in the harassment of, any Library patron, City employee or volunteer or any employee of Contractor or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS – related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual).
2. Contractor shall comply with all laws, ordinances, rules, regulations, and codes applicable to these services.
3. All of contractor's personnel who perform work under this contract shall be uniformed. **Armed guards shall never be scheduled for this location.**
4. Communicate with City in a timely manner.

EXHIBIT "B"
COMPENSATION SCHEDULE

Hourly Labor Rate:

Security Patrol Services (unarmed) \$ 33.55 per hour

EXHIBIT "C"
INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Contractor, their agents, representatives, or employees.

Minimum Scope and Limits of Insurance. Contractor shall maintain limits not less than:

1. **Commercial General Liability:** coverage written on an occurrence basis with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form shall be at least as broad as CG 0001.
2. **Automobile Liability:** coverage with a combined single limit of not less than \$1,000,000 per occurrence applying to all owned, non-owned, or hired vehicles used in conjunction with this contract for bodily injury and property damage. ISO Form shall be at least as broad as CA 0001.
3. **Workers' Compensation:** Statutory Limits and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Industry Specific Coverages. If checked below, the following insurance is also required:

- Liquor Liability coverage** written on an occurrence basis with limits not less than \$1,000,000 per occurrence.
- Professional Liability / Errors and Omissions Liability** coverage with limits not less than \$2,000,000 per occurrence or claim.
- Cyber & Tech Liability** coverage with limits not less than of \$1,000,000 per occurrence or claim.
- Valuable Papers and Electronic Data Processing** with limits not less than \$10,000 each.
- Crime coverage** with limits not less than \$500,000 to include third party premises endorsement.
- If working directly with minors, the Certificate of Insurance must include coverage for **molestation and sexual abuse** with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- Pollution Liability** coverage with limits not less than \$2,000,000 per occurrence.
- MCS-90 Endorsement** to Business Automobile insurance for transportation of hazardous materials and pollutants.
- Builder's Risk / Course of Construction** coverage written on an "all risk" basis with limits equal to the completed value of the project and no coinsurance penalty provisions.

- Installation Floater** coverage written on an “all risk” basis with limits equal to the completed value of the project and no coinsurance penalty provisions.
- Garage Liability coverage** written on an occurrence basis with limits not less than \$1,000,000 per occurrence.
- Garage Keepers Liability coverage** with limits not less than \$100,000 per location.
- On-Hook coverage** with limits not less than \$100,000 per vehicle.

Deductibles, Self-Insured Retentions and Other Coverages:

Any deductibles or self-insured retentions must be declared and reviewed by the City’s Risk Manager. The Contractor shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

The aforementioned insurance requirements can be met through any combination of self-insured, primary and excess/umbrella policies that fulfill the stipulated coverage as cited above.

Other Insurance Provisions:

1. During the term of the contract, the City of Sunnyvale, its officers, officials, employees, agents, and volunteers are to be covered as an additional insured in the Contractor’s commercial general liability policy (and if industry specific coverage box is checked above, liquor liability, valuable papers, electronic data processing, cyber & tech liability, pollution liability, sexual abuse and molestation, builder’s risk, and installation floater policies) with respect to liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, or volunteers.

Additional Insured Endorsement for ongoing operations at least as broad as ISO CG 20 10 Scheduled, or automatic CG 20 38 and completed operations shall be at least as broad as ISO CG 20 37 scheduled or automatic ISO CG 20 40.

Contractor shall maintain commercial general liability insurance as required by this contract for a minimum of five years following the completion of this project. In the event contractor fails to obtain or maintain completed operations coverage as required by this agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by contractor.

2. During the term of the contract, the Contractor’s Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Sunnyvale.
3. For all Architects, Engineers and Design Professionals - If Industry Specific Coverage box is check above **and** if the Consultant’s Professional Liability/Errors and Omissions coverage is written on a claims made basis:
 - a. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided *for at least three (3) years after completion of the contract of work.*
 - c. If coverage is canceled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, the Consultant must purchase “extended reporting” coverage for a minimum of *three (3) years after completion of contract work.*

4. If Industry Specific Coverage box is checked above, during the term of the contract, the Contractor's Builder's Risk / Course of Construction or Installation Floater policy shall provide coverage for any building, structures, machinery or equipment that is damaged, impaired, broken or destroyed during the performance of the Work, including during transit, installation and testing. The policy shall name the City as a Loss Payee with respect to any repairs or replacement of any damaged property or other amounts payable under the policy.
5. For any claims related to this project, the Contractor's insurance shall be primary. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not contribute with it and shall be at least as broad as ISO CG 20 01 04 13.
6. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
7. The 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.
8. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
9. Any umbrella or excess insurance liability policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this document, including the additional insured, SIR, and primary and non-contributory insurance requirements for the benefit of City (if agreed to in a written contract or agreement) until all coverage carried by or available to the Contractor's primary and excess liability policies are exhausted and before the City's own Insurance or self-insurance shall be called upon to contribute to a loss.
10. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the Contractor's policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, and who are admitted and authorized to do business and in good standing in California unless otherwise acceptable to the City's Risk Manager.

Verification of Coverage:

City utilizes PINSAdvantage.com (PINS) to track and verify all insurance related documents. City is no longer accepting Certificates of Insurance by mail and requires the use of PINS. City will email the Contractor requesting proof of insurance for this Contract through the PINS platform (no-reply@pinsadvantage.com), which include instructions on how to upload insurance documents electronically. Contractor shall furnish the City with an electronic Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person

authorized by that insurer to bind coverage on its behalf and name City of Sunnyvale, Attn: Risk Management, 456 W. Olive Ave, Sunnyvale, CA 94088 as the certificate holder. All certificates are to be received and approved by the City, Risk Manager prior to commencement of work.

The Contractor shall provide certificate(s) evidencing renewals of all insurance required herein prior to the expiration date of any such insurance. Contractor shall submit insurance certificates reflecting the policy renewals through PINS. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Subcontractors

Contractor shall require all subcontractors to procure and maintain insurance policies subject to these requirements. Failure of Contractor to verify existence of sub-contractor's insurance shall not relieve Contractor from any claim arising from sub-contractors work on behalf of Contractor.