

ORDINANCE 2019-11-07-0921

AUTHORIZING A PROFESSIONAL SERVICES CONTRACT WITH RUIZ PROTECTIVE SERVICES, INC., TO PROVIDE THE SAN ANTONIO POLICE DEPARTMENT, AVIATION AND PARK POLICE PRE-EMPLOYMENT POLYGRAPH SERVICES FOR A THREE YEAR TERM BEGINNING NOVEMBER 15, 2019 AND ENDING NOVEMBER 14, 2022, WITH TWO ONE YEAR RENEWAL OPTIONS IN AN ESTIMATED ANNUAL AMOUNT NOT EXCEED \$70,462.10.

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WHEREAS, the City issued a Request for Proposals to provide pre-employment polygraph services for the San Antonio Police Department; Aviation and Park Police; and

WHEREAS, a formal committee evaluation was conducted; and

WHEREAS, City staff now recommends Ruiz Protective Services, Inc. be awarded the contract; and

WHEREAS, said agreement provides for an initial three year term, beginning November 15, 2019 through November 14, 2022 with two (2) additional, one (1) year options to renew; and

WHEREAS, the total estimated annual cost of this contract is \$70,462.10; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or designee is hereby authorized to execute a Professional Services Contract with Ruiz Protective Services, Inc. for a period beginning November 15, 2019 to April 4, 2022, with the option for the City to extend the contract for two (2) one (1) year renewals. A copy of the Professional Services Agreement is attached as **Exhibit 1**.

SECTION 2. Funding in the amount of \$70,462.10 for this Ordinance is available in Fund 11001000, Cost Center 1703040001, and General Ledger 5201040 as part of the Fiscal Year 2020 budget. Based on data provided by the department, the Office of Management and Budget will process any necessary administrative adjustments to the current year operating budget.


SECTION 3. Payment not to exceed the budgeted amount is authorized to Ruiz Protective Services, Inc., (Ruiz) to provide primary and/or secondary pre-employment polygraph examination services to the San Antonio Police Department, Park Police, and Aviation Police for entry-level uniform applicant screening.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to

specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

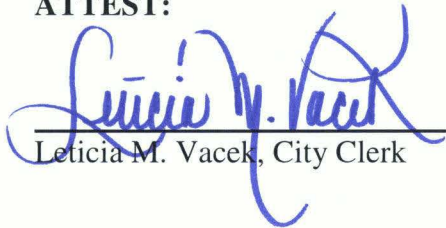
SECTION 5. This Ordinance becomes effective immediately if passed and approved by eight (8) affirmative votes; otherwise this Ordinance shall take effect ten (10) days from the date of passage.

PASSED AND APPROVED this 7th day of November, 2019.



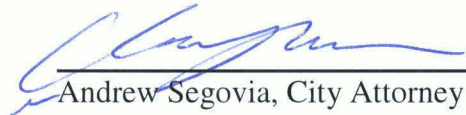
M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	29 (in consent vote: 5, 6, 7, 8, 9, 10A, 10B, 10C, 10D, 10E, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29)
Date:	11/07/2019
Time:	09:42:59 AM
Vote Type:	Motion to Approve
Description:	Ordinance approving a professional service contract with Ruiz Protective Services, Inc. to provide the San Antonio Police Department, Aviation and Park Police Pre-employment Polygraph Examination Services for a three year term beginning November 15, 2019, and ending November 14, 2022, with two one-year renewal options in an estimated annual amount not to exceed \$70,462.10, available in the City's FY 2020 General Fund Budget. [María Villagómez, Deputy City Manager; William P. McManus, Chief of Police]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				
Jada Andrews-Sullivan	District 2		x			x	
Rebecca Viagran	District 3		x				
Adriana Rocha Garcia	District 4		x				
Shirley Gonzales	District 5	x					
Melissa Cabello Havrda	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				x
Clayton H. Perry	District 10		x				

EXHIBIT 1

**PROFESSIONAL SERVICES CONTRACT
BETWEEN
CITY OF SAN ANTONIO
AND
RUIZ PROTECTIVE SERVICE, INC.**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This contract is made and entered into by and between the City of San Antonio, a Texas Municipal Corporation (CITY) and Ruiz Protective Service, Inc. (CONSULTANT), both of which may be referred to herein collectively as the "Parties", in order that CONSULTANT provide CITY with polygraph examinations of applicants to the San Antonio Police Department (SAPD).

The parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. TERM

- 1.1 This contract shall be for a three year term beginning November 15, 2019 and ending November 14, 2022. Upon CITY's written request, there will be two one year renewal options under the same terms and conditions.
- 1.2 CONSULTANT and CITY recognize that the continuation of any contract after the close of any given fiscal year of CITY, which fiscal year ends on September 30, shall be subject to appropriation of funds for the contract. Should funds not be appropriated, this contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

II. SCOPE OF SERVICES

A. General

- 2A.1 The definitions set out below shall be applicable to the provisions of the contract.
 - a. Polygraph examination shall mean a complete directed lie screening test (DLST) that includes, but is not limited to, the following: (1) an extensive pre-test interview; (2) an in-test examination; (3) an oral evaluation; and (4) a written evaluation.

- b. Oral evaluation shall mean an oral explanation to the applicant of the information that will later be memorialized in a written evaluation.
 - c. Written evaluation shall mean a detailed written report that includes a statement of findings and reflects whether deception was indicated, no deception was indicated, or there is a finding of no opinion. A written evaluation also includes copies of any associated written statements made by an applicant. In the event of a deceptive or no opinion result, a written evaluation documenting the circumstances of such examination will be provided.
 - d. Reasonable time shall mean a time between the hours of 8:00 a.m. and 8:00 p.m., whether on a weekday, weekend, or holiday.
- 2A.2 CONSULTANT acknowledges and agrees that it has no exclusive right to provide the services contemplated by this contract to CITY. At any time and without notice to CONSULTANT, CITY may contract with another party to provide said services. The fact that CITY does so, however, does not relieve CONSULTANT of its obligations under this contract.

B. Polygraph Examinations

- 2B.1 During the term of this contract, CONSULTANT shall, at the request of CITY, conduct polygraph examinations of applicants for entry-level uniform positions with the SAPD.
- 2B.2 CONSULTANT shall conduct said examinations within seven calendar days after the CITY's request. CONSULTANT agrees that it will conduct examinations at any reasonable time requested by CITY.
- 2B.3 CONSULTANT shall provide to the applicant an oral evaluation immediately upon completion of an in-test examination. CONSULTANT shall provide to representatives of the SAPD Applicant Processing Division a written evaluation within forty-eight hours after an in-test examination.
- 2B.4 To ensure adequate coverage to CITY, CONSULTANT shall have no less than two polygraphers available to conduct the aforementioned examinations.
- 2B.5 CONSULTANT and all polygraphers used by CONSULTANT shall comply with the provisions of Article IV of this contract.
- 2B.6 CONSULTANT agrees to make available for testimony at any criminal, civil, and administrative hearings any polygrapher who provides services pursuant to this contract, at the request of CITY.
- 2B.7 CONSULTANT will utilize during business hours a professional answering service or a full-time employee to handle the heavy workload of examination appointments, cancellations or reschedules.

- 2B.8 CONSULTANT will use a Texas Driver's License or Texas identification card as proof of identify prior to each examination.

III. PAYMENT AND BILLING

- 3.1 Upon completion of a polygraph examination requested pursuant to Article 2 of this contract, CITY shall pay CONSULTANT \$198.37.
- 3.2 In the event that an applicant fails to present himself at or shortly after the time scheduled for a polygraph examination, where CONSULTANT has not been provided at least twenty-four hours of notice by the applicant or CITY that applicant will not present himself, CITY shall pay CONSULTANT a \$25.00 No Show Fee.
- 3.3 Upon completion of a polygraph examination, CONSULTANT shall submit an itemized invoice to CITY for the services provided to CITY. Said invoice shall be submitted within fifteen days of the completion of a polygraph examination, except as provided for by Article VII of this contract. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio Police Department, P.O. Box 839966, San Antonio, Texas 78283-3966. The invoice shall contain a representation that the services being invoiced were provided pursuant to this contract.
- 3.4 Upon receipt of and approval by CITY of CONSULTANT's invoice, CITY agrees to pay CONSULTANT the amount invoiced, so long as the amount invoiced has been invoiced pursuant to the provisions of this contract.
- 3.5 CITY shall not be obligated or liable under this contract to any party other than CONSULTANT for payment of any monies or provision of any goods or services.
- 3.6 CONSULTANT shall be responsible for all expenses incurred by CONSULTANT in completing the work required by this contract. No additional fees or expenses of CONSULTANT shall be charged by CONSULTANT nor be payable by CITY. The parties hereby agree that all compensable expenses of CONSULTANT have been provided for in section 3.1 above.
- 3.7 In no event shall CONSULTANT be paid in excess of \$70,462.10 pursuant to this contract annually.

IV. LICENSES AND CERTIFICATIONS

- 4.1 CONSULTANT warrants and certifies that CONSULTANT and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

- 4.2 All licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials and all applicable state and federal laws and local ordinances must be complied with by CONSULTANT. Failure to comply with this requirement shall be treated as a default and will result in termination of this contract.
- 4.3 CONSULTANT certifies that an annual criminal background check will be performed on each polygrapher providing services under this Contract. Background check results will be provided to CITY for approval. CITY reserves the right to reject any proposed polygrapher based on background check information.

V. CONFIDENTIAL WORK

- 5.1 No reports, information, project evaluation, project designs, data, or any other documentation developed by, given to, prepared by, or assembled by CONSULTANT under this contract shall be disclosed or made available to any individual or organization by CONSULTANT without the express prior written approval of CITY, unless required by law or court order.
- 5.2 CONSULTANT shall establish a method to secure the confidentiality of records and information that CONSULTANT may have access to, in accordance with any applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting the CITY's right of access to records or other information under this CONTRACT.
- 5.3 If CONSULTANT receives inquiries regarding documents within its possession pursuant to this contract, CONSULTANT shall immediately forward such request to CITY for disposition.

VI. OWNERSHIP OF DOCUMENTS

- 6.1 All reports, information, and other data given to, prepared by, or assembled by CONSULTANT pursuant to this contract and any other related documents or items shall become the sole property of CITY. Such reports, information, and other data shall be delivered at no cost to CITY upon request or upon termination of this contract without restriction on future use. CONSULTANT may make copies of any and all documents for its files, at its sole cost and expense.
- 6.2 CONSULTANT shall retain all records owned by CITY or to which CITY has access for the retention periods specified by local, state, or federal law.

VII. TERMINATION

- 7.1 For purposes of this contract, "termination" of this contract shall mean termination by expiration of the contract term as set out in article I or earlier termination pursuant to any of the provisions of this contract.

- 7.2 CITY may terminate this contract in accordance with this article, in whole or in part, at any time, for any reason, upon written notice to CONSULTANT. Said notice shall specify the date of termination.
- 7.3 In no event shall CITY's action of terminating this contract be deemed an election of CITY's remedies, nor shall such termination limit, in any way, at law or at equity, CITY's right to seek damages from or otherwise pursue CONSULTANT for any default hereunder or other action.
- 7.4 If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, this contract shall automatically terminate as of the effective date of such prohibition.
- 7.5 Should this contract be terminated prior to completion of the work identified in Article II, CONSULTANT shall, within five business days of the effective date of termination, submit to the CITY its claim, in detail, for the monies owed by the CITY for services performed under this contract through the effective date of termination.
- 7.6 Regardless of how this contract is terminated, CONSULTANT shall effect an orderly transfer to CITY or to such person(s) or firm(s) as the CITY may designate, at no additional cost to CITY, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by CONSULTANT, or provided to CONSULTANT, hereunder, regardless of storage medium, if so requested by CITY, or shall otherwise be retained by CONSULTANT in accordance with Article XXV. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by CITY and shall be completed at CONSULTANT's sole cost and expense. Payment of compensation due or to become due to CONSULTANT is conditioned upon delivery of all such documents, if requested.
- 7.7 Upon the effective date of expiration or termination of this contract, CONSULTANT shall cease all operations of work being performed by CONSULTANT or any of its subcontractors pursuant to this contract.

VIII. NON-WAIVER OF PERFORMANCE

- 8.1 Unless otherwise specifically provided for in this contract, a waiver by either party of a breach of any of the terms, conditions, covenants, or guarantees of this contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant, or guarantee herein contained. Further, any failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by either party hereto of any provision of this contract shall be deemed to have been made or shall be effective, unless expressed in

writing and signed by the party to be charged. No act or omission by a party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

IX. INDEPENDENT CONTRACTOR

- 9.1 CONSULTANT covenants and agrees that CONSULTANT is an independent contractor and not an officer, agent, servant, or employee of CITY; that CONSULTANT shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and consultants; that the doctrine of respondent superior shall not apply as between CITY and CONSULTANT, its officers, agents, employees, contractors, subcontractors, and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners, or joint venturers between CITY and CONSULTANT. The parties hereto understand and agree that the CITY shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the CONSULTANT under this agreement and that the CONSULTANT has no authority to bind the CITY.
- 9.2 Regardless of where the work shall be performed, what supplies or resources are provided by CITY, what instruction or direction is provided by CITY, CONSULTANT and those persons designated by it to provide services shall not be deemed employees of CITY and shall not be entitled to wages or benefits from CITY, other than the compensation provided herein.

X. SUBCONTRACTING AND ASSIGNMENT

- 10.1 Any other clause of this contract to the contrary notwithstanding, none of the work or services covered by this contract shall be subcontracted without the prior written approval of CITY. Any work or services approved for subcontracting hereunder, however, shall be subcontracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this contract. Compliance by subcontractors with this contract shall be the responsibility of CONSULTANT.
- 10.2 Despite CITY approval of a subcontract, CITY shall, in no event, be obligated to any third party, including any subcontractor of CONSULTANT, for performance of work or services, nor shall CITY funds ever be used for payment of work or services performed prior to the date of contract execution or after the termination of this contract.
- 10.3 Except as otherwise stated herein, CONSULTANT may not sell, assign, pledge, transfer, or convey any interest in this contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, without the prior written consent of CITY. As a condition of such consent, if such consent is granted,

CONSULTANT shall remain liable for completion of the services outlined in this contract in the event of default by the successor, assignee, transferee, or subcontractor.

- 10.4 Any attempt to transfer, pledge, or otherwise assign this contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should CONSULTANT assign, transfer, convey, delegate, or otherwise dispose of any part or all of its right, title, or interest in this contract, CITY may, at its option, cancel this contract and all rights, titles, and interest of CONSULTANT shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this contract. The violation of this provision by CONSULTANT shall in no event release CONSULTANT from any obligation under the terms of this contract, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY, which CITY sustains as a result of such violation.

XI. CONFLICT OF INTEREST

- 11.1 CONSULTANT acknowledges that it is informed that the Charter of the City of San Antonio and CITY's Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies, or services, if any of the following individuals or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten percent or more of the voting stock or shares of the business entity, or ten percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.
- 11.2 Pursuant to the subsection above, CONSULTANT warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of CITY. CONSULTANT further warrants and certifies that it has tendered to CITY a discretionary contracts disclosure statement in compliance with CITY's Ethics Code.

XII. INDEMNITY

- 12.1 **CONSULTANT COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY**

DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONSULTANT'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

12.2 THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. CONSULTANT SHALL ADVISE THE CITY IN WRITING WITHIN TWENTY-FOUR HOURS OF ANY CLAIM OR DEMAND AGAINST CITY OR CONSULTANT KNOWN TO CONSULTANT RELATED TO OR ARISING OUT OF CONSULTANT'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONSULTANT'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONSULTANT OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

12.3 Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONSULTANT shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that CITY is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

12.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the

indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

XIII. POLYGRAPH EXAMINER'S BOND

- 13.1 CONSULTANT shall procure and maintain in effect a polygraph examiner's bond in the amount of \$5,000.00, which conforms to the requirements outlined in the Texas Administrative Code Title 16, Part 4, Chapter 88 §88.40. Said bond shall guarantee payment arising out of judgments recovered against CONSULTANT for any wrongful or illegal act committed by CONSULTANT in the course of administering a polygraph examination. This bond must remain in effect for two years after the completion of any services rendered by CONSULTANT pursuant to this contract or otherwise for, or on behalf of, CITY.

XIV. CHANGES AND AMENDMENTS

- 14.1 Except when the terms of this contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and CONSULTANT.
- 14.2 It is understood and agreed by the parties hereto that changes in local, state, and federal rules, regulations, or laws applicable hereto may occur during the term of this contract and that any such changes shall be automatically incorporated into this contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, or law.

XV. ENTIRE AGREEMENT

- 15.1 This contract and its exhibits constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

XVI. SEVERABILITY

- 16.1 If any clause or provision of this contract is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including, but not limited to, the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality, or unenforceability shall not affect any other clause or provision hereof and that the remainder of this contract shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this contract that is invalid, illegal, or

unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

XVII. NOTICES

- 17.1 For purposes of this contract, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY

City of San Antonio
San Antonio Police Department
315 South Santa Rosa
San Antonio, Texas 78207

CONSULTANT

Ruiz Protective Service, Inc.
Attention: Andy Ruiz, Vice President
2646 Andjon Dr.
Dallas, Texas 75220

XVIII. LAW APPLICABLE

- 18.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.
- 18.2 VENUE AND JURISDICTION FOR ANY LEGAL ACTION OR PROCEEDING BROUGHT OR MAINTAINED, DIRECTLY OR INDIRECTLY, UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL LIE EXCLUSIVELY IN BEXAR COUNTY, TEXAS.
- 18.3 The Parties expressly agree that in the event of litigation, each party waives its right to attorneys' fees.

XIX. LEGAL AUTHORITY

- 19.1 The signer of this contract for CONSULTANT represents, warrants, assures, and guarantees that he has full legal authority to execute this contract on behalf of CONSULTANT and to bind CONSULTANT to all of the terms, conditions, provisions, and obligations herein contained.

XX. PARTIES BOUND

- 20.1 This contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns, except as otherwise expressly provided for herein.

XXI. GENDER

- 21.1 Words of any gender used in this contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXII. CAPTIONS

- 22.1 The captions contained in this contract are for convenience of reference only and in no way limit or enlarge the terms and/or conditions of this contract.

XXIII. NON-DISCRIMINATION

- 23.1 As a party to this contract, CONSULTANT understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XXIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

- 24.1 Non-discrimination. As a condition of entering into this agreement, CONSULTANT represents and warrants that it will comply with City's Commercial Nondiscrimination Policy, as described under Section IIIC.1 of the SBEDA Ordinance. As part of such compliance, CONSULTANT shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall CONSULTANT retaliate against any person for reporting instances of such discrimination. CONSULTANT shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in City's Relevant Marketplace. CONSULTANT understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of CONSULTANT from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONSULTANT shall include this nondiscrimination clause in all subcontracts for the performance of this agreement.

XXV. RECORDS RETENTION

- 25.1 CONSULTANT and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the CITY at their respective offices, at all reasonable times and as often as CITY may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by CITY and any of its authorized representatives.
- 25.2 CONSULTANT shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, CONSULTANT shall retain the records until the resolution of such litigation or other such questions. CONSULTANT acknowledges and agrees that CITY shall have access to any and all such documents at any and all times, as deemed necessary by CITY, during said retention period. CITY may, at its election, require CONSULTANT to return the documents to CITY at CONSULTANT's expense prior to or at the conclusion of the retention period. In such event, CONSULTANT may retain a copy of the documents.
- 25.3 CONSULTANT shall notify CITY, immediately, in the event CONSULTANT receives any requests for information from a third party, which pertain to the documentation and records referenced herein. CONSULTANT understands and agrees that CITY will process and handle all such requests.

XXVI. INSURANCE

- 26.1 Prior to the commencement of any work under this Agreement, CONSULTANT shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the San Antonio Fire Department, which shall be clearly labeled "Polygraph Examination" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the San Antonio Fire Department. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.

26.2 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will CITY allow modification whereby CITY may incur increased risk.

26.3 A CONSULTANT's financial integrity is of interest to the CITY; therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by the CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at CONSULTANT's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

26.4 CONSULTANT agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of CONSULTANT herein, and provide a certificate of insurance and endorsement that names the CONSULTANT and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of CONSULTANT. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This

provision may be modified by CITY's Risk Manager, without subsequent CITY Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by CITY's Risk Manager, which shall become a part of the contract for all purposes.

- 26.5 As they apply to the limits required by the CITY, the CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. CONSULTANT shall be required to comply with any such requests and shall submit requested documents to CITY at the address provided below within 10 days. CONSULTANT shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: San Antonio Police Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- 26.6 CONSULTANT agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the CITY is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the CITY.

Provide advance written notice directly to CITY of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

- 26.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, CONSULTANT shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONSULTANT's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 26.7 In addition to any other remedies the CITY may have upon CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order CONSULTANT to stop work

hereunder, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.

- 26.8 Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subcontractors' performance of the work covered under this Agreement.
- 26.9 It is agreed that CONSULTANT's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 26.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the CITY shall be limited to insurance coverage provided.
- 26.11 CONSULTANT and any Subcontractors are responsible for all damage to their own equipment and/or property.

XXVII. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

- 27.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
- (1) does not boycott Israel; and
 - (2) will not boycott Israel during the term of the contract.
- 27.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 27.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.
- 27.4 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

**XXVIII. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN
BUSINESS
WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**


Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

RUIZ PROTECTIVE SERVICE, INC.

Erik Walsh
City Manager



Andrew Ruiz
Vice President of Finance

Approved as to Form:

Krista Cover
Assistant City Attorney