



DATE: January 30, 2013

TO: Honorable Mayor and City Councilmembers

FROM: Property Management Division

SUBJECT: **APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT FOR ALARM SYSTEM MONITORING AND SECURITY GUARD SERVICES FOR CITY FACILITIES**

SYNOPSIS

Staff recommends approval of a professional services agreement with Rancho Santa Fe Security Protective Services of Encinitas to provide alarm monitoring and security guard services at the Civic Center and various City facilities, retroactive to January 1, 2013; through December 30, 2014, for a total annual cost of \$148,050; and authorization for the City Manager to execute the agreement.

BACKGROUND

Rancho Santa Fe Protective Services has provided alarm monitoring and security guard services at the Civic Center and various other City facilities since 1998. The current security agreement expired December 31, 2012. City staff solicited requests for proposals from qualified private companies to provide alarm monitoring and security guard services at the Civic Center and various other City facilities on October 30, 2012. In response thereto, five proposals were submitted. A list of respondents is attached.

ANALYSIS

A panel comprised of City staff reviewed the proposals and conducted interviews with the top two rated candidates: Alltech Security and Rancho Santa Fe Protective Services. City staff unanimously selected Rancho Santa Fe Protective Services (RSF).

RSF was selected based on their past performance and experience providing security service to the City. RSF's proposed service levels are consistent with the bid proposal requirements and the bid costs were comparable with other security proposals.

The professional services agreement with RSF is for a term of two years commencing retroactive to January 1, 2013 and ending December 31, 2014. The City may renew the agreement with the same terms and conditions, except compensation, for four additional one-year terms. The yearly compensation would be adjusted to reflect the change in the semi-annual Consumer Price Index for "All Urban Consumers" for San Diego.

FISCAL IMPACT

The current annual agreement cost is \$166,282. The proposed annual agreement cost is \$148,050 per year, which is a reduction in cost. Funds for the harbor and beach service portion of the agreement will be paid from the Harbor District Budget (Account No. 600625101.5305). The Public Works Department Budget (Account No. 630603851.5305) funds the remainder of the agreement cost.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be provided.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY ANALYSIS

The City Attorney reviewed and approved the professional services agreement as to form.

RECOMMENDATION

Staff recommends approval of a professional services agreement with Rancho Santa Fe Security Protective Services of Encinitas to provide alarm monitoring and security guard services at the Civic Center and various City facilities, retroactive to January 1, 2013; through December 30, 2014, for a total annual cost of \$148,050; and authorization for the City Manager to execute the agreement.

PREPARED BY:

SUBMITTED BY:

Julie Cook
Julie Cook
Program Specialist

Peter Weiss
Peter Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

[Signature]

Douglas Eddow, Real Property Manager

[Signature]

Frank Quan, Harbor and Beaches Coordinator

J.F.Q.

Teri Ferro, Financial Services Director

[Signature]

Exhibit A: Cost Breakdown

Exhibit B: List of Respondents

EXHIBIT A

Base Level Security Services

	<u>Number of Units of Measure</u>	<u>Price Per Unit of Measure</u>	<u>Total Agreement Cost</u>
Alarm Systems monitoring(monthly)	44	\$19.75	\$ 20,856
Long Range Radio Back up(monthly)	4	\$15.00	\$ 1,440
<u>Parks</u>			
Marshall Park. Open and close gates seven days a week. (2 X per day X 365 days=730)	730	\$ 4.25	\$ 6,205
Palisades Park. Close gate seven days a week. (1 X per day X 365 days=365)	365	\$ 5.95	\$ 4,343.50
Walking guard at Balderrama Park. (4 hours a day X 5 days a week = 20 hours per week X 52 weeks = 1,040 hours per year)	1,040	\$19.40	\$ 40,352
<u>Harbor and Beach</u>			
Strand restrooms. Lock five sets of men's and women's restrooms seven days a week. (5 sets X 365 days=1,835)	1,835	\$ 2.55	\$ 9,358.50
Beach Area Gates. Lock and unlock the gates at Betty's Lot, Surfrider street gate, Lot 28 and Lot 29 seven days a week. (4 X 2 per day=8 X 365 days= 2,920)	2,920	\$ 3.40	\$ 19,856
<u>Civic Center</u>			
Walking security guard. (96 hours per week X 52 weeks = 4,992 hours per year.)	4,992	\$19.40	\$193,689.60
Total Agreement cost			\$296,100.60

Extraordinary/Additional Work Rates

Hourly rate for additional unarmed guard service with advance notice.	\$19.40
Hourly rate for additional unarmed guard service with less than 48 hours advance notice.	\$35.00
Hourly rate for armed guard service with advance notice.	\$24.50
Hourly rate for armed guard service with less than 48 hours advance notice	\$35.50
Rate per gate for additional gate locking or unlocking.	\$ 5.50
Rate per restroom set for additional locking or unlocking.	\$10.00

Exhibit B

City Facility Security RFP

List of Respondents

- 1. Alltech Industries, Inc.***
- 2. American Guard Services, Inc.**
- 3. Continental Protection Agency**
- 4. Legacy Protective Services**
- 5. Rancho Santa Fe Protective Services***

***Respondents interviewed**

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CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: CITY FACILITIES SECURITY

This Professional Services Agreement ("Agreement") is made and entered into this ____ day of January 2013, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY" and Rancho Santa Fe Protective Services hereinafter designated as "CONTRACTOR".

RECITALS

- A. CITY desires to obtain professional security services from an independent contractor for the above named project.
- B. CONTRACTOR has submitted a proposal to provide security services for the CITY in accordance with the terms set forth in this Agreement.
- C. CITY desires to contract with CONTRACTOR as an independent contractor and CONTRACTOR desires to provide services to CITY as an independent contractor.
- D. CONTRACTOR has demonstrated its competence and professional qualifications necessary for the satisfactory performance of the services designated herein by virtue of its experience, training, education and expertise.

NOW THEREFORE, THE PARTIES HERETO MUTUALLY AGREE AS FOLLOWS:

1. **TERM OF AGREEMENT.** The term of this Agreement shall be two (2) years, retroactive to January 1, 2013, and ending on December 31, 2014, unless terminated sooner as provided for in this Agreement.

1.1 **RENEWAL OPTION.** CITY may agree to renew this Agreement for four (4) additional consecutive one (1) year terms upon the same terms and conditions, except compensation, provided CONTRACTOR at the end of each Agreement term is not in default of this Agreement.

1.1.2 **Compensation Adjustment Index.** The index used will be the semi-annual Consumer Price Index ("CPI") for "All Urban Consumers" for San Diego, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index.

If the Department of Labor indices are no longer published, another index

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generally recognized as authoritative will be substituted by agreement of CITY and CONTRACTOR. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor.

1.1.3 **Compensation Adjustment Computation.** Any term renewal compensation under this Agreement shall be computed in accordance with the following definitions and formulas:

Definitions:

Initial Compensation: The compensation at the commencement of this AGREEMENT as listed in Schedule A, divided by two (2), creating a one year compensation rate, and the hourly rates listed Schedule B.

Existing Compensation: The compensation in effect on the date preceding the term renewal date.

Percent Change in the CPI: The San Diego All Consumer Index is published in July and December. The percent change in the CPI shall be the percent change in the San Diego All Consumer Index over the preceding twelve (12) month period from June 30 to July 1 for the year prior to renewal. The first eligible term renewal shall be based on the July 2013 to June 2014 period in the July 2014 publication of the Index. The second eligible renewal shall be based on the July 2015 index, third renewal on the July 2016 index and the fourth eligible renewal would be based on the July 2017 index.

Rent Adjustment Formulas:

First Adjustment: $\text{Initial Compensation} + (\text{Initial Compensation} \times \text{the percent change in the CPI}) = \text{New Compensation}$.

For example: $\$122,000 + (\$122,000 \times 2.5\%) = \$125,050$

Subsequent Adjustments: $\text{Existing Compensation} + (\text{Initial Compensation} \times \text{the percent change in the CPI}) = \text{New Compensation}$.

For example: $\$125,050 + (\$122,000 \times 3\%) = \$128,710$

1.2. **NOTICE OF INTENT TO RENEW.** CONTRACTOR shall notify CITY, in writing, with a "Notice of Request to Renew" not sooner than one hundred eighty (180) days and not later than ninety (90) days prior to expiration of the Agreement and at each subsequent renewal option as set forth above.

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1.3. **NOTICE OF RENEWAL.** Upon receipt of CONTRACTOR'S Notice of Request to Renew, CITY shall respond to CONTRACTOR, in writing, within 60 days of receipt of said Notice of Request to Renew. Failure of the CITY to so respond shall be construed as an intention to not renew this Agreement for the optional term.

2. **SCOPE OF WORK.** CONTRACTOR shall provide professional security services at CITY facilities (as outlined in Schedule A), as well as provide protection to CITY facilities and to persons utilizing these facilities. In performing these duties, the CONTRACTOR shall cooperate with CITY law enforcement authorities by monitoring and reporting of crime and other unusual or suspicious activities. The work to be performed under this Agreement shall consist of furnishing all tools, equipment, materials, supplies, manufactured articles, transportation services (including fuel), power, water, essential communications, and labor, work and other operations required for the fulfillment of the Agreement.

2.1. **SERVICES TO BE PROVIDED BY CONTRACTOR.** The services provided by CONTRACTOR shall be in accordance with this Agreement and accepted industry standards. The intended duties and responsibilities of CONTRACTOR include, but are not limited to, the following:

CONTRACTOR shall work closely with CITY in performing its work in accordance with this Agreement in order to receive clarification as to the result that the CITY expects to be accomplished by CONTRACTOR. The City Manager shall be the CITY's authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The City Manager may delegate authority in connection with this Agreement to the Real Estate Manager's designee(s). For the purposes of directing CONTRACTOR in accordance with this Agreement, which does not result in a change to this Agreement, the City Manager delegates authority to the CITY's Real Estate Manager or its designee.

CONTRACTOR shall furnish sufficient supervisory and working personnel capable of promptly accomplishing, to the satisfaction of the Real Estate Manager and on schedule, all work required under this Agreement during the regular and prescribed hours. All such personnel shall be physically able to do their assigned work. CONTRACTOR and CONTRACTOR'S employees shall conduct themselves in a proper and efficient manner at all times and shall cause the least possible annoyance to the public. Employees shall be fully clothed in suitable uniform attire with a company identifying marker. **The Real Estate Manager may require the CONTRACTOR to remove from the work site any employee(s) deemed careless, incompetent, or otherwise objectionable whose continued employment on the job is considered to be contrary to the best interests of the CITY OF OCEANSIDE.**

CONTRACTOR shall have readily available (defined as capable of reaching all Agreement job sites within forty-five (45) minutes at all times that work is being performed) competent supervisors who have the ability to speak and understand English, and are able

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to discuss matters pertaining to this Agreement with the general public and the Real Estate Manager. Supervisors must have a minimum of three (3) years actual field experience, and must be able to demonstrate to the satisfaction of the Real Estate Manager that they possess adequate technical background. Adequate and competent supervision shall be provided for all work done by the CONTRACTOR'S employees to ensure accomplishment of high quality work, which will be acceptable to the Real Estate Manager.

CONTRACTOR shall be responsible for providing sufficient personnel to accomplish the duties required under this Agreement. Consistent with the contractual duties and obligations, CONTRACTOR'S principal responsibility is to be a highly visible presence at the Civic Center Complex and designated CITY parks and facilities. In this regard, CONTRACTOR'S personnel are the eyes and ears of the CITY. The number of CONTRACTOR'S personnel to be provided for any given facility shall be determined by the CITY. Should CONTRACTOR feel that the designated number is insufficient to provide adequate protection to persons and property, then CONTRACTOR shall make recommendations to CITY for additional personnel. However, CITY's determination as to the number of CONTRACTOR'S personnel shall be final.

CONTRACTOR'S personnel shall be responsible for the physical protection of CITY's buildings, restrooms, parks, parking lots, structures, equipment and CITY facilities as directed by this Agreement.

CONTRACTOR'S personnel shall take all reasonable actions for the protection and safety of facility participants.

CONTRACTOR'S personnel shall monitor, and when necessary, report to the Oceanside Police Department, any unusual or suspicious activities in CITY parks or other CITY facilities.

CONTRACTOR'S personnel shall observe and report to the Oceanside Police Department any criminal activities in CITY parks or other CITY facilities.

For those facilities with fire alarm service, CONTRACTOR agrees to transmit notice of the alarm to the appropriate CITY Fire Department personnel after receipt in its central station of all fire alarm signals from the CITY's premises.

CONTRACTOR shall not be responsible for the maintenance and up keep of CITY alarm systems.

CONTRACTOR'S personnel shall insure that buildings, facilities, gates, etc. are secure and locked/unlocked as directed by the CITY.

CONTRACTOR'S personnel shall make security checks on park facilities and properties as per this Agreement.

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CONTRACTOR'S personnel shall provide a highly visible and uniformed presence within CITY parks and facilities as per this Agreement.

CONTRACTOR'S personnel shall be attired in distinctively identifiable CONTRACTOR uniforms.

CONTRACTOR'S personnel shall maintain a highly visible presence and maintain standards of personal appearance to the reasonable satisfaction of CITY.

2.1.1. If suspected criminal behavior is observed, CONTRACTOR'S personnel should attempt to contact the Oceanside Police Department before making any contact with the suspect. As to criminal activity, CONTRACTOR'S personnel shall comply with the following:

As to misdemeanor offenses, personnel shall initially contact the Oceanside Police Department. Arrest shall be made only as a last resort and only as to offenses occurring within the CONTRACTOR'S personnel's presence as provided in California Penal Code §837(1), Private Person's authority to arrest.

As a general rule, misdemeanor arrests should be made and consummated by the Oceanside Police Department. Arrests for felony offenses shall be made only by the Oceanside Police Department except in exigent circumstances when CONTRACTOR is specifically directed by Oceanside Police Department.

CONTRACTOR'S personnel must recognize and comply with the constitutional and statutory restraints on the use of deadly and non-deadly force for purposes of arrests.

2.1.2. The CITY shall further direct that all patrol officers of CONTRACTOR be:

Properly trained and licensed as required by the State of California to carry a handgun and baton. Also, patrol officers should be properly trained in constitutional and statutory limits on deadly and non-deadly uses of force for purposes of making arrests. Basically, CONTRACTOR'S members are citizens and have no greater right to use deadly or non-deadly force than any other private citizen. CONTRACTOR shall be responsible and indemnify the City for any actions arising from any use of force by CONTRACTORS employee(s).

Verification of license qualifications required by this Agreement shall be filed with the Oceanside Police Department.

All CONTRACTOR'S vehicles shall contain a cellular phone or two-way radio, First-Aid kit, and be marked with the CONTRACTOR'S insignia.

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CONTRACTOR'S personnel shall courteously provide facility participants with information regarding all facility and CITY rules and regulations and request compliance therewith.

CONTRACTOR'S personnel shall be equipped with portable communication devices enabling them to contact immediate emergency assistance.

CONTRACTOR'S personnel shall check-in with on-site supervisory CITY staff for park guard service at the beginning of each shift and periodically throughout the shift.

CONTRACTOR'S personnel shall take work breaks off site. Sitting in a private automobile or just relaxing on or near the work site is not acceptable. This is a public relations issue. When the public sees a uniformed security officer sitting anywhere around the work site, eating, reading, or just taking it easy, there is potential for the public perception that the security officer isn't doing his or her job.

CONTRACTOR'S personnel shall have in their possession, while on duty, a valid California Guard Registration Card.

2.1.3. CONTRACTOR shall be required to maintain a log (record) for each work assignment carried out under this Agreement. Said log shall contain, but not be limited to: entries of the number of and names of CONTRACTOR'S personnel working, any and all incidents of vandalism or damage to property, injury to persons, names and/or descriptions of any victims, suspects and witnesses and time of occurrences or discovery. The above-mentioned information shall be made available to the CITY within twenty-four (24) hours of occurrence or forty-eight (48) hours if a weekend or holiday is involved.

2.1.4. While performing their duties under this Agreement, CONTRACTOR'S personnel shall be routinely checked upon by a member of CONTRACTOR'S supervisory staff. Such inspections shall not be less than once per work shift. CONTRACTOR'S supervisory staff shall be present during all changes in work shifts to ensure a smooth transition of its work force.

2.1.5. CONTRACTOR shall perform such other duties as mutually agreed upon, in writing, insofar as such duties relate to the intent of this Agreement.

2.1.6. CONTRACTOR shall be responsible for the monitoring of a fully operable security system at locations designated by the CITY and timely calling of appropriate authorities upon evidence of a system malfunction or possible breach of security.

2.1.7. CONTRACTOR, on receipt of a burglar alarm signal from the CITY's premises, will endeavor to send its representative to said premises to await the arrival of the local

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police authorities or the CITY's representative, and, if provided with a key to the premises, CONTRACTOR'S representative will admit the aforementioned parties. CONTRACTOR'S representative will take no action of any nature whatsoever to hold or cause the arrest of any person or persons.

2.1.8 CONTRACTOR shall notify CITY of any alarm malfunction as soon as it is discovered during normal CITY business hours and by 9:00 a.m. of the first business day following discovery if discovered during CITY non-working hours.

2.1.9. CONTRACTOR shall provide opening and closing reports upon request by the CITY.

2.1.10. CONTRACTOR shall perform its duties as set forth in Schedule A, regardless of holidays.

3. ACCESS AND INFORMATION TO BE PROVIDED BY CITY. CITY shall provide the following access and information to facilitate CONTRACTOR'S performance under this Agreement:

Provide access to all CITY facilities, as deemed necessary by CITY, for CONTRACTOR to carry out its duties while engaged in the performance of this Agreement.

For those facilities with Burglary Alarm Service, the CITY will furnish CONTRACTOR with a current written list of users and individual signatures of all persons who are authorized to be in and about the premises during closed periods. CITY will properly test and set the burglar alarm system on every closing and properly turn off the system on each opening. CITY will test any capacitance or other electronic equipment according to procedures prescribed by CONTRACTOR prior to setting the alarm system for closed periods and will notify CONTRACTOR promptly if such equipment fails to respond to the test.

Provide a one (1) hour window for closing gates and restrooms. CITY may adjust that window with a minimum of forty-eight (48) hours written notice.

Provide a one hour window for opening gates and restrooms. CITY may adjust that window with a minimum of 48 hours written notice.

4. INDEPENDENT CONTRACTOR. CONTRACTOR'S relationship to the CITY shall be that of an independent CONTRACTOR. CONTRACTOR shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the Real Estate Manager. CONTRACTOR shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONTRACTOR shall

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report to the CITY any and all employees, agents and consultants performing work in connection with this project, and all shall be subject to the approval of the CITY.

5. **CITY BUSINESS LICENSE.** Prior to the commencement of any work under this Agreement, the CONTRACTOR shall obtain and present a copy to the Real Estate Manager of either a City of Oceanside Business License, or a written-verification from the City Business License Division that a City Business License is not required for this Agreement.

6. **WORKERS' COMPENSATION.** Pursuant to Labor Code Section 1861, the CONTRACTOR hereby certifies that the CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against Liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONTRACTOR will comply with such provisions, and provide certification of such compliance. The certification shall be in accordance with Subsections 7.3 through 7.7 of this Agreement.

7. **LIABILITY INSURANCE.** CONTRACTOR shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONTRACTOR, its agents and employees, performed in connection with this Agreement including but not limited to use of force, premises and automobile, and extended coverage to include false arrest, wrongful detention and invasion of privacy.

7.1 CONTRACTOR shall maintain the following minimum limits:

General Liability

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000

Automobile Liability

Combined Single Limit Per Occurrence	\$ 2,000,000
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7.2. All insurance companies affording coverage to the CONTRACTOR shall be required to add the City of Oceanside as "additional insured" under the insurance policy for all work performed in accordance with this Agreement.

7.3. All insurance companies affording coverage to the CONTRACTOR shall be insurance organizations authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

7.4. All insurance companies affording coverage shall provide thirty (30) days written

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notice to the CITY of Oceanside should the policy be canceled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

7.5. CONTRACTOR shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

7.6. CONTRACTOR shall provide a substitute certificate of insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONTRACTOR to provide such a substitution and extend the policy expiration date shall be considered a default by CONTRACTOR and may subject the CONTRACTOR to a suspension or termination of work under the Agreement.

7.7. Maintenance of insurance by the CONTRACTOR as specified in this Agreement shall in no way be interpreted as relieving the CONTRACTOR of any responsibility whatsoever and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.

8. INDEMNIFICATION.

8.1 CONTRACTOR shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of CONTRACTOR'S work, including the negligent acts, errors or omissions or wrongful acts or conduct of the CONTRACTOR, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONTRACTOR'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONTRACTOR at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees founded upon, resulting or arising from the conduct, tortious acts or omissions of the CONTRACTOR.

8.2 CONTRACTOR'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONTRACTOR.

9. NO CONFLICT OF INTEREST. The CONTRACTOR shall not be financially interested in any other CITY contract for this Agreement. For the limited purposes of interpreting this section, the CONTRACTOR shall be deemed a "CITY officer or employee", and this section shall be interpreted in accordance with Government Code Section 1090. In the event that the CONTRACTOR becomes financially interested in any other CITY contract for this Agreement, that other contract shall be void. The

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CONTRACTOR shall indemnify and hold harmless the CITY, under Section 8 above, for any claims for damages resulting from the CONTRACTOR'S violation of this Section.

10. **COMPENSATION.** CONTRACTOR shall be compensated for services rendered to CITY in accordance with the attached schedules, marked Schedule A and Schedule B, attached hereto and incorporated herein by reference. No rate changes shall be made during the term of this Agreement without prior written approval of the CITY. CONTRACTOR'S compensation for all work performed in accordance with this Agreement shall not exceed prices indicated in said Schedule A and Schedule B.

10.1 CONTRACTOR shall perform no work in excess of the total Agreement price without prior written approval of the Real Estate Manager. The hourly rates and extended services rates from Schedule A and Schedule B shall be the bases for all additional work performed by CONTRACTOR. CONTRACTOR shall obtain approval of the Real Estate Manager prior to performing any work, which results in incidental expenses to CITY.

10.2. CONTRACTOR shall maintain account records including the following information:

Names and title of employees or agents, types of work performed, and times and dates of all work performed in connection with this Agreement which is billed on an hourly basis.

10.3. CONTRACTOR'S accounting records shall be made available to the Real Estate Manager, for verification of billings, within a reasonable time of the Real Estate Manager's request for inspection.

10.4. CONTRACTOR shall submit monthly invoices to CITY. CITY shall make payments to CONTRACTOR not to exceed the actual Agreement prices set forth in said Schedule A and Schedule B within thirty (30) days of receipt of invoice, subject to the approval of the Real Estate Manager.

11. **FAILURE TO PERFORM SATISFACTORILY.** It is agreed and understood that if the CONTRACTOR fails to perform the work as specified herein, the CITY may:

1. Pay only for the amount of service received, as determined by the Real Estate Manager, with an appropriate downward adjustment in Agreement price; or
2. Have such required work done by CITY forces, by others or by both, and charge the cost thereof to the CONTRACTOR.

Such adjustments may be estimated cost for performance by CITY forces, plus CITY overhead, and shall include overtime pay as required to complete the work.

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3. For gate and restroom opening and closing, failure of the CONTRACTOR, **FOR WHATEVER REASON**, to properly execute the task in a timely manner which requires the City to open or close the gate or restroom, the City shall:

- a. Adjust the Agreement price per Section 11.1. above, and
- b. Charge the CONTRACTOR one hundred and no/dollars (\$100.00) per Event ("Event" being defined as opening or closing an individual gate or beach area restroom. This cost will adjust concurrently and commensurate with any agreement renewal price adjustments.

Those discrepancies and deficiencies in the work that remain uncorrected may be necessary justification for a billing adjustment in the month following the occurrence.

12. **PAYMENTS WITHHELD**. The CITY may withhold payment to such extent as may be necessary to protect the CITY from loss due to:

1. Work required in the specifications, which is defective, incomplete or not performed.
2. Claims filed against the CITY for damage caused by the CONTRACTOR'S acts or omissions, or reasonable evidence indicating probable filing of such claims.
3. A reasonable doubt that the Agreement can be completed for the balance then unpaid.

13. **TERMINATION OF AGREEMENT**. If either party ("Demanding Party") has a good faith belief that the other party ("Defaulting Party") is not complying with the terms of this Agreement, the Demanding Party shall give written notice of the default (with reasonable specificity) to the Defaulting Party and demand the default to be cured within ten (10) days of the notice.

If the Defaulting Party fails to cure the default within ten (10) days of the notice, or, if more than ten days are reasonably required to cure the default and the Defaulting Party fails to give adequate assurance of due performance within ten (10) days of the notice, the Demanding Party may terminate this Agreement upon written notice to the Defaulting Party.

The CITY may terminate this Agreement for any reason by providing thirty (30) days written notice to CONTRACTOR.

If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONTRACTOR for any work completed up to and including the date of termination or abandonment of this Agreement, in accordance with the Compensation Section 10. The CITY shall be required to compensate CONTRACTOR only for work performed in accordance with the Agreement up to and including the date of

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termination.

14. **ASSIGNMENT AND DELEGATION.** This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the CONTRACTOR'S duties be delegated, without the express written consent of the CITY. Any attempt to assign or delegate this Agreement without the express written consent of the CITY shall be void and of no force or effect. Consent by the CITY to one assignment shall not be deemed to be a consent to any subsequent assignment.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

15. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONTRACTOR concerning the work to be performed for this project and supersedes all prior negotiations, representations or agreements.

16. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.

17. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONTRACTOR shall be responsible for complying with all Local, State and Federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

18. **LIMITATION ON LIABILITY.**

18.1. It is understood that CONTRACTOR is not an insurer; that the sums payable hereunder to CONTRACTOR by the CITY are based upon the value of services offered and the scope of liability undertaken and such sums are not related to the value of property belonging to the CITY or to others located on the CITY'S premises. In particular, the CONTRACTOR does not insure that the CITY'S alarm systems are maintained in good working order.

18.2 The parties agree that the services that CONTRACTOR agrees to render are intended to protect against certain contingencies but that CONTRACTOR cannot and does not guarantee or warrant that the CITY will not incur damages or losses caused by

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hazards and contingencies against which the services provided by the CONTRACTOR are intended to protect. It is further agreed that there are no third party beneficiaries to this Agreement.

19. **NOTICES.** All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To CITY:
Property Management
City of Oceanside
300 N. Coast Highway
Oceanside, CA 92054

To CONTRACTOR:
Rancho Santa Fe protective Services
1991 Village Park Way
Encinitas, CA 92024

Either party may change its address by notice to the other party as provided herein.

Communication shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

20. **SPECIAL PROVISIONS.**

20.1. **Turnover.** The month of January 2013 shall be a turnover period. The current security provider shall be responsible for security services until such time as CONTRACTOR assumes responsibility no later than January 15, 2013 or City Council approval of this Agreement, whichever is later. CONTRACTOR shall bill the CITY according to the amount of service CONTRACTOR provides during this period.

20.2. **Local Office.** The CONTRACTOR shall maintain a local office with a competent company representative who can be reached during normal working hours and who is authorized to discuss matters pertaining to this Agreement. A local office is one that can be reached by telephone without a toll charge. An answering service in conjunction with a pager for the designated company representative would fulfill this requirement, provided that all calls are returned within a one (1) hour period. The CONTRACTOR shall maintain an e-mail address to receive City generated service performance reports and additional service requests. The CONTRACTOR shall also maintain a single telephone number where he/she can be reached in an emergency twenty-four (24) hours a day.

20.3. **Emergency Service Calls.** The CONTRACTOR shall maintain the ability to provide immediate twenty-four (24) hour a day emergency guard services to assist CITY

City Facilities Security Program

as a result of Acts of God, natural disasters or in the event that circumstances disrupt the normal course of events as determined by the Real Estate Manager. The word "immediate" is construed to mean with all possible haste and shall not exceed two (2) hours from the time of notification.

The CONTRACTOR shall maintain a single telephone number where he can be reached in an emergency twenty-four (24) hours a day. This telephone number shall be made available to the Real Estate Manager, Police and Fire Dispatch.

City will compensate CONTRACTOR for Emergency Services at the bid prices for "guard service with less than forty-eight (48) hours advance notice" rate for the first 48 hours of required service. Continued services shall be compensated at the "guard service with advance notice" rate.

20.4 **Subcontractors.** Subcontractors shall be allowed under the terms and conditions of the Agreement. All persons engaged in the work will be considered as employees of the CONTRACTOR and the CONTRACTOR shall be held directly responsible for their work and their compensation.

21. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONTRACTOR and the CITY.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed.

"CONTRACTOR"

"CITY"

CITY MANAGER

DATE _____

DATE _____

Approved as to form: _____
CITY ATTORNEY

NOTARY ACKNOWLEDGMENTS OF CONTRACTOR'S SIGNATURE(S) MUST BE ATTACHED