



CITY OF PALO ALTO OFFICES OF THE CITY MANAGER AND CITY ATTORNEY

June 14, 2021

The Honorable City Council
Palo Alto, California

Approval of Amendment Number One to Contract Number S20178065 With the OIR Group for Independent Police Auditing Services to Expand the Scope of Services and Increase the Contract Amount by \$32,500 for a Total Not-to-Exceed Amount of \$107,500

Recommendation

The Policy and Services Committee and staff recommend that Council approve and authorize the Clerk to execute Amendment Number One to the contract with the Office of Independent Review (OIR Group) for independent police auditing (IPA) services to expand the Scope of Services and increase the contract amount by \$32,500 for a total not-to-exceed amount of \$107,500 (Attachment A).

Background

Since 2006, Palo Alto has utilized an independent police auditor to conduct secondary review of defined investigations of uniformed Police Department personnel and provide related services. Since the inception of the independent police auditing program, the City has contracted with the Office of Independent Review (OIR Group), to provide these services. Michael Gennaco and Stephen Connolly, the principals of OIR Group, provide services to Palo Alto.

The City last issued a Request for Proposals for IPA services in 2014. At that time, three firms submitted proposals and the City again selected OIR Group as the most qualified to perform the services. The City and OIR entered into a contract for IPA services through October 2019. When the contract expired in 2019, the City and OIR entered into the current contract, which will expire on January 1, 2023.

In November 2020, as part of a series of discussions regarding Police Department procedures, police accountability, and race and equity matters, the Council directed that the IPA's scope of review be expanded to include review of:

- incidents where an officer uses a baton, chemical agent, less-lethal projectile, canine, or

firearm (in addition to TASER uses, which have been and will continue to be reviewed by the IPA)

- incidents resulting in an injury requiring treatment beyond minor medical care in the field
- the Police Department's handling of Supervisory Inquiry Reports (formerly called Informal Inquiry Reports) (complaints that are sufficiently investigated and resolved through expedited review)

In addition, Council directed that changes be made to the schedule of reporting to improve timeliness and accountability and indicated that it will meet publicly with the IPA two times each year.

Finally, Council referred to the Policy and Services Committee consideration of whether the IPA's scope should be further revised to include review of City investigations of uniformed officers arising from internal complaints regarding employee harassment, discrimination, and retaliation in the workplace. The staff report for the November 2020 Council meeting is [CMR 11754](#), the action minutes are [here](#), and the final minutes are [here](#).

Policy and Services considered the Council referral at its meeting on April 13, 2021. The Committee voted unanimously to recommend the City Council direct staff to amend the IPA contract to include employee harassment, retaliation and discrimination claims within the IPA scope, and to research best practices to balance the needs of transparency and public oversight while preserving the anonymity of complainants, witnesses and the subject. The Committee CMR is [CMR 12177](#), the action minutes are [here](#), and the summary minutes are [here](#).

Discussion

After the Policy and Services meeting in April, staff conferred with the IPA regarding the Committee's direction to explore best practices to balance the needs of transparency and public oversight while preserving the anonymity of complainants, witnesses and the subject. The IPA assured staff of its commitment to maintain the confidentiality of employees' identities and reconfirmed that the IPA will work with the City during the review of draft reports to identify and resolve any specific privacy concerns.

The attached Contract Amendment implements the following changes:

1. Expands the scope of IPA review to include the following new areas:

- Incidents where an officer uses a baton, chemical agent, less-lethal projectile, canine, firearm, or any other force, resulting in an injury requiring treatment beyond minor medical care in the field;
 - Supervisor Inquiry Investigations (formerly Informal Inquiry Reports); and
 - Employee complaints of discrimination, harassment or retaliation by a uniformed officer.
2. Amends the timing of reports to implement Council direction that reports be issued two times per year.
 3. Provides for OIR to confer with Council two times per year to discuss trends in criminal justice and policing, policy and training matters, and recommendations made by OIR.
 4. Allows for Council to request additional performance reviews on special topics, to be compensated by task order.
 5. Updates OIR's rates and adds compensation to account for the additional services.

The amendment also reorganizes content for readability, and updates procedures to conform to current practice and legal requirements. Michael Gennaco of the OIR Groups is available for Council questions or concerns.

Resource Impact

The IPA contract is administered through the Clerk's Office. The proposed Operating Budget for 2022 includes adequate funding for the expanded service level.

Policy Implications

Approval of this contract furthers Council direction to increase oversight and accountability in policing.

Environmental Review

Approval of this contract is not a project for the purposes of the California Environmental Quality Act. No environmental review is required.

ATTACHMENTS:

- Attachment A: Amendment One to the Agreement Between the City of Palo Alto and Michael Gennaco DBA OIR Group for Professional Services (PDF)
- Attachment B: Annotated Exhibit A (Scope of Services) with strikeouts and underlines showing changes from prior Scope (PDF)

Department Head: Molly Stump, City Attorney

**AMENDMENT NO. ONE TO CONTRACT NO. S20178065
BETWEEN THE CITY OF PALO ALTO AND
MICHAEL GENNACO DBA OIR GROUP**

This Amendment No. 1 (this "Amendment") to Contract No. S20178065 (the "Contract" as defined below) is entered into as of this _____ day of June, 2021, by and between the CITY OF PALO ALTO, a California chartered municipal corporation ("CITY"), and MICHAEL GENNACO DBA OIR GROUP, a sole proprietor, located at 7142 Trask Avenue, Playa Del Rey, CALIFORNIA, 90293 ("CONSULTANT"). CITY and CONSULTANT are referred to collectively as the "Parties" in this Amendment.

RECITALS

A. The Contract (as defined below) was entered into by and between the Parties hereto for the provision of professional services, as detailed therein.

B. The Parties now wish to amend the Contract in order to add additional scope and increase compensation.

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the Parties agree:

SECTION 1. Definitions. The following definitions shall apply to this Amendment:

- a. **Contract.** The term "Contract" shall mean Contract No. S20178065 between CONSULTANT and CITY, dated December 16, 2019.
- b. **Other Terms.** Capitalized terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Contract.

SECTION 2. Section 1 of the Contract is hereby amended to read as follows:

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described at Exhibit "A" in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

Optional On-Call Provision (This provision only applies if checked and only applies to on-call agreements.)

On-Call Services will be authorized by CITY, as needed, with a Task Order assigned and

Vers.: Aug. 5, 2019

approved by CITY's Project Manager, as identified in Section 13 ("Project Management"). Each Task Order shall be in substantially the same form as Exhibit A-1 ("Professional Services Task Order"). Each Task Order shall contain a specific proposed scope of services, schedule of performance and compensation amount, in accordance with the provisions of this Agreement. To accept a Task Order, CONSULTANT shall sign the Task Order and return it to the Project Manager within the time specified by the Project Manager, and upon acceptance by CITY, the signed Task Order shall become part of this Agreement. The cumulative total compensation due to CONSULTANT for all Task Orders issued under this Agreement shall not exceed the amount of Compensation set forth for such services in Section 4 of this Agreement. CONSULTANT shall only be compensated for services performed under an authorized Task Order and CITY may elect to, but is not required to, authorize work up to the maximum compensation amount set forth for such services in Section 4. Performance of and payment for any On-Call Services are subject to all requirements and restrictions in this Agreement.



Additional Services (This provision only applies if checked and only applies to Agreements that specify an amount for Additional Services under Section 4 and Exhibit "C".)

Additional Services (as defined in Section 4, "Not to Exceed Compensation") will be authorized by CITY, as needed, with a Task Order assigned and approved by CITY's Project Manager, as identified in Section 13 ("Project Management"). Each Task Order shall be in substantially the same form as Exhibit A-1 ("Professional Services Task Order"). Each Task Order shall contain a specific proposed scope of services, schedule of performance and compensation amount, in accordance with the provisions of this Agreement. To accept a Task Order, CONSULTANT shall sign the Task Order and return it to the Project Manager within the time specified by the Project Manager, and upon acceptance by CITY, the signed Task Order shall become part of this Agreement. The cumulative total compensation to CONSULTANT for all Task Orders issued under this Agreement shall not exceed the amount of compensation set forth for Additional Services in Section 4 of this Agreement. CONSULTANT shall only be compensated for Additional Services performed under an authorized Task Order and CITY may elect to, but is not required to, authorize Additional Services work up to the maximum compensation amount set forth for such services in Section 4. Performance of and payment for any Additional Services are subject to all requirements and restrictions in this Agreement.

SECTION 3. Section 4 of the Contract is hereby amended to read as follows:

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit "A" (also referred to herein as the "Basic Services"), and reimbursable expenses (if specified in Exhibit "C"), ("Basic Services"), and reimbursable expenses, shall not exceed Ninety-Seven Thousand Five Hundred Dollars (\$97,500.00). CONSULTANT agrees to complete all Basic Services, including specified reimbursable expenses, within this amount. In the event Additional Services (defined below) are authorized, the total

compensation for Basic Services, Additional Services and specified reimbursable expenses shall not exceed One Hundred Seven Thousand Five Hundred Dollars (\$107,500). The applicable rate schedule is set out at Exhibit "C-1", entitled "SCHEDULE OF RATES." Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amounts of compensation set forth herein shall be at no cost to the CITY.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit "C". CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described at Exhibit "A".

SECTION 4. The following exhibit(s) to the Contract is/are hereby amended or added, as indicated below, to read as set forth in the attachment(s) to this Amendment, which is/are hereby incorporated in full into this Amendment and into the Contract by this reference:

- a. Exhibit "A" entitled "Scope of Services" - AMENDED, REPLACES PREVIOUS.
- b. Exhibit "B" entitled "Schedule of Performance" - AMENDED, REPLACES PREVIOUS.
- c. Exhibit "C-1" entitled "Schedule of Rates" - AMENDED, REPLACES PREVIOUS.

SECTION 5. Legal Effect. Except as modified by this Amendment, all other provisions of the Contract, including any exhibits thereto, shall remain in full force and effect.

SECTION 6. Incorporation of Recitals. The recitals set forth above are terms of this Amendment and are fully incorporated herein by this reference.

(SIGNATURE BLOCK FOLLOWS ON THE NEXT PAGE.)

SIGNATURES OF THE PARTIES

IN WITNESS WHEREOF, the Parties have by their duly authorized representatives executed this Amendment effective as of the date first above written.

CITY OF PALO ALTO

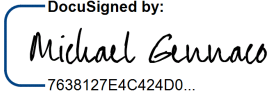
Purchasing Manager

APPROVED AS TO FORM:

City Attorney

MICHAEL GENNACO DBA OIR GROUP

Officer 1

By:  7638127E4C424D0...

Name: Michael Gennaco

Title: Principal, OIR Group

Officer 2 (Required for Corp. or LLC)

By:

Name:

Title:

Attachments:

- Exhibit "A" entitled "Scope of Services"
- Exhibit "B" entitled "Schedule of Performance"
- Exhibit "C-1" entitled "Schedule of Rates"

**EXHIBIT “A”
SCOPE of SERVICES**

Independent Police Auditor Services

CONSULTANT shall perform the following services:

1. Complaints by Members of the Public and Internal Affairs Investigations

Intake – The CONSULTANT may receive complaints directly from members of the public. The CONSULTANT will forward a summary of the complaint and contact information for the complainant directly to the Department. If the Department received the complaint directly or initiates an internal investigation regarding sworn personnel, they will notify the CONSULTANT within (3) working days about the nature of the allegation(s). The Department and the CONSULTANT will review each complaint by a member of the public/internal investigation to determine whether a criminal component exists and proceed accordingly. Complaints from members of the public shall include Supervisor Inquiry Investigations, which are minor complaints that are sufficiently investigated and resolved through expedited review (formerly Informal Inquiry Reports).

~~Complaints and investigations of internal personnel or human resources matters are not part of these Independent Police Auditor Services.~~ Internal affairs investigations shall include employee complaints of discrimination, harassment or retaliation against uniformed officers, whether investigated by the Police Department, Human Resources Department, or an outside investigator retained by the City.

~~Investigative Plan—As needed, the CONSULTANT will discuss the investigative plan with the Personnel & Training Coordinator and arrange for a mutually convenient way to update CONSULTANT on the progress of the investigation.~~

Review – The CONSULTANT will review each investigation of a complaint by a member of the public and internal affairs investigation to determine thoroughness, objectivity and appropriateness of disposition ~~within (10) working days.~~

Follow-up – After reviewing the completed investigations, the CONSULTANT will confer with the Personnel & Training Coordinator to evaluate results and discuss any suggestions for additional follow-up.

~~Disposition—When all aspects of the investigation are complete, the CONSULTANT will confer with the Police Chief to resolve any issues about the process, the disposition or the recommendations outlined in the investigation. Disposition shall be defined as “Sustained”, “Not Sustained”, “Unfounded” or “Exonerated”.~~

~~Status and Tracking—The CONSULTANT will track each case through its conclusion to ensure that each investigation is completed in a timely manner.~~

~~Semi-Annual Reporting—Twice a year, the CONSULTANT will produce a written report to the City Manager and City Council. The report will contain a statistical breakdown of the number of complaints/investigations and any developing trends. The report will also contain the initial allegation(s), the findings and the number and type of recommendations made to the Police Chief. The report will not contain any specific information that would identify the involved officers either internally or externally.~~

~~CONSULTANT Meetings—If requested by the City, the CONSULTANT will meet with the City Council, City Manager and/or Police Chief in order to discuss any trends.~~

2. Taser Deployment and Other Reviews

The Department will promptly notify the CONSULTANT of each Taser deployment when any of the following occurs, regardless of whether a complaint is filed or the Department initiates an internal affairs investigation: (a) an officer deploys a Taser in an interaction with the public; and (b) an officer uses a baton, chemical agent, less-lethal projectile, canine, firearm or other force resulting in injury requiring treatment beyond minor medical care in the field. Once the Department's investigation, analysis or report of such occurrence is completed, the CONSULTANT will review the Use of Force investigation related to the use of the Taser for thoroughness, objectivity and appropriateness of disposition. The CONSULTANT will make any recommendations on the investigation and findings. The CONSULTANT may also make recommendations to the Police Chief regarding training and policy modifications.

The CONSULTANT will include a brief summary of CONSULTANT'S review of each Taser deployment such occurrence in their semi- annual report including the findings and any recommendations.

In addition to CONSULTANT's review of specific matters as set forth in paragraphs 1 and 2 above, CONSULTANT's reports shall include a statistical breakdown of the number of complaints/investigations and any developing trends.

3. Timing, Review and Transmittal Publication of Reports

Department and CONSULTANT acknowledge that accountability and public trust are served by prompt, accurate and thorough Departmental investigations and CONSULTANT reviews. Department and CONSULTANT also acknowledge that the time required for investigation and review varies depending on the facts and circumstances, including availability of witnesses, investigative resources, complexity, and the existence of collateral proceedings. Department and CONSULTANT commit to use diligence and reasonable efforts to complete investigations, reviews and public reporting in a timely manner.

CONSULTANT will produce two reports during each year summarizing its findings and reporting on each investigation and disposition. Effective June 1, 2021, CONSULTANT'S reports will be published as a City Council Information Report in February and August, except upon mutual agreement where unusual circumstances require.

By December 1 for the February report, and by June 1 for the August report, CONSULTANT will transmit a Draft Report to the Department containing all matters CONSULTANT has completed since CONSULTANT'S most recent previous report.

CITY and CONSULTANT will coordinate and use reasonable efforts ensure the Draft is reviewed and finalized for publication in February and August.

CITY reviews are for the purpose of completeness, accuracy, and compliance with law and procedure. CONSULTANT will consider CITY's comments and will confer with CITY and attempt to reach a consensus. CONSULTANT will have final authority over the contents of the Final Report. If substantial issues arise with any matter, CONSULTANT shall consider pulling that matter for further work and publication in a subsequent report.

4. Meetings with the City Council

Beginning in the second half of 2021, CONSULTANT shall meet with the City Council two times per year to discuss trends in criminal justice and policing, policy and training matters, recommendations made by CONSULTANT, and other Council concerns. CONSULTANT'S conferences with Council are not for the purpose of elaborating on published reviews of specific incidents and shall not include discussion of personnel matters prohibited by law. Semi-annual conferences shall be scheduled after publication of the CONSULTANT'S report, according to availability of Council and the CONSULTANT.

Council may request that CONSULTANT conduct additional performance reviews on special topics, in light of best practices in the industry. At Council's request and direction, CONSULTANT shall prepare an estimate of time and cost, subject to approval by the Mayor and City Manager on a Task Order basis and compensated as Additional Services.

5. Compliance with State Law

~~The~~ CONSULTANT will ensure that each and all ~~produce~~ of CONSULTANT'S reports and public comments ~~which~~ comply with the Public Safety Officers Procedural Bill of Rights Act ("POBR"), California Government Code 3300 *et seq.*, and California laws on peace officer personnel records, California Penal Code 832.7 832.5 et seq.

In furtherance of this obligation, CONSULTANT will ensure that reports and public comments do not contain specific information that would identify the involved officers either internally or externally, including names, specific identifying information, factual details, special assignments, reference to single-position assignments, or other indicators that, by themselves or collectively, are likely to lead to disclosure of an officer's identity.

~~CONSULTANT will provide a draft of the report to the City Attorney's Office and the Chief of Police of the Palo Alto Police Department at least 14 days prior to its final submission for the purpose of review for compliance with state law. CONSULTANT will consider any suggestions from the City Attorney's Office and the Chief of Police regarding the information contained in the report.~~

~~Prior to finalizing each report, it shall be the CONSULTANT's practice to discuss significant identified problems and recommendations with the Police Department and the City Manager. CONSULTANT will solicit the Police Department's response to the report's analysis and attempt to reach a consensus as to solutions. CONSULTANT will document the Department's investigation into the incident and response to suggested~~

~~solutions in its reports.~~

6. Definitions

Sustained – There is sufficient credible evidence to believe that the subject officer committed the act charged in the allegation and thereby engaged in misconduct.

Not Sustained – The available evidence is insufficient to determine whether the officer did or did not commit misconduct.

Unfounded – There is sufficient credible evidence to believe that the subject officer did not commit the alleged act.

Exonerated – The subject officer was found to have committed the act alleged but the officer's actions were determined to be lawful and proper.

EXHIBIT "B"
SCHEDULE OF PERFORMANCE

Consultant shall complete reports for calendar year 2018, and thereafter for 2019 and 2020, ~~2020 and 2021~~.

In calendar year 2021, CONSULTANT shall complete two reports, for publication in approximately March and August 2021, containing all matters completed since the last published report.

In calendar year 2022, CONSULTANT shall complete two reports, for publication in approximately February and August 2022, containing all matters completed since the last published report

EXHIBIT "C-1"
SCHEDULE OF RATES

| Michael Gennaco, \$215.00 per hour

| Stephen Connolly, ~~\$190.00~~\$215.00 per hour

Certificate Of Completion

Envelope Id: 40D8185C8CD14388969CA546BCBBC9C4	Status: Completed
Subject: Please DocuSign: OIR Contract S20178065 Amendment One (final).pdf	
Source Envelope:	
Document Pages: 10	Signatures: 1
Certificate Pages: 1	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Tricia Hoover
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	250 Hamilton Ave
	Palo Alto , CA 94301
	Tricia.Hoover@CityofPaloAlto.org
	IP Address: 199.33.32.254


Record Tracking

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Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: City of Palo Alto	Location: DocuSign

Signer Events

Michael Gennaco
michael.gennaco@oirgroup.com
Principal, OIR Group
Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:

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Signature Adoption: Pre-selected Style
Using IP Address: 104.174.143.23

Timestamp

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Signed: 6/2/2021 8:43:19 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp****Carbon Copy Events****Status****Timestamp****Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

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Completed	Security Checked	6/2/2021 8:43:19 AM

Payment Events**Status****Timestamps**

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Commented [SM1]: New scope: SIIs

Commented [SM2]: New scope: discrimination/harassment/retaliation

Commented [SM3]: Deleted per IPA as not consistent with practice.

Commented [SM4]: Timelines and schedules have been updated and moved into a separate section below.

Commented [SM5]: Deleted content consolidated and moved into subsequent sections.

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Commented [SM6]: New scope: uses of force resulting in injury requiring treatment

Commented [SM7]: Restate standard order of work. The IPA's review comes after the Department's investigation.

Commented [SM8]: Same IPA standard as used in Section 1 (public complaints and IA investigations).

Commented [SM9]: New section adding specific requirements on timing of reports.

CITY and CONSULTANT will coordinate and use reasonable efforts ensure the Draft is reviewed and finalized for publication in February and August.

CITY reviews are for the purpose of completeness, accuracy, and compliance with law and procedure. CONSULTANT will consider CITY's comments and will confer with CITY and attempt to reach a consensus. CONSULTANT will have final authority over the contents of the Final Report. If substantial issues arise with any matter, CONSULTANT shall consider pulling that matter for further work and publication in a subsequent report.

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Commented [SM10]: New section.

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