



CITY OF PALO ALTO OFFICE OF THE CITY ATTORNEY

December 16, 2019

The Honorable City Council
Palo Alto, California

Approval of a Contract With the OIR Group in the Amount of \$75,000 for Independent Police Auditing Services for a Three-year Period

Recommendation

Staff recommends that Council approve and authorize the Clerk to execute a contract with the OIR Group in the amount of \$75,000 for independent police auditing services for a three-year period (Attachment A).

Background

The Palo Alto Police Department (PAPD) receives and investigates complaints that are made from time to time by members of the public against police officers. State law requires all police agencies to have such a process (Cal. Penal Code §832.5.). PAPD also investigates potential policy violations of uniformed officers that come to the attention of the Chief, even when a complaint is not filed. The investigative function of the PAPD is generally referred to as “internal affairs.”

Since approximately 2006, Palo Alto has contracted with an outside firm to act as Independent Police Auditor (IPA). The IPA performs several functions for Palo Alto. First, the IPA provides independent review of PAPD internal affairs investigations. Department management confers with IPA periodically as investigations are opened and in process. When the Department’s investigation is complete, the IPA conducts a secondary review and assesses “thoroughness, objectivity and appropriateness” of the investigation and disposition. Where appropriate, the IPA provides recommendations for training, procedural adjustments or other follow-up actions. Second, the IPA reviews every deployment of a taser device and the PAPD’s use of force review of that deployment, regardless of whether a citizen complaint is filed. Twice a year, the IPA produces a written public report to the City Manager and City Council summarizing the IPA’s conclusions and comments.

The City’s contract with the IPA states that the IPA must provide these services in a manner that complies with the Public Safety Officers Procedural Bill of Rights Act and provisions of the California Penal Code that provide procedural and privacy protections to sworn personnel. (See Penal Code § 832.7; Govt Code §§ 3300 *et seq.*) These laws provide procedural and privacy protections for uniformed officers that are greater than those for public employees generally. Accordingly, the IPA must refrain from naming or including any information that identifies officers in any public report. The City’s contract with the IPA requires the IPA to send drafts of its reports to the City Attorney and Chief of Police for the purpose of review for compliance

with state law. Prior to finalizing its report, the IPA is also directed to discuss identified problems with PAPD and the City Manager and attempt to reach consensus as to solutions. Once final, the IPA reports are made available to the public via a Council Informational Item.

Independent review of police investigations is not required by law. A program of independent review is entirely discretionary, and where one is developed, it is up to the individual city to define its parameters. Many large metropolitan areas work with an independent auditor. It is rare for a small city to retain a police auditor.

Since the inception of the IPA program in 2006, the IPA has reviewed investigations regarding sworn personnel, almost always while engaged in policing activities, such as conducting investigations, issuing citations, and making arrests. This year, a question arose regarding whether the IPA should also review and comment on City investigations of internal personnel matters not involving policing activities or members of the public. This type of matter could include complaints by PAPD personnel with respect to their supervisors or co-workers regarding unfair or discriminatory treatment in areas such as assignments, overtime, training, promotions, or interpersonal conduct. Throughout the City, the Human Resources Department investigates or supervises the investigation of these matters. In the Police Department, such matters could involve sworn or non-sworn personnel, such as dispatchers, Community Safety Officers, or administrative staff.

In 2014, the City issued a Request for Proposals for independent police auditor services. Three firms submitted proposals. The City selected the Michael Gennaco dba Office of Independent Review (OIR Group) as the most qualified to perform the services. The contract between the City and the OIR Group expired in October 2019 and is due to be renewed.

Analysis

After careful consideration, staff recommends that Council approve the attached contract with the OIR Group (Attachment A), which confirms and clarifies the longstanding traditional scope of IPA review: PAPD internal affairs investigations and taser deployments. Personnel matters that arise in the PAPD will not be included in the IPA process; rather, they will continue to be investigated and resolved by the Human Resources Department, or under its direction.

There are several reasons for continuing the current scope. Sworn personnel perform critical public safety services that can place them and their families at risk. The City has an overriding interest in protecting the privacy of sworn personnel so that these employees can do their work without concern about risk or intrusions into their personal and family affairs. In addition, the City has an obligation to maintain a confidential human resources system, so that employees feel safe coming forward to make complaints or to provide information in an investigation that involves their co-workers or supervisors. According to established policies and procedures, the City's Human Resources department investigates and resolves personnel complaints in all departments throughout the City. The City does not publicly report on human resources matters. While we recognize that secondary review and reporting of Human Resources

investigations in PAPD offers some potential for additional insights, the risks to personal privacy and a safe and confidential human resources complaint system weigh in favor of continuing to handle these matters confidentially under the direction of the Human Resources Department.

Resource Impact

Departmental budgets include adequate funding for this contract.

Policy Implications

Approval of this contract affirms current and longstanding City policy regarding police oversight and reporting.

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

A: Agreement Between the City of Palo Alto and Michael Gennaco DBA OIR Group for Professional Services

B: Exhibit A to the Agreement, with strikeouts and underlines showing changes from prior Scope

ATTACHMENTS:

- Attachment A : 2019 Contract with Michael Gennaco dba OIR Group for Professional Services_FINAL.docx (PDF)
- Attachment B : CMR 10924 Exhibit B - Redlined Changes Scope of Services - IPA contract_CPA (PDF)

Department Head: Molly Stump, City Attorney

**CITY OF PALO ALTO CONTRACT NO. _____
AGREEMENT BETWEEN THE CITY OF PALO ALTO AND
MICHAEL GENNACO DBA OIR GROUP FOR PROFESSIONAL SERVICES**

This Agreement is entered into on this ___ day of December 2019, (“Agreement”) 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").

RECITALS

The following recitals are a substantive portion of this Agreement, fully incorporated herein by this reference:

- A. CITY intends to provide independent police auditor services (“Project”) and desires to engage a consultant to provide services in connection with the Project (“Services”).
- B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.
- C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit “A”, attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, in this Agreement, the parties agree:

AGREEMENT

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 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.

Optional 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 2. TERM.

The term of this Agreement shall be from the date of its full execution through January 1, 2023 unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit “B”, attached to and made a part of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY’s agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

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 Seventy Five Thousand Dollars (\$75,000.00). 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 Seventy Five Thousand Dollars (\$75,000).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 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the services performed and the applicable charges (including, if

applicable, an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon Exhibit “C” (“Compensation”) or, if applicable, the CONSULTANT’s billing rates set forth in Exhibit “C- 1” (“Schedule of Rates”). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT’s payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City’s project manager at the address specified in Section 13 (“Project Management”) below. The City will generally process and pay invoices within thirty (30) days of receipt.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT’s supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subconsultants, if permitted, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the Services to be furnished by CONSULTANT under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

SECTION 8. ERRORS/OMISSIONS. CONSULTANT is solely responsible for costs, including, but not limited to, increases in the cost of Services, arising from or caused by CONSULTANT’s errors and omissions, including, but not limited to, the costs of corrections such errors and omissions, any change order markup costs, or costs arising from delay caused by the errors and omissions or unreasonable delay in correcting the errors and omissions.

SECTION 9. COST ESTIMATES. If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds ten percent (10%) of CITY’s stated construction budget, CONSULTANT shall make recommendations to CITY for aligning the PROJECT design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign

or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

SECTION 12. SUBCONTRACTING.

Option A: No Subcontractor: CONSULTANT shall not subcontract any portion of the Services to be performed under this Agreement without the prior written authorization of the City Manager or designee. In the event CONSULTANT does subcontract any portion of the work to be performed under this Agreement, CONSULTANT shall be fully responsible for all acts and omissions of a subcontractor.

Option B: Subcontracts Authorized: Notwithstanding Section 11 ("Assignment") above, CITY agrees that subcontractors may be used to complete the Services. The subcontractors authorized by CITY to perform work on this Project are:

CONSULTANT shall be responsible for directing the work of any subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subcontractors. CONSULTANT shall change or add subconsultants only with the prior approval of the city manager or his designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Michael Gennaco as the CONSULTANT's Project Manager to have supervisory responsibility for the performance, progress, and execution of the Services and Stephen Connolly as the Project Manager to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the CONSULTANT's Project Manager, project coordinator, or any other of CONSULTANT's key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's project manager. CONSULTANT, at CITY's request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property.

CITY's Project Manager is Beth Minor, City Clerk's Office, 250 Hamilton Avenue, Palo Alto, CA 94301, Telephone: (650) 329-2379. The CITY's Project Manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. CITY may designate an alternate Project Manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the

suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

SECTION 15. AUDITS. CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for four (4) years thereafter, CONSULTANT’s records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least four (4) years after the expiration or earlier termination of this Agreement.

SECTION 16. INDEMNITY.

[Option A applies to the following design professionals pursuant to Civil Code Section 2782.8: architects; landscape architects; registered professional engineers and licensed professional land surveyors.] 16.1. To the fullest extent permitted by law, including without limitation California Civil Code 2728.8, CONSULTANT shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an “Indemnified Party”) from and against any and all third party demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements (“Claims”) to the extent that such Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party. In no event shall the cost to defend and/or indemnify charged to the Consultant hereunder exceed the Consultant’s proportionate percentage of fault, in accordance with California Civil Code section 2782.8. However, notwithstanding the previous sentence, in the event one or more defendants in any such Claim is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the Consultant shall meet and confer with other such party or parties regarding unpaid defense costs, in accordance with California Civil Code section 2782.8.

[Option B applies to any consultant who does not qualify as a design professional as defined in Civil Code Section 2782.8.] 16.1. To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an “Indemnified Party”) from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements (“Claims”) resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT’s services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

16.1.

SECTION 17. WAIVERS. The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision, ordinance or law.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "D" ("Insurance Requirements"). CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-:VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days' notice to CONSULTANT, CONSULTANT shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the CONSULTANT's receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Chief Procurement Officer during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to

CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will become the property of CITY.

194. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 16, 19.4, 20, and 25.

195. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
City of Palo Alto
Post Office Box 10250
Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the project director
at the address of CONSULTANT recited above

SECTION 21. CONFLICT OF INTEREST.

21.1. In executing this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the Project Manager determines that CONSULTANT is a "Consultant" as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.

SECTION 22. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS. CONSULTANT shall comply with the CITY's Environmentally Preferred Purchasing policies which are available at CITY's Purchasing Department, incorporated by reference and may be amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of CITY's Zero Waste Program. Zero Waste best practices include first minimizing and reducing waste; second, reusing waste and third, recycling or composting waste. In particular, CONSULTANT shall comply with the following zero waste requirements:

- (a) All printed materials provided by CCONSULTANT to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY's Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or greater post-consumer material and printed with vegetable based inks.
- (b) Goods purchased by CONSULTANT on behalf of CITY shall be purchased in accordance with CITY's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Division's office.
- (c) Reusable/returnable pallets shall be taken back by CONSULTANT, at no additional cost to CITY, for reuse or recycling. CONSULTANT shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

SECTION 24. COMPLIANCE WITH PALO ALTO MINIMUM WAGE ORDINANCE. CONSULTANT shall comply with all requirements of the Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as it may be amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the City, CONSULTANT shall pay such employees no less than the minimum wage set forth in Palo Alto Municipal Code section 4.62.030 for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, CONSULTANT shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code section 4.62.060.

SECTION 25. NON-APPROPRIATION. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

SECTION 26. PREVAILING WAGES AND DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS

26.1 **This Project is not subject to prevailing wages.** CONSULTANT is not required to pay prevailing wages in the performance and implementation of the Project in accordance with SB 7 if the contract is not a public works contract, if the contract does not include a public works construction project of more than \$25,000, or the contract does not include a public works alteration, demolition, repair, or maintenance (collectively, ‘improvement’) project of more than \$15,000.

OR

26.1 **CONSULTANT is required to pay general prevailing wages** as defined in Subchapter 3, Title 8 of the California Code of Regulations and Section 16000 et seq. and Section 1773.1 of the California Labor Code. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute the contract for this Project from the Director of the Department of Industrial Relations (“DIR”). Copies of these rates may be obtained at the Purchasing Division’s office of the City of Palo Alto. CONSULTANT shall provide a copy of prevailing wage rates to any staff or subcontractor hired, and shall pay the adopted prevailing wage rates as a minimum. CONSULTANT shall comply with the provisions of all sections, including, but not limited to, Sections 1775, 1776, 1777.5, 1782, 1810, and 1813, of the Labor Code pertaining to prevailing wages.

26.2 CONSULTANT shall comply with the requirements of Exhibit “E” for any contract for public works construction, alteration, demolition, repair or maintenance.

SECTION 27. MISCELLANEOUS PROVISIONS.

27.1. This Agreement will be governed by California law, without regard to its conflict of law provisions. .

27.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

27.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys’ fees paid to third parties.

27.4. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the authorized representatives of the parties and approved as required under Palo Alto Municipal Code.

27.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

27.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

27.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement referred to herein are, by such reference, incorporated into this Agreement in full and will be deemed to be a part of this Agreement.

27.8 In the event of a conflict between the terms of this Agreement and the exhibits hereto or CONSULTANT’s proposal (if any), the Agreement shall control. In the case of any conflict between the exhibits hereto and CONSULTANT’s proposal(if any), the exhibits shall control.

27.9 If, pursuant to this contract with CONSULTANT, CITY shares with CONSULTANT personal information as defined in California Civil Code section 1798.81.5(d) about a California resident (“Personal Information”), CONSULTANT shall maintain reasonable and appropriate security procedures to protect that Personal Information, and shall inform City immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. CONSULTANT shall not use Personal Information for direct marketing purposes without City’s express written consent. The provisions of this paragraph shall survive the termination or expiration of this Agreement.

27.10 CONSULTANT understands and agrees that, in connection with this Agreement, the CONSULTANT may have access to proprietary and/or confidential information which may be owned or controlled by the CITY, the disclosure of which to third parties may be damaging to the CITY, its employees or customers/residents. CONSULTANT also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the CONSULTANT to civil liability. Consequently, CONSULTANT agrees that all information disclosed by the CITY to the CONSULTANT shall only be used in the performance of this Agreement, unless disclosure is required by law or court order. CONSULTANT shall exercise the same standard of care to protect such information as is used to protect its own proprietary and/or confidential information and in no case less than a reasonable standard of care. If selected in Section 28 (“Exhibits”), this Agreement is subject to the terms and conditions of the Information Privacy Policy exhibit and the Vendor Cybersecurity Terms and Conditions exhibit. The provisions of this paragraph shall survive the termination or expiration of this Agreement.

27.11 All unchecked boxes do not apply to this agreement.

27.12 The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

27.13 This Agreement may be signed in multiple counterparts, which , when executed by all the parties, shall constitute a single binding agreement.

SECTION 28. EXHIBITS. The following exhibits, if the check box is selected below, are hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

EXHIBIT “A”: SCOPE OF SERVICES

- EXHIBIT "A-1" PROFESSIONAL SERVICES TASK ORDER (*Optional*)
- EXHIBIT "B": SCHEDULE OF PERFORMANCE
- EXHIBIT "C": COMPENSATION
- EXHIBIT "C-1": SCHEDULE OF RATES
- EXHIBIT "D": INSURANCE REQUIREMENTS
- EXHIBIT "E": DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS
- EXHIBIT "F": INFORMATION PRIVACY POLICY
- EXHIBIT "G": VENDOR CYBERSECURITY TERMS AND CONDITIONS

THIS AGREEMENT IS NOT COMPLETE UNLESS ALL SELECTED EXHIBITS ARE ATTACHED.

CONTRACT No. _____ SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO

Beth Minor
City Clerk

MICHAEL GENNACO dba OIR GROUP

DocuSigned by:
Michael Gennaco
7638147E4C424DD
Michael J. Gennaco
Principal, OIR Group

Attachments:

EXHIBIT "A": SCOPE OF SERVICES
EXHIBIT "B": SCHEDULE OF PERFORMANCE
EXHIBIT "C": COMPENSATION
EXHIBIT "C-1": SCHEDULE OF RATES
EXHIBIT "D": INSURANCE REQUIREMENTS

**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 and investigations of internal personnel or human resources matters are not part of these Independent Police Auditor Services.

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 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. Review Taser Deployment

The Department will promptly notify the CONSULTANT of each Taser deployment. Once completed, the CONSULTANT will review the Use of Force investigation related to the use of the Taser. 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 each Taser deployment in their semi-annual report including the findings and any recommendations.

3. Transmittal of Reports

CONSULTANT will produce two reports during each year summarizing its findings and reporting on each investigation and disposition. The CONSULTANT will produce reports which comply with the Public Safety Officers Procedural Bill of Rights Act (“POBR”), California Government Code 3300 and California Penal Code 832.7. 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.

4. 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, 2020 and 2021.

EXHIBIT "C" COMPENSATION

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement based on the hourly rate schedule attached as Exhibit C-1.

The compensation to be paid to CONSULTANT under this Agreement for all services, additional services, and reimbursable expenses shall not exceed the amount(s) stated in Section 4 of this Agreement. CONSULTANT agrees to complete all Services and Additional Services, including reimbursable expenses, within this/these amount(s). Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth in this Agreement shall be at no cost to the CITY.

REIMBURSABLE EXPENSES

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are: None

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense shall be approved in advance by the CITY's project manager.

ADDITIONAL SERVICES

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, including reimbursable expenses, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's Project Manager and CONSULTANT prior to commencement of the services. Payment for additional services is subject to all requirements and restrictions in this Agreement.

EXHIBIT "C-1"
SCHEDULE OF RATES

Michael Gennaco, \$215.00 per hour

Stephen Connolly, \$190.00 per hour

EXHIBIT “D” INSURANCE REQUIREMENTS

CONTRACTORS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST’S KEY RATING OF A-VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY’S INSURANCE REQUIREMENTS, AS SPECIFIED, BELOW:

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES YES	WORKER’S COMPENSATION EMPLOYER’S LIABILITY	STATUTORY STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, AND FIRE LEGAL LIABILITY	BODILY INJURY	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$1,000,000	\$1,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY	\$1,000,000	\$1,000,000
		- EACH PERSON	\$1,000,000	\$1,000,000
		- EACH OCCURRENCE	\$1,000,000	\$1,000,000
		PROPERTY DAMAGE	\$1,000,000	\$1,000,000
		BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000	\$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE			
		ALL DAMAGES		\$1,000,000
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS’ COMPENSATION, EMPLOYER’S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSUREDS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

I. INSURANCE COVERAGE MUST INCLUDE:

- A. A PROVISION FOR A WRITTEN THIRTY (30) DAY ADVANCE NOTICE TO CITY OF CHANGE IN COVERAGE OR OF COVERAGE CANCELLATION; AND
- B. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR’S AGREEMENT TO INDEMNIFY CITY.
- C. DEDUCTIBLE AMOUNTS IN EXCESS OF \$5,000 REQUIRE CITY’S PRIOR APPROVAL.

II. CONTACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE AT THE FOLLOWING URL: <https://www.planetbids.com/portal/portal.cfm?CompanyID=25569>.

III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO “ADDITIONAL INSUREDS”

A. PRIMARY COVERAGE

WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.

B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSUREDS UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSUREDS, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

VENDORS ARE REQUIRED TO FILE THEIR EVIDENCE OF INSURANCE AND ANY OTHER RELATED NOTICES WITH THE CITY OF PALO ALTO AT THE FOLLOWING URL:

<HTTPS://WWW.PLANETBIDS.COM/PORTAL/PORTAL.CFM?COMPANYID=25569>

OR

HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET_BIDS_HOW_TO.ASP

**EXHIBIT “A”
SCOPE of SERVICES**

Independent Police Auditor Services

CONSULTANT shall perform the following services:

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

Intake – The CONSULTANT may receive ~~citizen~~-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 with nature of the allegation(s). The Department and the CONSULTANT will review each ~~citizen~~ complaint by a member of the public/internal investigation to determine whether a criminal component exists and proceed accordingly. Complaints and investigations of internal personnel or human resources matters are not part of these Independent Police Auditor Services.

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 ~~citizen~~-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 ~~insure~~-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 – ~~The~~-If requested by the City, the CONSULTANT will

~~formally~~ meet with the City Council, City Manager and/or Police Chief ~~twice a year~~ in order to ~~provide the report and~~ discuss any trends.

2. Review Taser Deployment

The Department will promptly notify the CONSULTANT of each Taser deployment. Once completed, the CONSULTANT will review the Use of Force investigation related to the use of the Taser. 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.

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~~The CONSULTANT will meet with the City Council to present each report and discuss any issues or questions raised.~~ 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.

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