

AGREEMENT FOR SECURITY SERVICES

THIS AGREEMENT (“**Agreement**”), effective the 1st day of July, 2023 (“**Effective Date**”), is by and between the City of San Pablo, a municipal corporation organized and existing under the laws of the State of California, (“**City**”), and Bajan Security, a private security company, (“**Contractor**”) (individually, a “**Party**,” and collectively, the “**Parties**”).

RECITALS

WHEREAS, on March 28, 2022, City issued a Request for Proposals, attached as **Exhibit A**, under which Contractor was awarded a one-year contract, effective July 1, 2022 through June 30, 2023, to provide security services to the City for multiple City properties.

WHEREAS, the City’s Request for Proposals dated March 28, 2022 (**Exhibit A**), specified that the term of the contract was from award date through June 30, 2023, with the option, at the City’s sole discretion, to renew annually for four (4) years.

WHEREAS, the City desires to exercise its renewal option(s) and engage Contractor to provide continued security services to the City (“**Services**”) as further set forth in this Agreement;

WHEREAS, the City desires to engage a Contractor who will act at all times in the City’s best interest and will respect the trust and confidence placed in that Contractor by the City; and

WHEREAS, Contractor has represented to City that Contractor has the special training, skill, competence and expertise necessary to provide the Services needed by the City; desires to enter into this Agreement with the City as an independent contractor; and is willing to provide the Services on the following terms and conditions.

NOW, THEREFORE, Contractor and the City agree as follows:

TERMS AND CONDITIONS

(1) **Scope of Services.**

A. **Scope of Services.** Contractor agrees to provide the Services to the City as specified in, collectively, the scope of services set forth in the City’s Request for Proposals, dated March 28, 2022 and any addenda thereto (“**RFP**”), attached as **Exhibit A** and incorporated herein, the scope of services set forth in Contractor’s proposal dated April 29, 2022, attached as **Exhibit B-1** and incorporated herein, along with Consultant’s Rate Proposal for FY23-24 dated August 18, 2023, attached as **Exhibit B-2** and incorporated herein (collectively “**Proposal**”). In the event of any conflict or inconsistency between any of the terms of the RFP, the Proposal, and this Agreement, the terms most favorable to the City will prevail.

Added services at City Hall:

In addition to the Services described in Section 1(A) above, Contractor agrees to provide security guard services for City Hall for the duration of City Council and Planning Commission meetings as needed, subject to cancellation, currently scheduled as follows:

City Council meetings: first and third Mondays of each month
Planning Commission meetings: 4th Tuesdays of each month

Revised schedule at Rumrill Sports Park:

The schedule of security guard services to be provided at Rumrill Sports Complex, 1509 Rumrill Blvd, San Pablo, as described on page 22 of Exhibit A, shall be replaced with **Exhibit C** (Bajan Security 2023-24 Schedule, Rumrill Sports Park). City shall provide Contractor with written schedules of security guard services to be provided at Rumrill Sports Complex for Fiscal Years 2024-25 through 2026-7 when those schedules are available.

Any services not encompassed in this Section (1) are additional services (“**Additional Services**”) subject to prior written authorization by the City, as further specified below in Section (3), “Additional Services.”

B. Quality of Performance. Contractor will provide the Services and any authorized Additional Services in accordance with the standards of its profession; in accordance with the terms, conditions, and objectives of this Agreement; and in a manner satisfactory to the City Manager or his or her authorized delegee (“**City Manager**”). Contractor represents that it possesses the necessary skills, background, and licenses to perform the Services or Additional Services. Contractor is solely responsible for the quality and suitability of the Services it provides pursuant to this Agreement. If, during the course of this Agreement, the City Manager notifies Contractor that the Services are not satisfactory, in whole or in part, Contractor will promptly take the corrective action required by the City Manager, at no extra cost to the City. Failure to promptly take such corrective action constitutes a material breach of this Agreement and cause for termination in the City’s discretion. This standard of care will not be construed to impose a mandatory duty on the City within the meaning of Government Code section 815.6.

The City’s acceptance of Services performed under this Agreement will not operate to waive or release Contractor’s obligation under this paragraph.

C. COVID-19 Pandemic. All City of San Pablo programs and services must be in compliance with current health orders issued by Contra Costa County Health Services at: <https://www.coronavirus.cchealth.org/health-orders>. Consultant shall comply with these requirements and contact City staff immediately if there is any issue with compliance. In addition, the City requires all contractors/consultants providing services at City facilities or City worksites to comply with all City’s current COVID policies on-site as they may be amended from time to time.

D. Time is of the Essence. In the performance of this Agreement, time is of the essence. Contractor must be available to begin providing the Services upon the Effective Date of this Agreement, and must complete the Services within the time specified in Section (4), “Effective Date and Term.”

E. Primary Service Provider. The City has approved of Bajan Security as Contractor’s primary provider of the Services under this Agreement, and no other person will be accepted as the primary provider of the Services without the City’s prior written consent.

F. Labor Code Compliance. If the Services are “public works” services as defined in Labor Code section 1720 et seq. and the Agreement is for an amount greater than \$1,000, the Agreement is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, beginning at section 1720, and the related regulations, including but not limited to requirements pertaining to wages, working hours and workers’ compensation insurance.

Contractor must also post all job site notices required by laws or regulations pursuant to Labor Code section 1771.4.

1. **Prevailing Wages:** Each worker performing Services under this Agreement that is covered under Labor Code section 1720 or 1720.9, must be paid at a rate not less than the prevailing wage as defined in sections 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Pursuant to Labor Code section 1775, Contractor and any subcontractor will forfeit to City as a penalty up to \$200 for each calendar day, or portion of a day, for each worker paid less than the applicable prevailing wage rate, in addition to paying each worker the difference between the applicable wage rate and the amount actually paid.
2. **Working Day:** Pursuant to Labor Code section 1810, eight hours of labor consists of a legal day's work. Pursuant to Labor Code section 1813, Contractor will forfeit to City as a penalty the sum of \$25 for each day during which a worker employed by Contractor or any subcontractor is required or permitted to work more than eight hours during any one calendar day, or more than 40 hours per calendar week, unless such workers are paid overtime wages under Labor Code section 1815. All Services must be carried out during regular City working days and hours unless otherwise specified in the scope of services or authorized in writing by City.
3. **Payroll Records:** Contractor and its subcontractors must maintain certified payroll records in compliance with Labor Code sections 1776 and 1812, and all implementing regulations promulgated by the Department of Industrial Relations ("DIR"). For each payroll record, Contractor and its subcontractors must certify under penalty of perjury that the information in the record is true and correct, and that it has complied with the requirements of Labor Code sections 1771, 1811, and 1815. Unless the Agreement is for an amount under \$25,000, Contractor must electronically submit certified payroll records to the Labor Commissioner as required under California law and regulations.
4. **Apprentices:** If the amount of the Agreement is \$30,000 or more, Contractor must comply with the apprenticeship requirements in Labor Code section 1777.5.
5. **DIR Monitoring, Enforcement, and Registration:** The Services are subject to compliance monitoring and enforcement by the DIR pursuant to Labor Code section 1725.5, and, subject to the exception set forth below, Contractor and any subcontractors must be registered with the DIR to perform public works projects. The registration requirements of Labor Code section 1725.5 do not apply if the Agreement is for an amount under \$25,000.

(2) **Compensation.** As full compensation for the satisfactory and timely performance of the Services as specified in Section (1), "Scope of Services," and the attached exhibits, subject to the total compensation limit set forth in this section, City hereby agrees to pay Contractor as follows:

\$28 per hour per guard for all locations, except \$26.50 per hour per guard for the Rumrill Sports Complex. All locations require a 4-hour minimum schedule.

The total amount the City pays Contractor for security services at Rumrill Sports Complex and security and greeting services at City Hall shall not to exceed **One Hundred Fifty Thousand Dollars (\$150,000)** per fiscal year, for a total contract amount not to exceed **Six Hundred Thousand Dollars (\$600,000)** over four (4) fiscal years. Security services Contractor provides for private rentals of City facilities are not subject to the \$150,000 total annual compensation limit.

Contractor will be paid all undisputed amounts within forty-five (45) days of City's receipt of detailed invoices for Services provided to the City Manager's satisfaction during the preceding calendar month. Invoices must include all of the information contained in Section (7), "Billings," below. Each invoice must be signed by an authorized representative of Contractor, verifying that the invoiced Services have been performed. Contractor will not be entitled to compensation for Additional Services, as defined below in Section (3), unless authorized by City in writing in advance, and memorialized in an amendment to this Agreement executed by the authorized representatives of each Party. This Section (2) supersedes any conflicting or inconsistent provisions in the Proposal.

(3) Additional Services. In addition to the Services included in Section (1), "Scope of Services," the Parties may from time to time agree that Contractor will provide Additional Services for additional compensation, as authorized by the City Manager. The nature and scope of the Additional Services, including the time for performance and terms for mutually agreeable additional compensation must be memorialized in a writing, executed by both Parties, as further specified in Section (25), "Amendments," before Contractor may begin providing the Additional Services. Contractor will not be entitled to compensation for any Additional Services performed without a written amendment to include the Additional Services in this Agreement. If Contractor believes that services that it is directed to perform by City are not included in Section (1), "Scope of Services," Contractor will promptly notify the City in writing of the basis for this belief.

If the City agrees that the subject services are not included in Section (1), "Scope of Services," the Parties will promptly execute a writing to authorize the services as Additional Services for mutually agreed-upon additional compensation. Except as otherwise specified in the written authorization, all Additional Services are subject to the same terms and conditions as all Services under this Agreement, including, billing, record-keeping, reporting, insurance, indemnity, and compliance with all applicable laws and standards.

(4) Effective Date and Term. The term of this Agreement ("**Term**") begins on the Effective Date set forth above, and expires on June 20, 2027. If the Term expires later than the end of the City's fiscal year, the continuation of the Term into the next fiscal year will be contingent upon the City's lawful encumbrance or appropriation of new funds for the Agreement.

(5) Assignment and Subcontracting. A substantial inducement to City for entering into this Agreement was, and is, the reputation and competence of Contractor. The assignment or subcontracting of this Agreement by Contractor, or any interest therein, is prohibited without the prior written approval of the City Manager. The City has authorized Contractor to use the following Subcontractors/Subcontractors as specified:

<u>Subcontractor/Subcontractor Name</u>	<u>Subcontractor/Subcontractor Services</u>
_____None_____	_____None_____
_____	_____

(6) Independent Contractor Status. It is expressly understood and agreed by the Parties that Contractor, while providing Services pursuant to this Agreement, is an independent contractor and not an employee of the City. Contractor is solely responsible for the means and methods by which it provides the Services. Contractor is solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. Contractor is solely responsible for its own acts and those of its agents and employees during the Term of this Agreement. Contractor will not represent, at any time or in any manner, that Contractor is an employee of the City. Contractor will exercise its judgment in recommending to City the methods by which to accomplish City's objectives and needs. Contractor acknowledges that the City will provide no training. Contractor will provide whatever tools and materials that are necessary to complete a client engagement. Contractor is free to accept, and has accepted in the past, other client engagements. Contractor is responsible for purchasing, bringing, providing, and controlling any and all equipment, tools, instruments, etc. needed for completion of the Services set forth herein, as well as for maintenance and use of such equipment. It is understood that Contractor is hired on a temporary basis only, and that if the City and/or Contractor desires to continue Contractor's services after expiration of the Term or termination of this Agreement, Contractor must enter into a new agreement.

(7) Billings. Contractor's invoices must include the following information: (a) a brief description of Services performed, including any Additional Services; (b) the date the Services were performed; (c) the number of hours spent and by whom; (d) the current Agreement not-to-exceed amount; (e) the amount previously billed; (f) the total paid to date; (g) the outstanding balance due, if any; (h) the current invoice amount; (i) total amount billed against the Agreement to date; (j) the remaining balance of the not-to-exceed amount;

and (k) the Contractor's signature. Except as specifically authorized by City, Contractor will not bill City for duplicate Services performed by more than one person. Contractor may not submit any billing for an amount in excess of the maximum amount of compensation authorized in Sections (2) and (3), above. Contractor is solely responsible for its office and overhead costs, including furniture and equipment rental, supplies, salaries of employees, telephone calls, postage, advertising, and all other expenses incurred by Contractor in the performance of this Agreement.

(8) Advice and Status Reporting. Contractor will provide the City with timely reports, orally or in writing, of all significant developments arising during performance of its Services, and provide the City with information as is necessary to enable City to monitor the performance of this Agreement, including statements and data demonstrating the effectiveness of the Services provided in achieving the City's express goals and objectives. The City may withhold payments otherwise due to Contractor pending timely delivery of all such reports and information. Contractor will promptly notify the City Manager of any matters that could adversely affect Contractor's ability or eligibility to continue to provide Services under this Agreement.

(9) Retention of Records. Contractor's complete files, including all records, employee time sheets, and correspondence pertaining to the Services will be available for review by the City upon request, and copies of pertinent reports and correspondence will be furnished for the City's files upon request by the City. Contractor will maintain adequate documentation to substantiate all charges for hours and materials charged to City under this Agreement. Contractor will maintain the records and any other records related to the Services or this Agreement and will allow City

access to such records for a period of four years after the expiration of the Term or termination of the Agreement. At City's request, or upon expiration or termination of this Agreement, Contractor will return to City all plans, maps, cost estimates, project financial records, reports, and related documents. All research information, plans, diagrams, financial records, reports, cost estimates or other documents prepared or obtained under the terms of this Agreement will be delivered to and become the property of the City and all data prepared or obtained under this Agreement will be made available, upon request, to the City without restrictions or limitations on their use. This Section (8) will survive expiration of the Term or termination of the Agreement.

(10) Written Reports and Documents. In accordance with Government Code section 7550, if the total compensation paid to Contractor under this Agreement exceeds \$5,000, any document or written report prepared by Contractor for or under the direction of City will contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such document or written report. The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report. When multiple documents or reports are the subject or product of this Agreement, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or reports.

(11) Record and Fiscal Control System. Contractor will maintain its financial records and fiscal control systems in a commercially reasonable manner. Contractor will maintain personnel and payroll records to adequately identify the source and application of all received funds; withhold income taxes; pay employment taxes (including Social Security), unemployment compensation, worker's compensation and other taxes as may be due. Contractor will maintain an effective system of internal control to assure that funds provided through the City are used solely for authorized purposes.

(12) Access to Records; Audits. The City will have access at any time during normal business hours and as often as necessary to any bank account and books, records, documents, accounts, files, reports, and other property and papers of Contractor relating to the Services to be provided under this Agreement for the purpose of making an audit, review, survey, examination, excerpt or transcript.

(13) Contractor's Testimony. Unless the Services include serving as an expert witness, Contractor agrees to consult with City and testify at City's request at no additional cost other than normal witness fees if litigation is brought against City in connection with Contractor's Services. This Section (12) will survive expiration of the Term or termination of the Agreement.

(14) Assignment of Personnel. Contractor will only assign competent and qualified personnel to perform the Services. If City asks Contractor to remove a person assigned to the Services, Contractor agrees to do so immediately regardless of the reason, or the lack of a reason, for City's request.

(15) Insurance. Before it may begin performing Services under this Agreement, Contractor must procure and provide proof of the insurance coverage and endorsements required by this Section in the form of certificates and endorsements acceptable to City. The required insurance must cover the activities of Contractor and its subcontractors or subcontractors relating to or arising from the performance of the Services, and must remain in full force and effect at all times during the Term of the Agreement. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial

strength rating of “A” or better and a financial size rating of “VII” or better. If Contractor fails to provide any of the required coverage in full compliance with the requirements of this Agreement, City may, at its sole discretion and in addition to any other remedies, purchase such coverage at Contractor’s expense and deduct the cost from payments due to Contractor, suspend performance of the Services under the Agreement, or terminate Contractor for default. The procurement of the required insurance will not be construed to limit Contractor’s liability under this Agreement or to fulfill Contractor’s indemnification obligations under this Agreement. If coverage limits carried by Contractor exceed the minimum limits specified below, the higher limits will be deemed to be required by this Agreement.

A. **Policies and Limits.** Contractor must procure and maintain the following insurance policies and limits at all times during the Term of this Agreement:

1. **Commercial General Liability Insurance (“CGL”):** The CGL policy must be issued on an occurrence basis, written on a comprehensive general liability form (CG 00 01), and must include coverage for liability arising from the operations of Contractor or its subcontractors or subcontractors in the performance of the Services, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits of at least \$1,000,000.00 per occurrence. General aggregate limit shall be twice the required occurrence limit. The CGL coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth herein.
2. **Automobile Liability:** The automobile liability policy must provide coverage of at least \$1,000,000.00 combined single-limit per accident for bodily injury, death or property damage.
3. **Workers’ Compensation Insurance and Employer’s Liability:** If the Contractor has employees, the policy must comply with the requirements of the California Workers’ Compensation Insurance and Safety Act, providing coverage of at least \$1,000,000.00, or as otherwise required by law.
4. **Professional Liability:** The professional liability insurance policy must insure against the Contractor’s errors and omissions in the provision of Services under this Agreement, in an amount not less than \$1,000,000.00 combined single limit. Any deductible or self-insured retention may not exceed \$50,000. The professional liability policy must include prior acts coverage sufficient to cover all Services provided by the Contractor for this Agreement, and the coverage must continue in effect for five years following final payment to Contractor. The following provisions apply if the professional liability policy is written on a claims-made form:
 - a. The retroactive date of the policy must be shown and must be on or before the Effective Date of the Agreement.
 - b. The insurance must be maintained and evidence of insurance must be provided for a continuous period of at least five years following expiration of the Term or termination of the Agreement, whichever occurs first.

- c. If the coverage is canceled or not renewed and is not replaced with another claims-made policy form with a retroactive date that is on or before the Effective Date of this Agreement, Contractor must provide extended reporting coverage for a minimum of five years following expiration of the Term or termination of the Agreement, whichever occurs first. The City has the right to procure, at Contractor's cost, any extended reporting provisions of the policy if the Contractor cancels or fails to renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City before Contractor may begin performing Services under this Agreement.

B. **Required Endorsements.** The insurance provided by Contractor must include the following endorsements as specified below. The endorsements must be executed by a person authorized to bind the issuing insurer. The endorsements are to be provided on forms provided, specified, or approved by the City. As an alternative to the City's forms, the Contractor's insurer(s) may provide complete copies of all required insurance policies, including endorsements.

- 1. **Additional Insured Endorsements:** The General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:
 - a. The City, its officers, officials, employees, and volunteers ("**Additional Insureds**") will be covered as additional insureds with respect to all covered liability. This must be provided in the form of an additional insured endorsement to the Contractor's insurance policy, using form CG 20 10 11 85, forms CG 20 10 10 01 and GC 20 37 10 01, or equivalent approved by the City. For design professionals form CG 20 07 may be used. Alternatively, the additional insured endorsement may be provided as a separate owner's policy that complies with all of the requirements set forth in this Section 15.
 - b. The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the policies will apply as though separate policies have been issued to each of the Additional Insureds.
 - c. The insurance provided by the Contractor is primary and no insurance or self-insurance held or owned by any of the Additional Insureds may be called upon to contribute to a loss or defense.
 - d. Any failure by Contractor to comply with the reporting requirements for a policy will not affect nor abridge the coverage provided for any Additional Insureds.
 - e. The coverage or endorsement will not contain any limitations on the scope of protection available to the Additional Insureds.
- 2. **Notice:** Each insurance policy required by this clause must provide or be endorsed to state that coverage will not be reduced, canceled, or allowed to expire without at least 30 days written notice to the City, unless due to non-payment of premiums, in which case 10 days written notice is required.

3. **Waiver of Subrogation:** Each required policy must include an endorsement providing that the insurer will waive any right of subrogation it may have against the City. Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss.

C. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions for the required insurance policies are subject to prior approval by the City Manager. Before beginning performance of the Services, Contractor must disclose the amounts of the deductibles and self-insured retentions that apply to the required policies. If the City Manager determines that the deductible or self-insured retention for any required policy is unacceptably high, at the option of City, (1) the insurer must reduce or eliminate the deductible or self-insured retention with respect to the Additional Insureds, or (2) the Contractor must provide a bond or financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. During the Term of this Agreement, Contractor may not increase any deductibles or self-insured retentions with respect to the Additional Insureds, without the prior written consent of the City Manager.

The City Manager may condition such consent upon the Contractor procuring a bond or financial guarantee that is satisfactory in form to the City, guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

D. **Subcontractors or Subcontractors.** Contractor must ensure that each subcontractor or subcontractor is required to maintain the same insurance coverage required for Contractor under this Section (15), with respect to its performance of Services, including the required endorsements. Contractor must confirm that each subcontractor or subcontractor has complied with these insurance requirements before the subcontractor or subcontractor is permitted to begin Services under this Agreement. Upon request by the City, Contractor must provide certificates and endorsements submitted by each subcontractor or subcontractor to prove compliance with this requirement. The insurance requirements for subcontractors or subcontractors do not replace or limit the Contractor insurance obligations.

(16) **Indemnification.** Contractor shall, to the fullest extent permitted by law, indemnify, defend (with counsel acceptable to the City) and hold harmless City, and its employees, officials, volunteers and agents ("**Indemnified Parties**") from and against any and all losses, claims, damages, costs and liability of every nature arising out of or resulting from the performance of this Agreement by Contractor, its officers, employees, agents, volunteers, subcontractors or subcontractors, excepting only liability arising from the sole negligence, active negligence or willful misconduct of City. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution.

1. The duty to defend is a separate and distinct obligation from the Contractor's duty to indemnify. The Contractor shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its directors, officers, and employees, immediately upon tender to the Contractor of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an Indemnified Party does not relieve the Contractor from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation

includes an obligation to provide independent defense counsel if the Contractor asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party, Contractor may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs.

2. In the event that Contractor or any employee, agent, subcontractor or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System ("**PERS**") to be eligible for enrollment in PERS as an employee of City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, subcontractors or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

3. The review, acceptance or approval of the Contractor's Services or work product by any Indemnified Party shall not affect, relieve or reduce the Contractor's indemnification or defense obligations. The provisions of this Section are not limited by and do not affect the provisions of this Agreement relating to insurance.

4. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

5. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration, and that these provisions survive the termination of this Agreement.

(17) Licenses. If a license of any kind, which term is intended to include evidence of registration, is required of Contractor, its employees, agents, or subcontractors by federal or state law, Contractor warrants that such license has been obtained, is valid and in good standing, and Contractor shall keep it in effect at all times during the Term of this Agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations. Contractor, its subcontractors, and subcontractors, will obtain and maintain a City of San Pablo Business License at all times during the Term of this Agreement.

(18) Employment Practices.

- A. **Employment of Local Residents.** Pursuant to the San Pablo Economic Opportunity Policy, the Contractor and any subcontractors shall contact the San Pablo Economic Development Corporation ("**EDC**") at info@sanpabloedc.org or 510-215-3200, at least ten business days prior to hiring or staffing for fulfillment of the Agreement, describing number, duties and qualifications needed for available positions, and shall fairly consider for employment any workers referred by the EDC within three business days. "**Local Resident**" means an individual having an adjusted household income of less than the Area Median Income for Contra Costa County, and domiciled in the City of San Pablo as of the relevant hiring date, with "domiciled" as defined by Section 349(b) of the California Election Code. Discrimination against Local Residents on the basis of their local status is prohibited.

B. **Compliance With Law.** Contractor represents that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal opportunity employment. Contractor shall not discriminate in the employment of any person because of race, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act. Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (“**ADA**”) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Agreement. In performing Services and providing services under this Agreement, Contractor shall, at its sole cost and expense, comply with all applicable laws of the United States and the State of California; the Ordinances of the City of San Pablo; and the rules, regulations, orders, and directions of their respective administrative agencies and the officers thereof.

(19) **Local Subcontracting – Outreach.** Contractor shall contact the EDC at info@sanpabloedc.org or 510-215-3200) at least two weeks prior to any subcontract award, providing notice and details regarding subcontracting opportunity. The EDC shall notify qualified local businesses of subcontracting opportunities, and provide technical assistance to qualified local businesses during the subcontracting bidding process.

(20) **Termination.**

A. **Termination for Convenience.** City may terminate this Agreement at its sole discretion at any time prior to expiration of the Term or completion by the Contractor of the Services required hereunder. Notice of termination of this Agreement shall be given in writing to the Contractor, and shall be sufficient and complete when same is deposited in the United States Mail, postage prepaid and certified, address as set forth below in Section (21), “Notices.” The Agreement shall be terminated upon the date set forth in the City’s Notice of Termination. If the City terminates this Agreement, the Contractor shall be compensated for all Services satisfactorily performed prior to the time of receipt of cancellation notice, and shall be compensated for materials ordered by the Contractor or its employees, or services of others ordered by the

Contractor or its employees, prior to receipt of notice of cancellation whether or not such materials or final instruments of service of others have actually been delivered, provided that the Contractor or its employees are not able to cancel such orders for materials or services of others. Compensation for the Contractor in the event of cancellation shall be determined by City in accordance with the percentage of Services completed and agreed to by the Contractor. In the event of cancellation, all notes, sketches, computations, drawings, and specifications or other data, whether complete or not, remain the property of the City. The City may make copies or extract information from any such notes, sketches, computations, drawings, and specifications, or other data whether complete or not.

B. **Termination for Cause.** City may terminate this Agreement for cause by providing Contractor with one day’s written notice of such termination if Contractor violates any of the terms and conditions of this Agreement. In City’s discretion and at City’s option, such termination for cause may alternatively be accomplished, where Contractor fails to perform any of the obligations required of Contractor within the time and in the manner provided for under the terms of this Agreement, within seven days after receipt of the notice of such default. Upon City’s termination

of this Agreement for cause, City reserves the right to complete the Services by whatever means City deems expedient and the expense of completing such Services, as well as any and all damages to the extent caused by the negligent acts, intentional acts or errors or omissions of the Contractor, shall be charged to the Contractor.

C. Immediate Termination. City may terminate this Agreement immediately in any case where the Contractor engages in fraudulent or criminal activities while performing the Services, or is otherwise determined to lack the necessary skills to accomplish the desired objectives.

(21) Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by Contractor pursuant to this Agreement shall be the property of the City at the moment of their completed preparation. All materials and records of a preliminary nature such as survey notes, sketches, preliminary plans, computations and other data, prepared or obtained in the performance of this Agreement, shall be made available, upon request, to City at no additional charge and without restriction or limitation on their use consistent with the intent of the original design.

(22) Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City's City Manager and approved as to form by the City Attorney. Such document shall expressly state that it is intended by the Parties to amend the terms and conditions of this Agreement.

(23) Abandonment by Contractor. In the event the Contractor ceases performing Services under this Agreement or otherwise abandons the Agreement prior to completing all of the Services, Contractor shall, without delay, deliver to City all materials and records prepared or obtained in the performance of this Agreement, and shall be paid for the reasonable value of the Services performed up to the time of cessation or abandonment, less a deduction for any damages or additional expenses which City incurs as a result of such cessation or abandonment. Contractor agrees to be financially responsible and to compensate City for any costs incurred by City in retaining the services of another to replace Contractor, but only to the extent that the costs of retaining the replacement exceed what remaining amounts would have been paid to Contractor under the Agreement had Contractor completed the Services.

(24) Waiver. The waiver by either Party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

(25) No Third-Party Rights. The Parties do not intend to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein.

(26) Severability. Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either Party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the Parties.

(27) **Compliance with Laws.** In the performance of this Agreement, Contractor shall abide by and conform to any and all applicable laws of the United States, the State of California, and City ordinances. Contractor warrants that all Services done under this Agreement will be in compliance with all applicable safety rules, laws, statutes and practices, including but not limited to Cal/OSHA regulations.

(28) **Controlling Law and Venue.** This Agreement and all matters relating to it shall be governed by the laws of the State of California, and venue for any legal action arising from or relating to this Agreement will be in the Superior Court of Contra Costa County, and no other place. Contractor hereby waives the removal provisions of Code of Civil Procedure section 394.

(29) **Breach.** In the event that Contractor fails to perform any of the Services described in this Agreement or otherwise breaches the Agreement, City shall have the right to pursue all remedies provided by law and equity. Neither payment by the City nor performance by Contractor shall be construed as a waiver of either Party's rights or remedies against the other. Failure to require full and timely performance of any provision, at any time, shall not waive or reduce the right to insist upon complete and timely performance of such provision thereafter. In the event of any suit, action or proceeding brought by either Party for breach of any term hereof or to enforce any provision hereof, the prevailing party shall be entitled to recover its reasonable attorney's fees.

(30) **Inspection by Other Agencies.** Authorized representatives of the Federal Government, the California Department of Transportation, or other government agencies which provide grant funding (if any) for this Agreement and the City have the right to inspect Contractor's performance of the Services, files, and work product.

(31) **Conflict of Interest.** Contractor warrants and covenants that Contractor presently has no interest in, nor shall any interest be acquired in, any matter which will render the services required under the provisions of this Agreement a violation of any applicable state, local, or federal law. In the event that any conflict of interest should nevertheless arise, Contractor shall promptly notify City of the existence of such conflict of interest so that the City may determine whether to terminate this Agreement. Contractor further warrants its compliance with the Political Reform Act (Gov. Code section 81000 et seq.) respecting this Agreement. Where City Manager determines, based on facts provided by City staff, that Contractor meets the criteria of section 18701 of the FPPC regulations, the individual providing services under this Agreement shall be considered a "designated employee" under the City's conflict of interest code, and shall be required to complete FPPC Form 700 regarding his or her economic interests in a timely manner.

(32) **Copyright.** Upon City's request, Contractor shall execute appropriate documents to assign to the City the copyright to work created pursuant to this Agreement. The issuance of a patent or copyright to Contractor or any other person shall not affect City's rights to the materials and records prepared or obtained in the performance of this Agreement. City reserves a license to use such materials and records without restriction or limitation consistent with the intent of the original design, and City shall not be required to pay any additional fee or royalty for such materials or records. The license reserved by City shall continue for a period of fifty years from the Effective Date unless extended by operation of law or otherwise.

(33) **Whole Agreement.** This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned

herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

(34) Multiple Copies of Agreement. Multiple copies of this Agreement may be executed but the parties agree that the Agreement on file in the office of the City Clerk is the version of the Agreement that shall take precedence should any differences exist among counterparts of the document.

(35) Notices. Notices required by this Agreement shall be personally delivered or mailed, postage prepaid, as follows:

To Contractor: Bajan Security
Attn: Mac Robinson
15501 San Pablo Ave, Ste 360
San Pablo CA 94806

To the City: City Manager, City of San Pablo
San Pablo City Hall
1000 Gateway Avenue
San Pablo, CA 94806

Each Party shall provide the other Party with telephone and written notice of any change in address as soon as practicable. Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered forty-eight hours after having been deposited in the United States mail.

(36) Federal Funding Requirements (if applicable). If this Agreement is subject to federal funding, in whole or in part, it must comply with the uniform federal award procurement requirements set forth in 2 CFR §§ 200.318 – 200.327, as may be amended from time to time, and contain the applicable provisions described in Appendix II to Part 200 – *Contract Provisions for non-Federal Entity Contracts Under Federal Awards*, which are attached to this Agreement as Exhibit C. In the event of a conflict or inconsistency between Exhibit C, Exhibit D, if applicable, and this Agreement, Exhibit C will control.

- This Agreement is subject to federal funding. See Exhibit C.
 This Agreement is not subject to federal funding.

(37) Caltrans Funding Requirements (if applicable). If this Agreement is for architectural and/or engineering services subject to reimbursement or funding, in whole or in part, by Caltrans and administered under the Local Assistance Procedures Manual (“LAPM”), it must include the provisions set forth in Exhibit D, *Mandatory Fiscal and Federal Provisions for Architectural and Engineering Contractor Contracts Subject to Caltrans Funding*. In the event of any conflict or inconsistency between Exhibit D and this Agreement, Exhibit D will control.

- This Agreement is subject to funding by Caltrans. See Exhibit D.
 This Agreement is not subject to funding by Caltrans.

IN WITNESS WHEREOF, Consultant has executed this Agreement, and the City, by its City Manager, who is authorized to do so, has executed this Agreement.

APPROVED AS TO FORM:

CITY OF SAN PABLO
A Municipal Corporation

By _____
Teresa L. Stricker, City Attorney

By _____
Matt Rodriguez, City Manager

Bajan Security

By _____
Mac Robinson, Owner

ATTEST:

By _____
Dorothy Gantt, City Clerk

Dated _____

Attachments:

- Exhibit A: Request for Proposals, dated March 28, 2022
- Exhibit B-1: Consultant's Proposal, dated April 28, 2022
- Exhibit B-2: Consultant's Rate Proposal for FY2023-24
- Exhibit C: Bajan Security 2023-24 Schedule, Rumrill Sports Park

EXHIBIT A

City's Request for Proposals dated March 28, 2022



Exhibit A - RFP
032823.pdf

EXHIBIT B-1

Consultant's Proposal, dated April 28, 2022



Exhibit B1 -
Proposal 042823.pdf

EXHIBIT B-2

Consultant's Rate Proposal for FY23-24

For Fiscal Year 2023-24, Bajan Security's hourly rates are increased by \$1, from \$27 to \$28 per hour per guard for all locations, except \$25.50 to \$26.50 per hour per guard for Rumrill Sports Complex.

Exhibit C

Bajan Security 2023-24, Rumrill Sports Park



Holiday Schedule
2023_24.pdf