

File No. 131022

Committee Item No. 1
Board Item No. 19

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: 12/04/2013

Board of Supervisors Meeting

Date: December 10, 2013

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
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OTHER (Use back side if additional space is needed)

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Completed by: Victor Young

Date November 27, 2013

Completed by: Victor Young

Date _____

AMENDED IN COMMITTEE

11/20/13

FILE NO. 131022

RESOLUTION NO.

[Contract Modification - Guardsmark LLC. - Security Services - \$21,226,260]

1
2 **Resolution retroactively approving the contract modification between the City**
3 **and County of San Francisco and Guardsmark LLC, to provide security services**
4 **for the Human Services Agency, to extend the term by two month, for a revised**
5 **period of December 1, 2008, through January 31, 2014, in the modified amount of**
6 **\$21,226,260.**

7
8 WHEREAS, The City and County of San Francisco wishes to provide security
9 services to its employees, clients and the general public at 20 locations; and,

10 WHEREAS, The Board of Supervisors approved this contract by Resolution No.
11 201-08 and subsequent Ordinance No. 306-08 in 2008; and,

12 WHEREAS, The Human Services Agency wishes to extend this contract by two
13 months until January 31, 2014 and add \$1,900,000 in order to complete the new
14 request for proposal process resulting in a modified total contract amount of
15 \$21,226,260; and,

16 WHEREAS, The City and County of San Francisco is providing financial support
17 with Federal, State and General Funds; now, therefore, be it

18 **RESOLVED**, That the Board of Supervisors retroactively authorizes Executive
19 Director of the Human Services Agency to approve the contract modification with
20 Guardsmark LLC., to provide security services to the Human Services Agency for its
21 employees, clients and the general public for the modified period of December 1, 2008,
22 through January 31, 2014, in the amount of \$21,226,260; and, be it
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1 FURTHER RESOLVED, That within thirty (30) days of the contract amendment
2 being fully executed by all parties the Department of Human Resources shall provide the
3 final contract amendment to the Clerk of the Board for inclusion into the official file.
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FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
 (S.F. Campaign and Governmental Conduct Code § 1.126)

| | |
|---|--|
| City Elective Officer Information <i>(Please print clearly.)</i> | |
| Name of City elective officer(s): Members, Board of Supervisors | City elective office(s) held: Members, Board of Supervisors |
| Contractor Information <i>(Please print clearly.)</i> | |
| Name of contractor: Guardsmark, LLC | |
| Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. Ira A. Lipman, President | |
| Contractor address: 350 Sansome Street, Suite 520, San Francisco, CA 94104 | |
| Date that contract was approved: <i>(By the SF Board of Supervisors)</i> | Amount of contracts: \$ 21,226,260 |
| Describe the nature of the contract that was approved: Security Services | |
| Comments: | |

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

| | |
|---|---|
| Filer Information <i>(Please print clearly.)</i> | |
| Name of filer: Angela Calvillo, Clerk of the Board | Contact telephone number: (415) 554-5184 |
| Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102 | E-mail: Board.of.Supervisors@sfgov.org |

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

Item 1**File 13-1022****Department:**

Human Services Agency (HSA)

EXECUTIVE SUMMARY

Note: The Budget and Finance Committee (1) approved the two-month extension of the existing contract between the Human Services Agency (HSA) and Guardsmark LLC at the November 20, 2013 Budget and Finance Committee meeting, and (2) continued the resolution to approve an increase in the contract not-to-exceed amount by \$1,900,000 to the December 4, 2013 Budget and Finance Committee meeting.

Legislative Objectives

- The proposed resolution would (1) extend the current security guard contract between the Human Services Agency (HSA) and Guardsmark LLC (Guardsmark) by two months from December 1, 2013 to January 31, 2014, and (2) increase the contract amount by \$1,900,000, from a not-to-exceed amount of \$19,326,260 to a not-to-exceed amount of \$21,226,260.

Key Points

- In April 2008, the Board of Supervisors approved the original security guard contract between HSA and Guardsmark for security guard services at 19 HSA facilities throughout the City for a five-year term from May 1, 2008 through April 30, 2013, and a not-to-exceed amount of \$21,100,370. The Board of Supervisors approved the revised contract in November 2008 subsequent to a bid protest, which revised the contract term for one year from December 1, 2008 through November 30, 2009, with four one-year options to extend the term through November 30, 2013. The contract amount was reduced from \$21,100,370 to \$19,326,260 due to projected reductions in security guard service hours.
- However, since December 1, 2008, HSA has increased the security guard service hours at many of the facilities, which increased the annual costs above what was initially budgeted. Additionally, HSA is requesting to increase the contract term by two months from December 1, 2013 through January 31, 2014, pending award and execution of a new security guard contract on January 1, 2014 through a competitive Request for Proposals (RFP) process. Consequently, HSA does not have sufficient remaining expenditure authority to pay for security guard services through January 31, 2014.

Fiscal Impact

- HSA is requesting an increase of \$1,900,000 in the contract amount to pay for (1) \$1,786,560 in security guard services from September 1, 2013 through January 31, 2014, and (2) a contingency of \$113,440, which is sufficient to pay for any unanticipated increase in security guard service hours.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT / BACKGROUND**Mandate Statement**

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

Background

The Human Services Agency (HSA) contracts for security services at 19 facilities throughout the City including client service centers, employee offices, homeless shelters, medical facilities and parking lots.

On April 22, 2008 the Board of Supervisors approved a contract between HSA and Guardsmark LLC (Guardsmark) for Guardsmark to provide security services for HSA at 19 facilities operated by HSA throughout the City for a five-year period from May 1, 2008 through April 30, 2013, in an amount not-to-exceed \$21,100,370, based on a competitive Request for Proposals (RFP) process.

Due to litigation by an unsuccessful bidder and further negotiations, the Board of Supervisors approved ordinance 306-08 (File 08-1346) on November 19, 2008 that amended the contract to:

- Change the effective term from May 1, 2008 through April 30, 2013 to December 1, 2008 through November 30, 2013.
- Change the structure of the contract from a five-year contract to a one-year contract with four one-year options to extend that did not require further Board of Supervisors approval.
- Reduce the not-to-exceed amount by \$1,774,110 from \$21,100,370 to \$19,326,260 by reducing the number of security guard hours by 37,000 from 750,000 to 713,000 hours.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would (1) extend the current security guard contract by two months from December 1, 2013 to January 31, 2014, and (2) increase the contract amount by

\$1,900,000, from a not-to-exceed amount of \$19,326,260 to a not-to-exceed amount of \$21,226,260.

According to Mr. David Curto, HSA Director of Contracts and Facilities, when the initial contract was awarded, HSA and Guardsmark assumed that the number of security guard hours would gradually decrease when HSA implemented technological or facility improvements such as electronic card-readers at entrances. While some of these efficiencies were realized, Mr. Curto advises that the security conditions at some of the facilities became increasingly dangerous, including instances of physical assaults on both clients and HSA staff at HSA homeless shelters. Also, there was one homicide at an HSA drop-in center. In response to requests by shelter and facility managers to increase security at the HSA facilities, HSA implemented 24-hour security presence at all of the shelters and at many of the drop-in facilities, which increased the number of security guard hours and costs (see Fiscal Impact Section below).

HSA issued a new RFP for security guard services on August 2, 2013 and is currently reviewing competitive proposals for a new security guard contract that will begin on February 1, 2014. Therefore, HSA is requesting a two-month extension of the existing contract with Guardsmark pending award and execution of a new security guard contract.

FISCAL IMPACT

The proposed resolution would increase the not-to-exceed contract amount by \$1,900,000, or 9.8 percent of the total contract, from \$19,326,260 to \$21,226,260. HSA spent \$19,102,220 of the budgeted not-to-exceed amount of \$19,326,360 from December 1, 2008 through August 31, 2013, resulting in a balance of \$224,040.

The HSA projected need for the \$1,900,000 increase in security services is shown in Table 1 below.

Table 1: Requested Increase in Contract Not-to-Exceed Amount

| | Request |
|--------------------------------|--------------------|
| September ¹ | \$380,660 |
| October ¹ | 363,760 |
| November ² | 477,966 |
| December ³ | 392,941 |
| January ³ | 395,273 |
| Monthly Subtotal | 2,010,600 |
| Less Unexpended Balance | (224,040) |
| Subtotal | 1,786,560 |
| Contingency⁴ | 113,440 |
| Total | \$1,900,000 |

¹September and October are actual expenditures.

² November expenditures are based on actual expenditures through November 16, 2013 and estimated expenditures from November 17, 2013 through November 30, 2013. The expenditure estimate for November is higher than the average monthly expenditure because it includes a fifth week as well as the Thanksgiving holiday.

³ The expenditure estimates for December and January include higher than the average monthly expenditure because they include the Christmas and New Year holidays.

⁴ The contingency of \$113,440 equals 9 percent of estimated expenditures of \$1,266,180 from November 1, 2013 through January 31, 2013.

According to Mr. Curto, HSA is requesting the contingency of \$113,440, or 9 percent of expenditures from November 1, 2013 through January 31, 2014, to give HSA sufficient authority to pay for security guard services in the event that the 19 HSA facilities require increased services during the remaining two months of the contract. The Budget and Legislative Analyst's Office reviewed the weekly expenditure estimates submitted by HSA and finds that HSA's estimates, combined with the proposed contingency funding, should provide sufficient additional contract authority to pay for the contract expenditures of \$1,786,560 and provide a contingency amount of \$113,440, resulting in the requested \$1,900,000 increase in the contract authorization through January 31, 2013.

Under the California State Department of Social Services (CDSS) County Welfare Department Cost Allocation Plan, HSA is eligible to receive Federal Financial Participation (FFP) funds for certain programs supported by Federal fund sources. Mr. Curto advises that approximately 62 percent, or \$1,178,000 of the proposed increase in the contract amount of \$1,900,000, would be reimbursed by the CDSS with the remaining 38 percent, or \$722,000, coming from the City General Fund.

RECOMMENDATION

Approve the proposed resolution.

**City and County of San Francisco
Office of Contract Administration
Purchasing Division**

First Amendment

THIS AMENDMENT is made as of **September 1, 2013** in San Francisco, California, by and between **Guardsmark GP**, and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the amount of the overall contract by \$1,900,000 and extend the contract until January 31, 2014.

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

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

a. Agreement. The term "Agreement" shall mean the Agreement dated **December 1, 2008** between Contractor and City, as amended by the:

b. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

(a) Section 2. Section 2, Term of the Agreement of the Agreement currently reads as follows:

Subject to Section 1, the term of this Agreement shall be from **December 1, 2008 to November 30, 2013.**

Such section is hereby amended in its entirety to read as follows:

Subject to Section 1, the term of this Agreement shall be from **December 1, 2008 to January 31, 2014.**

(b) Section 5. Section 5, Compensation, Paragraph 1 of the Agreement currently reads as follows:

Compensation shall be made in monthly payments in accordance with Appendix C, "Method of Payment," for work, as set forth in Section 4 of this Agreement, that Executive Director, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **\$19,326,260 (Nineteen Million, Three Hundred Twenty Six Thousand, Two Hundred Sixty Dollars)**. The breakdown of costs associated with this Agreement are provided for in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

Such section is hereby amended in its entirety to read as follows:

Compensation shall be made in monthly payments in accordance with Appendix C, "Method of Payment," for work, as set forth in Section 4 of this Agreement, that Executive Director, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **\$21,226,260 (Twenty One Million, Two Hundred Twenty Six Thousand, Two Hundred Sixty Dollars)**. The breakdown of costs associated with this Agreement are provided for in Appendix B-1, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

- (c) **Appendix B.** Appendix B, Calculation of Charges, of the Aforesaid Agreement displays the original total amount of **\$19,326,260**.

Such section is hereby superseded in its entirety by Appendix B-1, Calculation of Charges, which displays the budget as herein modified.

- (d) **Submitting False Claims; Monetary Penalties.** Section 8 is hereby replaced in its entirety to read as follows:

Submitting False Claims; Monetary Penalties.

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

- (e) **Requiring Minimum Compensation for Covered Employees.** Section 43 is hereby replaced in its entirety to read as follows:

Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's

obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount

in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

(f) Requiring Health Benefits for Covered Employees. Section 44 is hereby replaced in its entirety to read as follows:

Requiring Health Benefits for Covered Employees.

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

- f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.
- g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.
- h. Contractor shall keep itself informed of the current requirements of the HCAO.
- i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.
- k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

l. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

(g) First Source Hiring Program. Section 45 is hereby replaced in its entirety to read as follows:

First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement. As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

- (1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to

establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions. Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions. Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages. Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is

reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. **Subcontracts.** Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

(h) **Cooperative Drafting.** Section 62 is hereby added to the Agreement, as follows:

Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after **September 1, 2013.**
4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

CONTRACTOR

Recommended by:

Guardsmark, GP

Trent Rhorer Date
Executive Director
Human Services Agency

Insert Authorized Signature

Title:

**44 Montgomery Street, Suite 700
San Francisco, CA 94104**

Approved as to Form:

Dennis J. Herrera
City Attorney

City vendor number:
Federal Employer ID Number: 03-049742862-
1043970

By:

Sherri Sokeland Kaiser Date
Deputy City Attorney

Approved:

Jaci Fong Date
Director of the Office of Contract Administration,
and Purchaser

City and County of San Francisco



Edwin M. Lee, Mayor

Human Services Agency

Department of Human Services
Department of Aging and Adult Services

Trent Rhorer, Executive Director

October 15, 2013

Ms. Angela Calvillo
Clerk of the Board of Supervisors
City and County of San Francisco
#1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

1301022

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
OCT 15 PM 3:42
AK

RE: Proposed Modification to the contract with Guardsmark GP for the provision of security services

Dear Ms. Calvillo:

Enclosed for the Board of Supervisors' consideration and approval, please find a proposed resolution modifying the contract with Guardsmark LLC passed under prior resolution number 08-0332. The modification adds one month of service and an additional \$1,900,000 for a modified period of December 1, 2008 to December 31, 2013 for the revised contract amount of \$22, 226,260.

The Board approved this resolution and the contract in April of 2008.

Attached please find the proposed resolution, David Curto, Director of Contracts (557-5581) can provide further information.

Please schedule the Board's earliest consideration and notify Mr. Curto when the resolution is ready.

Thank you for your assistance.

Yours Truly,

Trent Rhorer
Executive Director

