

This contract was bid in May 2023 with four bids submitted. Five companies were solicited.

## Contracting Agreement

<date>

This agreement is executed by Hillcrest Business Association, a California not for profit corporation (hereinafter referred to as “HBA”) whose address is 3737 Fifth Avenue #202, San Diego, CA 92103 and ASAP Security (hereinafter referred to as “Contractor”), whose address is 9815 Carroll Canyon Rd, suite 208, San Diego, CA.

The City of San Diego, though not a party to this agreement, is referred to in this agreement as “the City”.

### Recitals

The HBA is seeking security patrol services within the Hillcrest commercial areas in Hillcrest, San Diego.

WHEREAS, ASAP is engaged in the business of providing security services, its Employer Tax ID Number is 82-2638423 and its State of California Private Patrol Operator number is 120273.

WHEREAS, the Customer desires to engage the services of ASAP wishes to accept such engagement on the terms set forth below;

NOW, therefore, in consideration of the above recitals, and the mutual promises and conditions contained in herein, the Parties, intending to be legally bound, hereby agree as follows:

### **Definitions**

A. Security Service Hours. The term “Security Service Hours” refers to the security office-man hours in which a security officer will be providing services.

B. Security Officers. The term “Security Officers” refers to the security professionals employed by Contractor who will provide services to the Customer.

### **Agreement**

**NOW, THEREFORE**, it is agreed by and between **the parties hereto as follows:**

#### **Hours and Location of Service.**

Beginning on January 1, 2024, the total number of Security Service Hours provided per week will be divided into shifts as further described on Attachment (“D”) to this contract;

Within the last week of each month, the HBA will provide in writing a Monthly Service Memo updating the patrol area that will describe the areas to be patrolled the following month. The memo will include:

- An updated list of blocks to be patrolled with shifts included
- A list of authorized addresses who can call the service.

In the case that no memo is provided, the Contractor shall use the most recently received memo.

Acknowledgment of Agency Relationship.

Customer hereby acknowledges that Contractor, while operating in its capacity as a security service provider while on Customer's Property, is an "Agent of the Owner" on Customer's Property(s)

Governing Law and Assignment.

Contractor and Customer acknowledge that they both expressly agree and understand that the laws of the State of California shall govern this agreement and any disputes arising therefrom.

This contract cannot be assigned or transferred without the express written consent of both parties.

Use and Furnishing of Security Officers.

Contractor agrees to furnish such number of Security Officers as is required and defined by the Customer at the Property as is described in Security Plan and Proposal, attached hereto as Attachment ("D").

Contractor shall provide Security Officers without regard to race, color, creed, sex, age, or national origin.

The Customer agrees to provide no gratuities or gifts to employees of Contractor, including but not limited to Security Officers.

Acknowledgment of Services Chosen and Offered.

The Customer acknowledges and hereby agrees that Customer alone has chosen the number of security officers and type of service to be provided herein.

Contractor has informed the Customer that additional Security officers and services are available at an additional cost to the Customer and that the Customer has elected not to avail themselves of the additional Security Officers and services.

Relationship of Security Officers to Contractor and Customer.

All Security Officers furnished hereunder are the employees of Contractor, an independent contractor, and not an employee of the Customer.

Contractor will pay all salaries and expenses of said Security Officers and withhold all Federal, State, and Social Security Taxes and Federal and State Unemployment Taxes and any similar taxes relating to such personnel of Contractor.

Supplies and Equipment to and or Used by Security Officers.

Contractor will furnish all Security Officers assigned hereunder to the Customer's Property with all appropriate equipment and uniforms.

Any and all property, equipment, supplies, apparatus, etc., furnished by Contractor hereunder and placed at or on the Property shall remain the property of Contractor, and Contractor shall at all times during and after the term of this Agreement have the sole and exclusive right to install, maintain, replace, and remove said property, equipment, supplies, and apparatus.

Role, Duties, and Limitations of Security Officers.

Contractor agrees that employees in conformity with practices current in the industry shall perform Security Officer Services furnished under this contract. Contractor further agrees that the Customer shall have the right to reject any Security Officer assigned by Contractor, for any reason, and Contractor shall, as soon as is practically possible thereafter, provide a satisfactory replacement.

The Security Officer furnished by Contractor shall perform such security related services as agreed upon by Contractor and the Customer.

It is understood that the Security Officer shall be and remain an employee of the Contractor and that Contractor shall be responsible for the hiring, licensing, training, and supervision of all such Security Officers. However, notwithstanding the foregoing, if the Customer alters any written post instructions or directions given to the Security Officer by Contractor, or if the Customer assumes any supervision of said Security Officer, the Customer shall be solely liable for any and all consequences.

The conduct of all Security Officers assigned hereunder shall be governed by the policy and the Customer and Contractor shall agree upon rules as in writing. Specific Instructions as well as Post Instructions shall be issued in writing covering each post of assignment, and such specific or Post instructions shall be signed by both parties hereto and by reference be made part hereof. These Instructions and Policies may from time to time be revised and supplemented provided it is done in writing and signed by both parties hereto.

Rights, Warranties, and Declarations of Insurance.

Contractor hereby represents and warrants that it has at present in force comprehensive public liability insurance.

Contractor hereby represents and warrants that at the time this contract is entered into, it carries workman's compensation insurance to the extent required by the appropriate statutes, and Public Liability Insurance including errors and omissions in an amount satisfactory to the Customer. Contractor agrees on request to provide Customer with Certificate of Insurance therefore. It is

further understood and agreed by and between the parties that: Contractor is not an insurer, that insurance, if any, shall be obtained by the Customer; Contractor is being paid hereunder for a Security Officer system designed to deter certain risks of loss and that all amounts being charged hereunder by Contractor are not sufficient to guarantee that no loss will occur; Contractor makes no warranty or guarantee, including any implied warranty of merchantability or fitness, that the service supplied will avert or prevent occurrences or the losses there from which the service is designed to detect or avert.

Contractor warrants that it shall provide its services and meet its obligations under this agreement in a timely and workmanlike manner, using knowledge and recommendations for performing the services which meet industry standards in the State of California.

It is expressly understood and agreed that this contract is entered into solely for the mutual benefit of the parties herein and that no benefits, rights, duties, or obligations are intended or created by this contract as to third parties not a signatory hereto.

Contractor shall not be held responsible for acts of God, riot or civil turmoil, hurricanes, or war if the event is beyond its reasonable control.

If the Customer changes the time(s) of coverage originally contracted, reduces the total number of billable hours, significantly alters the duties of Contractor's personnel, or the nature of the Customer's environment substantially changes, then Contractor reserves their rights to renegotiate the Agreement.

The entire agreement of the parties is contained herein, and no verbal understandings, agreements, purchase orders, work orders, or other documents shall alter, change, or modify the terms and provisions of this Agreement unless in writing AND SIGNED BY BOTH PARTIES HERETO.

#### Insurance

Contractor shall defend, indemnify, protect, and hold harmless the City and HBA, their elected officials, departments, officers, employees, representatives, and agents from and against any and all claims asserted, or liability established, for damages or injuries to any person or property.

The parties acknowledge that ASAP Security ( Contractor ) has been retained to provide services to HBA as a deterrent against loss and/or damage from criminal and/or other prohibited acts on or about the Protected Premises, and not as an insurer against all or any such loss or damage.

It is further acknowledged by the parties that the amounts payable to ASAP Security under this Agreement are based upon the value of the services rendered and are unrelated to the value of Client's property, both real and personal, or the property of third parties located in or about the Protected Premises.

HBA therefore acknowledges and agrees that ASAP Security is making no guarantee or warranty – either express or implied – that its services will absolutely avert and/or prevent all or any loss or damage to the Protected Premises.

HBA agrees that it will hold harmless and indemnify ASAP Security, its employees, officers, agents, and assignees, against all losses and damages to the Protected Premises suffered by

Client or any third party as the result of ordinary or gross negligence and/or all occurrences and/or conditions on or about the Protected Premises beyond ASAP Security's reasonable control.

ASAP Security reserve the right to subcontract part of all of this contract to a different security service provider without any notice to the client, but under a direct supervision of ASAP Security team.

Non-solicitation of Employees:

Throughout the term of this Agreement for the Property set forth above, Client shall exclusively use security personnel provided by ASAP Security Guards.

Client understands and acknowledges that ASAP Security Guards incurs substantial time and monetary expense to train, certify, and license each Security Officer to provide the highest standards of service at Client's Property.

In the event Client directly hires as an employee, or indirectly hires as an independent contract, any ASAP Security Guards, Officer who previously provided services at Client's Property within One Hundred Eighty (180) days of such hiring by Client, Then Client shall pay to ASAP Security Guards, the sum of Ten Thousand Dollars (\$10,000) to reimburse ASAP Security Guards, for the aforementioned time and expense to train, certify, and license said Security Officer.

Client shall not provide gratuities or gifts to employees of ASAP Security Guards, including but not limited to each Security Officer.

Contractor shall provide Commercial General Liability [CGL] Insurance, naming HBA and the "The City of San Diego, its elected officials, officers, employees, representatives, and agents" as additionally insured. Contractor shall provide Workers' Compensation Insurance, as required by the laws of the State of California for all of Contractor's employees who are subject to this agreement, with Employers' Liability coverage with a limit of at least one million dollars (\$1,000,000). "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additionally insured in the CGL. The policies shall be kept in force for the duration of the term and any extended use. The certificate(s) of insurance shall be delivered to HBA at the execution of this contract. All insurance required by the terms of this agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements. If the City is made a party to any judicial or administrative proceeding to resolve the dispute between HBA and Contractor, Contractor shall defend and indemnify the City as described herein.

Duration of and Termination of Agreement.

It's agreed upon by the parties that this contract shall be in full force and effect on a month to month basis.

Termination shall be effective only when notice in writing to discontinue is sent to either party by certified United States mail, with return receipt, postage prepaid and addressed to the other party hereto shown on this Agreement, at least thirty (30) days prior to the expiration of the term.

Confidentiality.

Contractor agrees not to use or disclose any information it receives from the Customer under this Agreement that has been identified as confidential or believed to be confidential in nature. Client also agrees to not disclose information about Contractor to any person or organization without the written consent of a Contractor official.

Miscellaneous.

It is agreed by and between Contractor and the Customer that if any of the terms of provisions of this Agreement shall be determined to be invalid or inoperative, all the remaining terms and provisions shall remain in full force and effect.

Contractor and Customer, both, hereby acknowledge that each has read, understands, accepts, and will abide by each and every provision and sub provision contained herein.

Services to be provided

Contractor shall provide security services described below in the area described on the attachment map (Attachment C).

Independent contractor status

Contractor is not an employee of the City or HBA. All staff costs relating to the project must be borne by the Contractor. Contractor shall have no authority to bind the City or HBA in any manner or to incur any obligation, debt, or liability of any kind, on behalf of or against the City or HBA. Signing this agreement does not assign any rights, obligations, and/or duties of Hillcrest Business Association under this agreement to any third party. This agreement does not create a contractual relationship between the City or HBA and any third party.

Conflict of interest

Contractor shall comply with all federal, state, and local laws, including conflict of interest laws, statutes, ordinances, regulations, and policies of the City related to public contracts and procurement practices to the extent applicable. HBA and Contractor are unaware of any financial or economic interest of any public officer or employee of the City relating to this agreement. Contractor has been made aware of the HBA's Conflict of Interest policy (attachment B).

Payment

HBA shall pay Contractor an amount based on the formula described for services described in Attachment #A.

Billing shall occur once per month within the first week of the month for which billing will occur and shall be based on the formula in Attachment A.

(a) The Customer will pay time and a half rate per man-hour worked on the following legal holidays: Christmas-December 25, New Year's Day-January 1, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving, and George Washington's Birthday.

(b) Upon non-payment of any sum due to Contractor hereunder, Contractor has the right to suspend any or all services without notice to the Customer. In the event of nonpayment and

suspension of services Contractor has the option to charge the Customer a reinstatement fee of Three hundred (\$300.00) dollars to reinstate services in addition to any sum already due.

Agreements with third parties

Upon signing the Contractor shall disclose and provide copies of all agreements with third parties relating to the project including rental agreements, service contracts, entertainment agreements, sponsorships, in-kind donations, special payments, and mutual benefit arrangements. Unwritten agreements shall be unacceptable.

Equal employment and nondiscriminatory provisions

Contractor shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Contractor's activities pursuant to this agreement, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment. Contractor shall comply with City Council Ordinance No.18173 (San Diego Municipal Code sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated into this agreement. Contractor is individually responsible to abide by its contents. Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor may be required to comply, and require each of its Subcontractors to comply, with the provisions of the City's Living Wage Ordinance. It is the responsibility of the Contractor to determine if compliance is required. Contractor is required where applicable to comply with the Americans with Disabilities Act, the City of San Diego Drug Free Workplace requirements, and Storm Water Management and Discharge Control Ordinance.

Arbitration. If a dispute arises out of or relates to this agreement, or the breach thereof, the parties agree first to try in good faith to resolve the dispute by mediation administered by the American Arbitration Association under its rules, before resorting to arbitration. Thereafter, any unresolved controversy or claim arising out of or relating to this agreement, or breach thereof, shall be resolved by arbitration administered by the American Arbitration Association in accordance with its Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof pursuant to applicable law.

Authorization. HBA hereby represents and warrants that while not the owner of the premises where services are to be provided the HBA is fully authorized by the owner to enter into this agreement.

Supervision. Contractor shall provide supervision adequate to insure that the services rendered pursuant to this agreement are of high quality.

No joint venture or partnership. This agreement shall not be construed or interpreted to create or establish any joint venture or partnership between the parties.

IN WITNESS WHEREOF, the parties have executed this agreement

on \_\_\_\_\_, at \_\_\_\_\_, California.

HILLCREST BUSINESS  
ASSOCIATION

Contractor

By:

Benjamin Nicholls  
Executive Director  
3737 Fifth Avenue, #202  
San Diego, California 92103  
(619) 299-3330 Tel.  
(619) 299-4230 Fax

By: \_\_\_\_\_



## Attachment A: scope of work

### Contractor agrees to provide the following:

Provide security services described below in the geographic areas described via Monthly Service Memo. Services shall be provided in all areas of the public right of way and including, in cases where a SDPD Letter of Agency is on file, alleyways and privately owned public areas such as parking lots, cafe seating areas, and storefront vestibules.

### Security services in all zones shall include:

- Foot patrols by uniformed staff of the area described, during the hours described in the Monthly Service Memo.
- Examination of “hot spot” addresses described in the Monthly Service Memo.
- Provide appropriate equipment and support for staff oversight including cellular telephones and a local call center to process calls from area property owners and businesses.
- Develop a “Security Plan” that will include directions for security staff to cover the services area described in the Monthly Service Memo that can be deployed on a weekly basis. Post orders shall be attached to this document as attachment D, and shall include:
  - logging, reporting and engaging with any security issues that might disrupt customers.
  - Provide GPS populated map-based report of patrol progress.
  - Provide daily reports of all issues observed during regular patrols including hazardous conditions (such as trip hazards, fallen tree limbs, street light outages, etc.), security incidents and engagement with San Diego Police officers.
  - Where appropriate, engage with the San Diego Police Department in such a way that supports their law enforcement activity.
  - Influencing problematic individuals or groups of individuals to relocate beyond the boundaries of the areas described.

### HBA agrees to provide the following:

Payment based on the rate of \$32 per hour for the hours described on the Monthly Service Memo.

Attachment B: Conflict of interest policy

- o No contract may be entered into by the Hillcrest Business Association if one of its officers, members, directors, committee members, staff members or volunteers has a material financial interest in the contract or transaction, except in the following circumstances:
  - o the material facts as to the contract or transaction and as to the party's interest are fully disclosed or known to the member, board or committee voting on the matter;
  - o the contract or transaction is approved by the members, board or committee in good faith, by a vote sufficient without counting the vote of the interested party or parties;
  - o the interested party or parties abstains from voting on the matter;
  - o the contract or transaction is just and reasonable to the Hillcrest Business Association at the time it was authorized, approved or ratified;
  - o the interested party or parties shall not actively participate in the decision about the contract or transaction, except to answer questions or provide a broad explanation;
  - o the action is recorded in meeting minutes, noting which members voted, how the members voted, and identifying any members who abstained from voting.

A violation of any provision of this policy shall be grounds for removal of the officers, directors, members, committee members, staff members or volunteers from their positions with the HBA. A contract or transaction entered into in violation of this Conflict of Interest Policy shall be void and unenforceable.

Attachment C: MAD map and service area



Attachment D: Monthly Security Memo