

**NORTH CAROLINA
DURHAM COUNTY**

**CONTRACT AMENDMENT #4
NIGHTHAWK SECURITY AND CONSULTING, LLC**

THIS CONTRACT AMENDMENT is made and entered into this 1st day of July 2019 by and between the **COUNTY OF DURHAM** (hereinafter referred to as “**County**”) and **NIGHTHAWK SECURITY AND CONSULTING, LLC and NIGHTHAWK COMPANY POLICE, LLC.** (hereinafter referred to as “**Contractor**”).

WITNESSETH:

THAT WHEREAS, the County and Contractor entered into a contract dated August 21, 2017, for the provision of providing security services and security consulting, (hereinafter the “Original Agreement”); and

WHEREAS, the County and Contractor amended the Original Agreement (amendment #1) on 8 March 2018 increasing the contract by \$111,356.38, while keeping in effect all terms and conditions of the Original Agreement not inconsistent with the terms and conditions set forth below.

WHEREAS, the County and Contractor amended the Original Agreement (amendment #2) on July 1, 2018 decreasing the contract by \$5,791.03 to \$1,724,941.95 for the provision of extending the contract term through June 30, 2019 and for the reduction in security post, while keeping in effect all terms and conditions of the Original Agreement not inconsistent with the terms and conditions set forth below.

WHEREAS, the County and Contractor amended the Original Agreement (amendment #3) on August 13, 2018 increasing the contract by \$183,499.91 to 1,908,441.76 for the provision of adding security services for the Administration II building, while keeping in effect all terms and conditions of the Original Agreement not inconsistent with the terms and conditions set forth below.

WHEREAS, the County and Contractor desire to amend the Original Agreement, while keeping in effect all terms and conditions of the Original Agreement not inconsistent with the terms and conditions set forth below.

NOW THEREFORE, for and in consideration for the mutual covenants and agreements made herein, the parties agree to amend the Original Agreement as follows:

1. The Term of the Original Agreement is hereby extended through June 30, 2020 and incorporates the follow revisions;
 - Post and hour adjustments as shown in the included Post Schedule and Cost sheet
 - 26 Weeks of Security Services for Durham County Main Library
2. The compensation paid to Contractor shall increase by \$21,842.47 for a total contract amount not to exceed \$1,930,284.23.
3. **CONFIDENTIALITY, DATA SECURITY, TRAINING AND NON-DISCLOSURE.** CONTRACTOR acknowledges and agrees that, in the course of its engagement with COUNTY, CONTRACTOR or its licensors, subcontractors or suppliers in connection with the services to be rendered under this Contract may receive or have access to “confidential information” or “personal identifiable information”.

CONTRACTOR or its licensors, contractors or suppliers has obtained or may need to obtain confidential information from the COUNTY in connection with the provision of services to the COUNTY or the discussions of such a proposed relationship.

The COUNTY and CONTRACTOR desire to stipulate and agree that any disclosure of confidential information in connection with the provision of services or the discussion of such a proposed relationship has occurred or will occur under circumstances and conditions that will protect and preserve the confidentiality of the information.

In consideration of the pursuit of current discussions and payment for the services, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

3.1 DEFINITIONS. As used in this Contract, the following terms shall have the meanings set forth below:

Confidential Information. The term “Confidential Information” shall mean any information, in any medium, whether written, oral or electronic, not generally known in the relevant trade or industry, which falls within any of the following general categories:

- a. Trade Secrets. For purposes of this Contract, trade secrets consist of information of the COUNTY or CONTRACTOR or any of its suppliers, contractors or licensors: (a) that Derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- b. Highly Restricted Information. CONTRACTOR acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) CONTRACTOR will also comply with any more restrictive instructions or written policies that may be provided by the COUNTY from time to time to protect the confidentiality of Highly Restricted Information, as defined below:
 1. Information of the COUNTY or its suppliers, contractors or licensors marked “Confidential” or “Proprietary.”
 2. Information relating to criminal investigations conducted by the COUNTY, and records of criminal intelligence information compiled by the COUNTY.
 3. Information contained in the COUNTY’s personnel files, as defined by NCGS §153A-98. This consists of all information gathered by the COUNTY about employees, except for that information which is a matter of public record under North Carolina law.
 4. Citizen or employee social security numbers collected by the COUNTY.
 5. Computer security information of the COUNTY, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
 6. Local tax records of the COUNTY that contained information about a taxpayer’s income or receipts.
 7. Any attorney/client privileged information disclosed by either party.
 8. Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.
 9. The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.

10. Protected Information (PHI), as defined in the Insurance Portability and Accountability Act (HIPAA), and any other information that is designated as confidential under federal or state law.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential information shall include information disclosed or revealed within one year prior to the date of this Contract.

Personal Identifiable Information. The term “Personal Identifiable Information” shall mean information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked to a specific individual.

3.2 RESTRICTIONS. CONTRACTOR shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

- a. Not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the COUNTY in writing.
- b. Not directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an employee, agent, subcontractor or CONTRACTOR of the COUNTY or CONTRACTOR having a need to know such Confidential Information for purpose or performing work contemplated by this Contract between the COUNTY and CONTRACTOR, and who has executed a confidentiality agreement incorporating substantially the form of this Confidentiality and Non-Disclosure Agreement. CONTRACTOR shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted Information to any third party without the County’s prior written consent.
- c. Not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written contracts between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- d. Not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
- e. Use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.
- f. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, CONTRACTOR shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- g. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the COUNTY or destroyed upon satisfaction of the purpose of the disclosure of such information.
- h. Restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.

- i. Take all reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract.

3.3 EXCEPTIONS. The COUNTY agrees that CONTRACTOR shall have no obligation with respect to any Confidential Information that CONTRACTOR can establish was:

- a. Already known to CONTRACTOR prior to being disclosed by the COUNTY;
- b. Or becomes publicly known through no wrongful act of CONTRACTOR;
- c. Rightfully obtained by CONTRACTOR from a third party without similar restriction and without breach hereof;
- d. Used or disclosed by CONTRACTOR with the prior written authorization of the COUNTY;
- e. Disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, CONTRACTOR shall first give to the other party notice of such requirement or request;
- f. Disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued Subpoena, provided that CONTRACTOR shall take reasonable steps to obtain an agreement or protective order providing that this Agreement will be applicable to all disclosures under the court order or subpoena.

3.4 REMEDIES. CONTRACTOR acknowledges that the unauthorized disclosure of the Confidential Information will diminish the value of the COUNTY's proprietary interests therein. Accordingly, it is agreed that if CONTRACTOR breaches its obligations hereunder, the COUNTY shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

3.5 DATA SECURITY. The CONTRACTOR shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations and rules.

The CONTRACTOR shall report a suspected or confirmed security breach to the COUNTY Department within twenty-four (24) hours after the breach is first discovered, provided that the CONTRACTOR shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered.

If any applicable Federal, State, or local law, regulation, or rule requires the CONTRACTOR to give written notice of a security breach to affect persons, the CONTRACTOR shall bear the cost of the notice.

3.6 TRAINING AND NON-DISCLOSURE. Upon request by the COUNTY, CONTRACTOR agrees to ensure compliance and the security of "confidential information" and "personal identifiable information", by having its employees, agents and subcontractors take online privacy and security awareness training provided by COUNTY, by way of an internet link or some other electronic method to be provided by COUNTY. CONTRACTOR, at the request of COUNTY, shall execute a non-disclosure agreement if, and when submitted by COUNTY.

4. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) PROGRAM. It is the policy of the County to provide minorities and women-owned businesses equal opportunity to participate in all aspects

of the County’s contracting programs, including but not limited to, the procurement of construction, goods and services consistent with law. The County has established an ordinance and implements an MWBE Program based on the ordinance, that promotes, increases and works towards eradicating the underutilization of minorities and women-owned businesses in the County’s contracting programs. As part of the implementation of the MWBE Program, Contractors shall complete **Attachment 2 – MWBE Utilization Form**, to provide the percentage/dollar value being subcontracted to any minority or women-owned business being utilized on this contract. Attachment 2 is hereby incorporated herein and made a part of this contract.

- 5. By execution hereof, the person signing for Contractor below certifies that he/she has read this Contract Amendment and that he/she is duly authorized to execute this contract on behalf of the Contractor.
- 6. Except for the changes made herein, the Original Agreement shall remain in full force and effect to the extent not inconsistent with this Amendment. In the event that there is a conflict between the Original Agreement and this Amendment, this Amendment shall control.

IN WITNESS WHEREOF, the parties have expressed their agreement to these terms by causing this Contract Amendment to be executed by their duly authorized office or agent. This Contract Amendment shall be effective as of the date herein.

COUNTY OF DURHAM

By: _____

Wendell Davis, County Manager

Date of Signature: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Susan Tezai, Durham County Chief Financial Officer

NIGHTHAWK SECURITY AND CONSULTING, LLC

By: _____

Print Name/Title: _____

Date of Signature: _____