

AN ORDINANCE 2012-12-13-0974

AUTHORIZING A CONTRACT WITH SMITH AND WESSON CORP. FOR ACQUISITION OF NEW PISTOLS FOR SAN ANTONIO LAW ENFORCEMENT AGENCIES FOR AN EXPENDITURE OF FUNDS OF APPROXIMATELY \$26,671.00 THROUGH A TRADE-IN PROGRAM.

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WHEREAS, in the process of replacing its current duty handgun, the San Antonio Police Department (SAPD) conducted an evaluation of a number of pistols; and

WHEREAS, said evaluation indicated that of the pistols tested, the Smith & Wesson (S&W) Military and Police (M&P) .40 caliber pistol was more accurate, easier to use, and less susceptible to catastrophic malfunction; and

WHEREAS, the SAPD, the San Antonio Park Police (Park Police), the San Antonio Airport Police (Airport Police), and the San Antonio Fire Department Arson Unit (Arson Unit) all wish to replace their duty handguns with the M&P .40 caliber pistol; and

WHEREAS, S&W has offered to accept the duty weapons of these four law enforcement agencies in trade for new M&P .40 caliber pistols; and

WHEREAS, costs for holsters, engraving, replacement of missing and damaged parts will be charged by S&W; and

WHEREAS, those costs are expected to be approximately \$26,671.00; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager and her designee are hereby authorized to execute a contract with S&W for replacement of the current duty handguns for the SAPD, the Park Police, the Airport Police, and the Arson Unit. The terms and conditions of the contract shall be substantially the same as those set out in the draft contract attached hereto as **Exhibit I**. Should the parties fail to execute a contract that contains substantially the same terms and conditions as those set out in the attached draft contract, further City Council authorization shall be required.

SECTION 2. Funding for this ordinance is available as part of the Fiscal Year 2013 budget per the table below.

Amount	Cost Center	General Ledger	Fund
\$5,178.00	1703020001	5304050	11001000
\$356.00	2608010001	5304050	11001000
\$14,631.60	2608010001	5304005	11001000
\$1,684.00	2002020001	5304050	11001000
\$4,821.40	1711130001	5304050	29037000
Total Amount	\$26,671.00		

SECTION 3. Payment not to exceed the budgeted amount is authorized to S&W and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts, as necessary to carry out the purpose of this Ordinance.

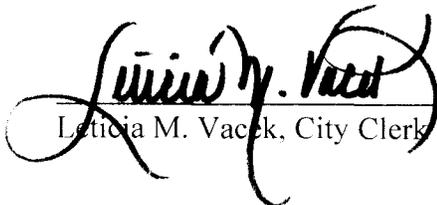
SECTION 5. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

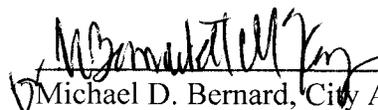
PASSED AND APPROVED this 13th day of December, 2012.


M A Y O R
Julián Castro

ATTEST:

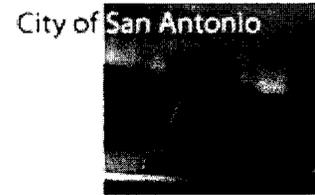
APPROVED AS TO FORM:


Leticia M. Vacek, City Clerk


Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION



Agenda Voting Results - 10

Name:	10, 11, 12, 13, 15, 16, 17, 18A, 18B, 18C, 18D, 18E, 18F, 18G, 19A, 19B, 19C, 19D, 19E, 19F, 19G, 19H, 19I, 19J, 19K, 19L, 20, 21, 22, 24, 25A, 25B, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37A, 37B, 37C, 37D						
Date:	12/13/2012						
Time:	03:04:01 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a contract with Smith and Wesson Corp. for acquisition of new handguns for City of San Antonio law enforcement agencies for an expenditure of funds of approximately \$26,671.00 through a trade-in program. [Erik J. Walsh, Deputy City Manager; William McManus, Police Chief]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7	x					
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

**SALES CONTRACT
BETWEEN
CITY OF SAN ANTONIO
AND
SMITH & WESSON CORP.**

This sales contract is made and entered into by and between the City of San Antonio (CITY) and Smith & Wesson Corp. (S&W) for the sale of handguns to the San Antonio Police Department (SAPD), the San Antonio Park Police (PARK POLICE), the San Antonio Airport Police (AIRPORT POLICE), and the San Antonio Fire Department Arson Unit (ARSON UNIT).

I. TERM

- 1.1 This contract shall commence upon the execution of this contract by the last party to sign it and shall terminate upon completion of all work described herein or delivery of all goods ordered, as applicable, unless terminated earlier pursuant to the provisions hereof.
- 1.2 S&W and CITY recognize that the continuation of any contract after the close of any given fiscal year of CITY, which fiscal year ends on September 30, shall be subject to appropriation of funds for the contract. Should funds not be appropriated, this contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder, except that CITY shall return any products to S&W for which payment has not been made.

II. SCOPE OF SERVICES

A. General

- 2A.1 For purposes of this contract, as it applies to SAPD, NEW PISTOL shall mean a new S&W Military & Police (M&P) full-size .40 caliber pistol (product code 309700), in the box, with a night sight and three fifteen-round magazines, and a new Safariland holster with an STX finish (product code 6360).
- 2A.2 For purposes of this contract, as it applies to PARK POLICE, AIRPORT POLICE, and ARSON UNIT, NEW PISTOL shall mean a new S&W M&P full-size .40 caliber pistol (product code 309700), in the box, with a night sight and three fifteen-round magazines.
- 2A.3 For purposes of this contract, HOLSTER shall mean a new Safariland holster with an STX finish (product code 6360).
- 2A.4 For purposes of this contract, TRADE PISTOL shall mean a used Glock 22, 23, or 27 pistol and three used fifteen-round Glock magazines.

- 2A.5 For purposes of this contract, GOOD WORKING CONDITION shall mean safe to use, reliable to operate, and with all pieces and parts, and otherwise in accordance with the provisions of Section 2B.8 below.
- 2A.6 Where delivery to CITY by S&W is required by the terms of this contract, delivery shall be to the SAPD Armorer at the SAPD Training Academy at 12200 S.E. Loop 410, San Antonio, Texas, 78214, unless otherwise specified.
- 2A.7 Where delivery to S&W by CITY is required by the terms of this contract, delivery shall be to a federal-firearms-licensed dealer located within the continental USA of S&W's choosing, unless otherwise specified.

B. SAPD Pistol Exchange

- 2B.1 This subarticle shall apply only to TRADE PISTOLS used by personnel of the SAPD.
- 2B.2 S&W agrees to exchange 2589 NEW PISTOLS owned by S&W for 2589 TRADE PISTOLS owned by CITY and used by SAPD personnel.
- 2B.3 S&W shall deliver 400 NEW PISTOLS to CITY on or before the first of each month, for six months, beginning January 14, 2013, and shall deliver 200 additional NEW PISTOLS to CITY on or before June 14, 2013. The costs of delivery of the NEW PISTOLS shall be borne by S&W and shall be FOB destination.
- 2B.4 CITY shall have a reasonable time (but not less than 30 days or more than 60 days) after receipt of NEW PISTOLS to inspect them. CITY, at its option, may reject all or any portion of the NEW PISTOLS which do not, in CITY's sole discretion, comply in every respect with all terms and conditions of this contract.
- 2B.5 CITY agrees to ship at least 1000 TRADE PISTOLS to S&W, or its designated distributor or agent, within six months of delivery of the first shipment of the aforementioned NEW PISTOLS by S&W. CITY shall ship an additional 1589 TRADE PISTOLS to S&W no later than January 31, 2014, or by a date CITY and S&W mutually agree upon in writing, no less than 30 days prior to January 31, 2014. The costs of shipment of the TRADE PISTOLS shall be borne by CITY and shall be FOB point of shipment.
- 2B.6 CITY's obligation to ship a given amount of TRADE PISTOLS to S&W is contingent upon the delivery of a like amount of NEW PISTOLS to CITY by S&W. Should CITY receive fewer NEW PISTOLS, or should CITY reject any NEW PISTOLS pursuant to Section 2B.4 above, it shall ship the same quantity of TRADE PISTOLS as NEW PISTOLS received from S&W and accepted by CITY.
- 2B.7 Prior to a given shipment of TRADE PISTOLS to S&W, CITY shall fax or email to S&W a list of the serial numbers of the TRADE PISTOLS being shipped to S&W.

2B.8 The TRADE PISTOLS shall be in good working condition, as certified by SAPD’s Glock armorer specialist, utilizing the Glock checklist attached hereto as Exhibit I. Should any of the components of the TRADE PISTOLS be missing or damaged, CITY shall pay S&W in accordance with the payment schedule set out in Section 2B.11. S&W shall notify CITY, in writing, of any missing components or damage to components within 30 days of receipt of the TRADE PISTOLS.

2B.9 Should CITY fail to ship the required amount of TRADE PISTOLS to S&W by January 31, 2014, CITY shall pay S&W in accordance with the payment schedule set out in Section 2B.11.

2B.10 CITY shall not be obligated, however, to ship TRADE PISTOLS where shipment is impossible. For example, where a TRADE PISTOL is evidence in a criminal prosecution, CITY shall not be obligated to ship the TRADE PISTOL. At the discretion of S&W, CITY shall either ship the TRADE PISTOL to S&W within 30 days of the date on which the condition causing the impossibility is eliminated or pay S&W in accordance with the payment schedule set out in Section 2B.11.

2B.11 Payment Schedule

no Glock 22 pistol	\$330.00for pistol/\$80.00 for holster
damaged Glock 22 pistol	cost of repairs and shipping, not to exceed \$330.00
no Glock fifteen-round magazine	\$20.00
damaged Glock fifteen-round magazine	\$20.00

2B.12 S&W agrees to engrave on the side of each NEW PISTOL the phrase "SAN ANTONIO POLICE" for a fee of \$2.00 per NEW PISTOL. Said engraving shall be done prior to delivery of the NEW PISTOLS to CITY and shall be invoiced by S&W prior to each delivery of NEW PISTOLS and paid for by CITY per the terms of each invoice.

C. PARK POLICE Pistol Exchange

2C.1 This subarticle shall apply only to TRADE PISTOLS used by personnel of the PARK POLICE.

2C.2 S&W agrees to exchange 178 NEW PISTOLS owned by S&W for 178 TRADE PISTOLS owned by CITY and used by PARK POLICE personnel.

2C.3 S&W agrees to sell CITY 178 HOLSTERS for \$82.20 each. The cost of the HOLSTERS shall be invoiced by S&W prior to each delivery of NEW PISTOLS and HOLSTERS and paid for by CITY per the terms of each invoice.

2C.4 S&W shall deliver 178 NEW PISTOLS and 178 HOLSTERS to CITY on or before the January 16, 2013. The costs of delivery of the NEW PISTOLS and HOLSTERS shall be borne by S&W and shall be FOB destination.

- 2C.5 CITY shall have a reasonable time (but not less than 30 days or more than 60 days) after receipt of NEW PISTOLS and HOLSTERS to inspect them. CITY, at its option, may reject all or any portion of the NEW PISTOLS and HOLSTERS which do not, in CITY's sole discretion, comply in every respect with all terms and conditions of this contract.
- 2C.6 CITY agrees to ship at least 178 TRADE PISTOLS to S&W, or its designated distributor or agent, within six months of delivery of the first shipment of the aforementioned NEW PISTOLS by S&W or by a date CITY and S&W mutually agree upon in writing, no less than 30 days prior to June 14, 2013. The costs of shipment of the TRADE PISTOLS shall be borne by CITY and shall be FOB point of shipment.
- 2C.7 CITY's obligation to ship a given amount of TRADE PISTOLS to S&W is contingent upon the delivery of a like amount of NEW PISTOLS and HOLSTERS to CITY by S&W. Should CITY receive fewer NEW PISTOLS and HOLSTERS, or should CITY reject any NEW PISTOLS and HOLSTERS pursuant to Section 2C.5 above, it shall ship the same quantity of TRADE PISTOLS as NEW PISTOLS and HOLSTERS received from S&W and accepted by CITY.
- 2C.8 Prior to a given shipment of TRADE PISTOLS to S&W, CITY shall fax or email to S&W a list of the serial numbers of the TRADE PISTOLS being shipped to S&W.
- 2C.9 The TRADE PISTOLS shall be in good working condition, as certified by SAPD's Glock armorer specialist, utilizing the Glock checklist attached hereto as Exhibit I. Should any of the components of the TRADE PISTOLS be missing or damaged, CITY shall pay S&W in accordance with the payment schedule set out in Section 2C.12. S&W shall notify CITY, in writing, of any missing components or damage to components within 30 days of receipt of the TRADE PISTOLS.
- 2C.10 Should CITY fail to ship the required amount of TRADE PISTOLS to S&W within six months of delivery or a date agreed upon in accordance with Section 2C.6, CITY shall pay S&W in accordance with the payment schedule set out in Section 2C.12.
- 2C.11 CITY shall not be obligated, however, to ship TRADE PISTOLS where shipment is impossible. For example, where a TRADE PISTOL is evidence in a criminal prosecution, CITY shall not be obligated to ship the TRADE PISTOL. At the discretion of S&W, CITY shall either ship the TRADE PISTOL to S&W within 30 days of the date on which the condition causing the impossibility is eliminated or pay S&W in accordance with the payment schedule set out in Section 2C.12.

2C.12 Payment Schedule

no Glock 22, 23, Or 27 pistol	\$360.00
damaged Glock 22 pistol	cost of repairs and shipping, not to exceed \$360.00
no Glock fifteen-round magazine	\$20.00

damaged Glock fifteen-round magazine	\$20.00
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2C.13 S&W agrees to engrave on the side of each NEW PISTOL the phrase "SA PARK POLICE" for a fee of \$2.00 per NEW PISTOL. Said engraving shall be done prior to delivery of the NEW PISTOLS to CITY and shall be invoiced by S&W prior to each delivery of NEW PISTOLS and paid for by CITY per the terms of each invoice.

D. AIRPORT POLICE Pistol Exchange

2D.1 This subarticle shall apply only to TRADE PISTOLS used by personnel of the AIRPORT POLICE.

2D.2 S&W agrees to exchange 68 NEW PISTOLS owned by S&W for 68 TRADE PISTOLS owned by CITY and used by AIRPORT POLICE personnel.

2D.3 S&W agrees to sell CITY 57 HOLSTERS for \$82.20 each. The cost of the HOLSTERS shall be invoiced by S&W prior to each delivery of NEW PISTOLS and HOLSTERS and paid for by CITY per the terms of each invoice.

2D.4 S&W shall deliver 68 NEW PISTOLS and 57 HOLSTERS to CITY on or before January 16, 2013. The costs of delivery of the NEW PISTOLS and HOLSTERS shall be borne by S&W and shall be FOB destination.

2D.5 CITY shall have a reasonable time (but not less than 30 days or more than 60 days) after receipt of NEW PISTOLS and HOLSTERS to inspect them. CITY, at its option, may reject all or any portion of the NEW PISTOLS and HOLSTERS which do not, in CITY's sole discretion, comply in every respect with all terms and conditions of this contract.

2D.6 CITY agrees to ship at least 68 TRADE PISTOLS to S&W, or its designated distributor or agent, within six months of delivery of the shipment of the aforementioned NEW PISTOLS by S&W or by a date CITY and S&W mutually agree upon in writing, no less than 30 days prior to June 14, 2013. The costs of shipment of the TRADE PISTOLS shall be borne by CITY and shall be FOB point of shipment.

2D.7 CITY's obligation to ship a given amount of TRADE PISTOLS to S&W is contingent upon the delivery of a like amount of NEW PISTOLS and HOLSTERS to CITY by S&W. Should CITY receive fewer NEW PISTOLS and HOLSTERS, or should CITY reject any NEW PISTOLS and HOLSTERS pursuant to Section 2D.5 above, it shall ship the same quantity of TRADE PISTOLS as NEW PISTOLS and HOLSTERS received from S&W and accepted by CITY.

2D.8 Prior to a given shipment of TRADE PISTOLS to S&W, CITY shall fax or email to S&W a list of the serial numbers of the TRADE PISTOLS being shipped to S&W.

2D.9 The TRADE PISTOLS shall be in good working condition, as certified by SAPD's Glock armorer specialist, utilizing the Glock checklist attached hereto as Exhibit I. Should any of the components of the TRADE PISTOLS be missing or damaged, CITY shall pay S&W in accordance with the payment schedule set out in Section 2D.12. S&W shall notify CITY, in writing, of any missing components or damage to components within 30 days of receipt of the TRADE PISTOLS.

2D.10 Should CITY fail to ship the required amount of TRADE PISTOLS to S&W within six months of delivery or a date agreed upon in accordance with Section 2D.6, CITY shall pay S&W in accordance with the payment schedule set out in Section 2D.12.

2D.11 CITY shall not be obligated, however, to ship TRADE PISTOLS where shipment is impossible. For example, where a TRADE PISTOL is evidence in a criminal prosecution, CITY shall not be obligated to ship the TRADE PISTOL. At the discretion of S&W, CITY shall either ship the TRADE PISTOL to S&W within 30 days of the date on which the condition causing the impossibility is eliminated or pay S&W in accordance with the payment schedule set out in Section 2D.12.

2D.12 Payment Schedule

no Glock 22 pistol	\$360.00
damaged Glock 22 pistol	cost of repairs and shipping, not to exceed \$360.00
no Glock fifteen-round magazine	\$20.00
damaged Glock fifteen-round magazine	\$20.00

2D.13 S&W agrees to engrave on the side of each NEW PISTOL the phrase "SAAPD" for a fee of \$2.00 per NEW PISTOL. Said engraving shall be done prior to delivery of the NEW PISTOLS to CITY and shall be invoiced by S&W prior to each delivery of NEW PISTOLS and paid for by CITY per the terms of each invoice.

E. ARSON UNIT Pistol Exchange

2E.1 This subarticle shall apply only to TRADE PISTOLS used by personnel of the ARSON UNIT POLICE.

2E.2 S&W agrees to exchange 20 NEW PISTOLS owned by S&W for 20 TRADE PISTOLS owned by CITY and used by ARSON UNIT personnel.

2E.3 S&W agrees to sell CITY 20 HOLSTERS for \$82.20 each. The cost of the HOLSTERS shall be invoiced by S&W prior to each delivery of NEW PISTOLS and HOLSTERS and paid for by CITY per the terms of each invoice.

- 2E.4 S&W shall deliver 20 NEW PISTOLS and 20 HOLSTERS to CITY on or before January 16, 2013. The costs of delivery of the NEW PISTOLS and HOLSTERS shall be borne by S&W and shall be FOB destination.
- 2E.5 CITY shall have a reasonable time (but not less than 30 days or more than 60 days) after receipt of NEW PISTOLS and HOLSTERS to inspect them. CITY, at its option, may reject all or any portion of the NEW PISTOLS and HOLSTERS which do not, in CITY's sole discretion, comply in every respect with all terms and conditions of this contract.
- 2E.6 CITY agrees to ship 20 TRADE PISTOLS to S&W, or its designated distributor or agent, within six months of delivery of the aforementioned NEW PISTOLS by S&W or by a date CITY and S&W mutually agree upon in writing, no less than 30 days prior to June 14, 2013. The costs of shipment of the TRADE PISTOLS shall be borne by CITY and shall be FOB point of shipment.
- 2E.7 CITY's obligation to ship a given amount of TRADE PISTOLS to S&W is contingent upon the delivery of a like amount of NEW PISTOLS and HOLSTERS to CITY by S&W. Should CITY receive fewer NEW PISTOLS and HOLSTERS, or should CITY reject any NEW PISTOLS and HOLSTERS pursuant to Section 2E.5 above, it shall ship the same quantity of TRADE PISTOLS as NEW PISTOLS and HOLSTERS received from S&W and accepted by CITY.
- 2E.8 Prior to a given shipment of TRADE PISTOLS to S&W, CITY shall fax or email to S&W a list of the serial numbers of the TRADE PISTOLS being shipped to S&W.
- 2E.9 The TRADE PISTOLS shall be in good working condition, as certified by SAPD's Glock armorer specialist, utilizing the Glock checklist attached hereto as Exhibit I. Should any of the components of the TRADE PISTOLS be missing or damaged, CITY shall pay S&W in accordance with the payment schedule set out in Section 2E.12. S&W shall notify CITY, in writing, of any missing components or damage to components within 30 days of receipt of the TRADE PISTOLS.
- 2E.10 Should CITY fail to ship the required amount of TRADE PISTOLS to S&W within six months of delivery or a date agreed upon in accordance with Section 2E.6, CITY shall pay S&W in accordance with the payment schedule set out in Section 2E.12.
- 2E.11 CITY shall not be obligated, however, to ship TRADE PISTOLS where shipment is impossible. For example, where a TRADE PISTOL is evidence in a criminal prosecution, CITY shall not be obligated to ship the TRADE PISTOL. At the discretion of S&W, CITY shall either ship the TRADE PISTOL to S&W within 30 days of the date on which the condition causing the impossibility is eliminated or pay S&W in accordance with the payment schedule set out in Section 2E.12.

2E.12 Payment Schedule

no Glock 23 pistol	\$360.00
damaged Glock 22 pistol	cost of repairs and shipping, not to exceed \$360.00
no Glock fifteen-round magazine	\$20.00
damaged Glock fifteen-round magazine	\$20.00

2E.13 S&W agrees to engrave on the side of each NEW PISTOL the phrase "SA ARSON" for a fee of \$2.00 per NEW PISTOL. Said engraving shall be done prior to delivery of the NEW PISTOLS to CITY and shall be invoiced by S&W prior to each delivery of NEW PISTOLS and paid for by CITY per the terms of each invoice.

F. Armorer School Training

2F.1 CITY acknowledges that S&W has recently conducted two armorer training schools to train and certify approximately 24 of the CITY's armorers and range staff at no cost to CITY.

III. PAYMENT AND BILLING

- 3.1 For any fee to which S&W is entitled, S&W shall submit an itemized invoice to CITY. Said invoice shall contain a representation that the fees are being invoiced pursuant to this contract.
- 3.2 Upon receipt of and approval by CITY of S&W's invoice, CITY agrees to pay S&W the amount invoiced, so long as the amount invoiced has been invoiced pursuant to the provisions of this contract.
- 3.3 CITY shall not be obligated or liable under this contract to any party other than S&W for payment of any monies or provision of any goods or services.
- 3.4 S&W shall be responsible for all expenses incurred by S&W in completing the work required by this contract.

IV. LICENSES AND CERTIFICATIONS

4.1 All licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials and all applicable state and federal laws and local ordinances must be complied with by S&W. Failure to comply with this requirement shall be treated as a default and will result in termination of this contract.

V. CONFIDENTIALITY OF INFORMATION

- 5.1 No reports, information, project evaluation, project designs, data, or any other documentation developed by, given to, prepared by, or assembled by S&W under this contract shall be disclosed or made available to any individual or organization by S&W without the express prior written approval of CITY, unless required by law or court order.
- 5.2 S&W shall establish a method to secure the confidentiality of records and information that S&W may have access to, in accordance with any applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting the CITY's right of access to records or other information under this CONTRACT.
- 5.3 Should S&W receive inquiries regarding documents within its possession pursuant to this contract, S&W shall immediately forward such request to CITY for disposition.

VI. OWNERSHIP OF DOCUMENTS

- 6.1 All reports, information, and other data given to, prepared by, or assembled by S&W pursuant to this contract and any other related documents or items shall become the sole property of CITY. Such reports, information, and other data shall be delivered at no cost to CITY upon request or upon termination of this contract without restriction on future use. S&W may make copies of any and all documents for its files, at its sole cost and expense.
- 6.2 S&W shall retain all records owned by CITY or to which CITY has access for the retention periods specified by local, state, or federal law, if any, and otherwise in accordance with S&W's internal document retention policy as it may be amended from time to time.

VII. TERMINATION

- 7.1 For purposes of this contract, "termination" of this contract shall mean termination by expiration of the contract term, as set out in Article I, or earlier termination pursuant to any of the provisions of this contract.
- 7.2 CITY may terminate this contract in accordance with this article, in whole or in part, at any time, for any reason, upon written notice to S&W. Said notice shall specify the date of termination.
- 7.3 Should S&W fail to fulfill in a timely and proper manner, as determined solely by CITY, its material obligations under this contract, or violate any of the material terms of this contract, CITY shall have the right to immediately terminate the contract, in whole or in part. Notice of termination shall be provided in writing to S&W, effective upon the date set forth in the notice. CITY may, in CITY's sole discretion, provide an opportunity for S&W to cure the default. If CITY elects to offer an opportunity to cure, CITY shall provide notice to S&W, specifying the matters in default and the cure period. If S&W

fails to cure the default within the cure period, CITY shall have the right, without further notice, to terminate the contract, in whole or in part. Such termination shall not relieve S&W of any liability to CITY for damages sustained by virtue of any breach by S&W and shall not relieve CITY of its obligation to pay any sums due to S&W pursuant to this agreement and unpaid at the time such termination is effective.

- 7.4 In no event shall CITY's action of terminating this contract be deemed an election of CITY's remedies, nor shall such termination limit, in any way, at law or at equity, CITY's right to seek damages from or otherwise pursue S&W for any default hereunder or other action.
- 7.5 If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, this contract shall automatically terminate as of the effective date of such prohibition.

VIII. NON-WAIVER

- 8.1 Unless otherwise specifically provided for in this contract, a waiver by either party of a breach of any of the terms, conditions, covenants, or guarantees of this contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant, or guarantee herein contained. Further, any failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by either party hereto of any provision of this contract shall be deemed to have been made or shall be effective, unless expressed in writing and signed by the party to be charged. No act or omission by a party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

IX. INDEPENDENT CONTRACTOR

- 9.1 S&W covenants and agrees that S&W is an independent contractor and not an officer, agent, servant, or employee of City; that S&W shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and consultants; that the doctrine of respondent superior shall not apply as between CITY and S&W, its officers, agents, employees, contractors, subcontractors, and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners, or joint venturers between CITY and S&W. The parties hereto understand and agree that the CITY shall not be liable for any claims which may be asserted against S&W by any third party occurring in connection with the services to be performed by S&W under this agreement and that S&W has no authority to bind the CITY.

- 9.2 Regardless of where the work shall be performed, what supplies or resources are provided by CITY, what instruction or direction is provided by CITY, S&W and those persons designated by it to provide services shall not be deemed employees of CITY and shall not be entitled to wages or benefits from CITY, other than the compensation provided herein.

X. SUBCONTRACTING AND ASSIGNMENT

- 10.1 Any other clause of this contract to the contrary notwithstanding, none of the work or services covered by this contract shall be subcontracted without the prior written approval of CITY. Any work or services approved for subcontracting hereunder, however, shall be subcontracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this contract. Compliance by subcontractors with this contract shall be the responsibility of S&W.
- 10.2 Despite CITY approval of a subcontract, CITY shall, in no event, be obligated to any third party, including any subcontractor of S&W, for performance of work or services, nor shall CITY funds ever be used for payment of work or services performed prior to the date of contract execution or after the termination of this contract.
- 10.3 Except as otherwise stated herein, S&W may not sell, assign, pledge, transfer, or convey any interest in this contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, without the prior written consent of CITY. As a condition of such consent, if such consent is granted, S&W shall remain liable for completion of the services outlined in this contract in the event of default by the successor, assignee, transferee, or subcontractor.
- 10.4 Any attempt to transfer, pledge, or otherwise assign this contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should S&W assign, transfer, convey, delegate, or otherwise dispose of any part or all of its right, title, or interest in this contract, CITY may, at its option, cancel this contract and all rights, titles, and interest of S&W shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this contract. The violation of this provision by S&W shall in no event release S&W from any obligation under the terms of this contract, nor shall it relieve or release S&W from the payment of any damages to CITY, which CITY sustains as a result of such violation.

XI. CONFLICT OF INTEREST

- 11.1 S&W acknowledges that it is informed that the Charter of the City of San Antonio and CITY's Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land,

materials, supplies, or services, if any of the following individuals or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten percent or more of the voting stock or shares of the business entity, or ten percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

- 11.2 Pursuant to the subsection above, S&W warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of CITY. S&W further warrants and certifies that it has tendered to CITY a discretionary contracts disclosure statement in compliance with CITY's Ethics Code.

XII. INDEMNITY

12.1 S&W COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO S&W'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF S&W, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, S&W OR SUBCONTRACTOR OF S&W, AND THEIR RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT S&W AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 12.2 THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. S&W SHALL ADVISE THE CITY IN WRITING WITHIN**

TWENTY-FOUR HOURS OF ANY CLAIM OR DEMAND AGAINST CITY OR S&W KNOWN TO S&W RELATED TO OR ARISING OUT OF S&W'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT S&W'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING S&W OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

XIII. RESERVED

XIV. CHANGES AND AMENDMENTS

- 14.1 Except when the terms of this contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and S&W.
- 14.2 It is understood and agreed by the parties hereto that changes in local, state, and federal rules, regulations, or laws applicable hereto may occur during the term of this contract and that any such changes shall be automatically incorporated into this contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, or law.

XV. ENTIRE AGREEMENT

- 15.1 This contract and its exhibits constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and only executed by the parties.

XVI. SEVERABILITY

- 16.1 If any clause or provision of this contract is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including, but not limited to, the city charter, city code, or ordinances of the city of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality, or unenforceability shall not affect any other clause or provision hereof and that the remainder of this contract shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this contract that is invalid, illegal, or unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.
- 16.2 To the extent any term or condition in this contract conflicts with the applicable Texas and/or United States law or regulation, such contract term or condition is void and

unenforceable. By executing a contract which contains the conflicting term or condition, the City makes no representations or warranties regarding the enforceability of such term or condition and the City does not waive the applicable Texas and/or United States law or regulation which conflicts with the contract term or condition.

XVII. NOTICES

- 17.1 For purposes of this contract, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY

City of San Antonio
SAPD Contract Administration Office
315 S. Santa Rosa
San Antonio, Texas 78207

S&W

Doug Grier
Smith & Wesson Corp.
Hull Street Road, PMB 224
Midlothian, Virginia 23112

with copy to:
Smith & Wesson Corp.
2100 Roosevelt Avenue
Springfield, Massachusetts 01104
Attn.: General Counsel

XVIII. LAW APPLICABLE

- 18.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.
- 18.2 VENUE AND JURISDICTION FOR ANY LEGAL ACTION OR PROCEEDING BROUGHT OR MAINTAINED, DIRECTLY OR INDIRECTLY, UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL LIE EXCLUSIVELY IN BEXAR COUNTY, TEXAS.

XIX. LEGAL AUTHORITY

- 19.1 The signer of this contract for S&W represents, warrants, assures, and guarantees that he has full legal authority to execute this contract on behalf of S&W and to bind S&W to all of the terms, conditions, provisions, and obligations herein contained.

XX. PARTIES BOUND

- 20.1 This contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns, except as otherwise expressly provided for herein.

XXI. GENDER

- 21.1 Words of any gender used in this contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXII. CAPTIONS

- 22.1 The captions contained in this contract are for convenience of reference only and in no way limit or enlarge the terms and/or conditions of this contract.

XXIII. WARRANTY OF NEW PISTOLS

- 23.1 For a period of one year, S&W warrants the NEW PISTOLS to be free from defects in material and workmanship, so long as S&W receives written notice within one year of the date of delivery of the defective NEW PISTOL to CITY and the defective NEW PISTOL is still owned by CITY. S&W shall repair or replace, at its option, the defective NEW PISTOL without charge after such notification and delivery of the NEW PISTOL to S&W.
- 23.2 The aforementioned written notification shall be sent to Smith & Wesson Corp., Customer Service Department, 2100 Roosevelt Avenue, Springfield, Massachusetts 01104. Said notification shall identify the model and serial number of the defective NEW PISTOL and shall provide a description of the difficulty being experienced.
- 23.3 For the lifetime of the NEW PISTOLS following the aforementioned one-year warranty period, S&W shall repair or replace, at its option, defective NEW PISTOLS where the defect is in material or workmanship, so long as the defective NEW PISTOL is still owned by CITY and the defect is functional and is not to the finish, the grips, the magazines, or the sights of NEW PISTOLS. Said repair or replacement shall be without charge after delivery of the NEW PISTOL to S&W.
- 23.4 S&W shall process defective NEW PISTOLS through its 911 Priority Repair Service. In any event, S&W shall repair or replace defective NEW PISTOLS within a reasonable period of time and return the functioning ones to CITY via overnight delivery.
- 23.5 CITY shall send defective NEW PISTOLS to Smith & Wesson Corp., Customer Service Department, 2100 Roosevelt Avenue, Springfield, Massachusetts 01104. CITY shall send with any defective NEW PISTOL a copy of the bill of sale in the owner's name or a copy of ATF Form 4473 indicating date of purchase, as well as a written description of the difficulty experienced.

- 23.6 The costs of transportation and the costs of insurance for loss or damage while in transit shall be borne by the party sending the NEW PISTOL, whether it be CITY, when sending the defective NEW PISTOL to S&W, or S&W, when returning it to CITY.
- 23.7 Despite the foregoing, S&W shall not be obligated to repair or replace a defective NEW PISTOL where the defect results from (1) careless handling, unauthorized adjustments or modifications made or attempted by anyone other than a qualified gunsmith following S&W authorized procedures, or failure to follow the disassembly instructions in the S&W manual; (2) use of defective or improper ammunition, corrosion, neglect, abuse, ordinary wear and tear, or unreasonable use; or (3) criminal misuse, negligence, or use under the influence of drugs or alcohol.
- 23.8 **UNLESS PROHIBITED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL S&W BE RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ECONOMIC LOSS, INJURY, DEATH OR PROPERTY DAMAGE, WHETHER AS A RESULT OF BREACH OF THIS WARRANTY, NEGLIGENCE OR OTHERWISE.**

EXECUTED IN DUPLICATE ORIGINALS on _____, 2012.

CITY OF SAN ANTONIO

SMITH & WESSON CORP.

 Erik Walsh
 Deputy City Manager

 Name: _____
 Title: _____

APPROVED AS TO FORM:

 City Attorney

**SALES CONTRACT
BETWEEN
CITY OF SAN ANTONIO
AND
SMITH & WESSON CORP.**

This sales contract is made and entered into by and between the City of San Antonio (CITY) and Smith & Wesson Corp. (S&W) for the sale of handguns to the San Antonio Police Department (SAPD), the San Antonio Park Police (PARK POLICE), the San Antonio Airport Police (AIRPORT POLICE), and the San Antonio Fire Department Arson Unit (ARSON UNIT).

I. TERM

- 1.1 This contract shall commence upon the execution of this contract by the last party to sign it and shall terminate upon completion of all work described herein or delivery of all goods ordered, as applicable, unless terminated earlier pursuant to the provisions hereof.
- 1.2 S&W and CITY recognize that the continuation of any contract after the close of any given fiscal year of CITY, which fiscal year ends on September 30, shall be subject to appropriation of funds for the contract. Should funds not be appropriated, this contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder, except that CITY shall return any products to S&W for which payment has not been made.

II. SCOPE OF SERVICES

A. General

- 2A.1 For purposes of this contract, as it applies to SAPD, NEW PISTOL shall mean a new S&W Military & Police (M&P) full-size .40 caliber pistol (product code 309700), in the box, with a night sight and three fifteen-round magazines, and a new Safariland holster with an STX finish (product code 6360).
- 2A.2 For purposes of this contract, as it applies to PARK POLICE, AIRPORT POLICE, and ARSON UNIT, NEW PISTOL shall mean a new S&W M&P full-size .40 caliber pistol (product code 309700), in the box, with a night sight and three fifteen-round magazines.
- 2A.3 For purposes of this contract, HOLSTER shall mean a new Safariland holster with an STX finish (product code 6360).
- 2A.4 For purposes of this contract, TRADE PISTOL shall mean a used Glock 22, 23, or 27 pistol and three used fifteen-round Glock magazines.

- 2A.5 For purposes of this contract, GOOD WORKING CONDITION shall mean safe to use, reliable to operate, and with all pieces and parts, and otherwise in accordance with the provisions of Section 2B.8 below.
- 2A.6 Where delivery to CITY by S&W is required by the terms of this contract, delivery shall be to the SAPD Armorer at the SAPD Training Academy at 12200 S.E. Loop 410, San Antonio, Texas, 78214, unless otherwise specified.
- 2A.7 Where delivery to S&W by CITY is required by the terms of this contract, delivery shall be to a federal-firearms-licensed dealer located within the continental USA of S&W's choosing, unless otherwise specified.

B. SAPD Pistol Exchange

- 2B.1 This subarticle shall apply only to TRADE PISTOLS used by personnel of the SAPD.
- 2B.2 S&W agrees to exchange 2589 NEW PISTOLS owned by S&W for 2589 TRADE PISTOLS owned by CITY and used by SAPD personnel.
- 2B.3 S&W shall deliver 400 NEW PISTOLS to CITY on or before the first of each month, for six months, beginning January 14, 2013, and shall deliver 200 additional NEW PISTOLS to CITY on or before June 14, 2013. The costs of delivery of the NEW PISTOLS shall be borne by S&W and shall be FOB destination.
- 2B.4 CITY shall have a reasonable time (but not less than 30 days or more than 60 days) after receipt of NEW PISTOLS to inspect them. CITY, at its option, may reject all or any portion of the NEW PISTOLS which do not, in CITY's sole discretion, comply in every respect with all terms and conditions of this contract.
- 2B.5 CITY agrees to ship at least 1000 TRADE PISTOLS to S&W within six months of delivery of the first shipment of the aforementioned NEW PISTOLS by S&W. CITY shall ship an additional 1589 TRADE PISTOLS to S&W no later than January 31, 2014, or by a date CITY and S&W mutually agree upon in writing, no less than 30 days prior to January 31, 2014. The costs of shipment of the TRADE PISTOLS shall be borne by CITY and shall be FOB point of shipment.
- 2B.6 CITY's obligation to ship a given amount of TRADE PISTOLS to S&W is contingent upon the delivery of a like amount of NEW PISTOLS to CITY by S&W. Should CITY receive fewer NEW PISTOLS, or should CITY reject any NEW PISTOLS pursuant to Section 2B.4 above, it shall ship the same quantity of TRADE PISTOLS as NEW PISTOLS received from S&W and accepted by CITY.
- 2B.7 Prior to a given shipment of TRADE PISTOLS to S&W, CITY shall fax or email to S&W a list of the serial numbers of the TRADE PISTOLS being shipped to S&W.

2B.8 The TRADE PISTOLS shall be in good working condition, as certified by SAPD's Glock armorer specialist, utilizing the Glock checklist attached hereto as Exhibit I. Should any of the components of the TRADE PISTOLS be missing or damaged, CITY shall pay S&W in accordance with the payment schedule set out in Section 2B.11. S&W shall notify CITY, in writing, of any missing components or damage to components within 30 days of receipt of the TRADE PISTOLS.

2B.9 Should CITY fail to ship the required amount of TRADE PISTOLS to S&W by January 31, 2014, CITY shall pay S&W in accordance with the payment schedule set out in Section 2B.11.

2B.10 CITY shall not be obligated, however, to ship TRADE PISTOLS where shipment is impossible. For example, where a TRADE PISTOL is evidence in a criminal prosecution, CITY shall not be obligated to ship the TRADE PISTOL. At the discretion of S&W, CITY shall either ship the TRADE PISTOL to S&W within 30 days of the date on which the condition causing the impossibility is eliminated or pay S&W in accordance with the payment schedule set out in Section 2B.11.

2B.11 Payment Schedule

no Glock 22 pistol	\$330.00for pistol/\$80.00 for holster
damaged Glock 22 pistol	cost of repairs and shipping, not to exceed \$330.00
no Glock fifteen-round magazine	\$20.00
damaged Glock fifteen-round magazine	\$20.00

2B.12 S&W agrees to engrave on the side of each NEW PISTOL the phrase "SAN ANTONIO POLICE" for a fee of \$2.00 per NEW PISTOL. Said engraving shall be done prior to delivery of the NEW PISTOLS to CITY and shall be invoiced by S&W prior to each delivery of NEW PISTOLS and paid for by CITY per the terms of each invoice.

C. PARK POLICE Pistol Exchange

2C.1 This subarticle shall apply only to TRADE PISTOLS used by personnel of the PARK POLICE.

2C.2 S&W agrees to exchange 178 NEW PISTOLS owned by S&W for 178 TRADE PISTOLS owned by CITY and used by PARK POLICE personnel.

2C.3 S&W agrees to sell CITY 178 HOLSTERS for \$82.20 each. The cost of the HOLSTERS shall be invoiced by S&W prior to each delivery of NEW PISTOLS and HOLSTERS and paid for by CITY per the terms of each invoice.

2C.4 S&W shall deliver 178 NEW PISTOLS and 178 HOLSTERS to CITY on or before the January 16, 2013. The costs of delivery of the NEW PISTOLS and HOLSTERS shall be borne by S&W and shall be FOB destination.

- 2C.5 CITY shall have a reasonable time (but not less than 30 days or more than 60 days) after receipt of NEW PISTOLS and HOLSTERS to inspect them. CITY, at its option, may reject all or any portion of the NEW PISTOLS and HOLSTERS which do not, in CITY's sole discretion, comply in every respect with all terms and conditions of this contract.
- 2C.6 CITY agrees to ship at least 178 TRADE PISTOLS to S&W within six months of delivery of the first shipment of the aforementioned NEW PISTOLS by S&W or by a date CITY and S&W mutually agree upon in writing, no less than 30 days prior to June 14, 2013. The costs of shipment of the TRADE PISTOLS shall be borne by CITY and shall be FOB point of shipment.
- 2C.7 CITY's obligation to ship a given amount of TRADE PISTOLS to S&W is contingent upon the delivery of a like amount of NEW PISTOLS and HOLSTERS to CITY by S&W. Should CITY receive fewer NEW PISTOLS and HOLSTERS, or should CITY reject any NEW PISTOLS and HOLSTERS pursuant to Section 2C.5 above, it shall ship the same quantity of TRADE PISTOLS as NEW PISTOLS and HOLSTERS received from S&W and accepted by CITY.
- 2C.8 Prior to a given shipment of TRADE PISTOLS to S&W, CITY shall fax or email to S&W a list of the serial numbers of the TRADE PISTOLS being shipped to S&W.
- 2C.9 The TRADE PISTOLS shall be in good working condition, as certified by SAPD's Glock armorer specialist, utilizing the Glock checklist attached hereto as Exhibit I. Should any of the components of the TRADE PISTOLS be missing or damaged, CITY shall pay S&W in accordance with the payment schedule set out in Section 2C.12. S&W shall notify CITY, in writing, of any missing components or damage to components within 30 days of receipt of the TRADE PISTOLS.
- 2C.10 Should CITY fail to ship the required amount of TRADE PISTOLS to S&W within six months of delivery or a date agreed upon in accordance with Section 2C.6, CITY shall pay S&W in accordance with the payment schedule set out in Section 2C.12.
- 2C.11 CITY shall not be obligated, however, to ship TRADE PISTOLS where shipment is impossible. For example, where a TRADE PISTOL is evidence in a criminal prosecution, CITY shall not be obligated to ship the TRADE PISTOL. At the discretion of S&W, CITY shall either ship the TRADE PISTOL to S&W within 30 days of the date on which the condition causing the impossibility is eliminated or pay S&W in accordance with the payment schedule set out in Section 2C.12.

2C.12 Payment Schedule

no Glock 22, 23, Or 27 pistol	\$360.00
damaged Glock 22 pistol	cost of repairs and shipping, not to exceed \$360.00
no Glock fifteen-round magazine	\$20.00

damaged Glock fifteen-round magazine	\$20.00
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2C.13 S&W agrees to engrave on the side of each NEW PISTOL the phrase "SA PARK POLICE" for a fee of \$2.00 per NEW PISTOL. Said engraving shall be done prior to delivery of the NEW PISTOLS to CITY and shall be invoiced by S&W prior to each delivery of NEW PISTOLS and paid for by CITY per the terms of each invoice.

C. AIRPORT POLICE Pistol Exchange

2D.1 This subarticle shall apply only to TRADE PISTOLS used by personnel of the AIRPORT POLICE.

2D.2 S&W agrees to exchange 68 NEW PISTOLS owned by S&W for 68 TRADE PISTOLS owned by CITY and used by AIRPORT POLICE personnel.

2D.3 S&W agrees to sell CITY 57 HOLSTERS for \$82.20 each. The cost of the HOLSTERS shall be invoiced by S&W prior to each delivery of NEW PISTOLS and HOLSTERS and paid for by CITY per the terms of each invoice.

2D.4 S&W shall deliver 68 NEW PISTOLS and 57 HOLSTERS to CITY on or before January 16, 2013. The costs of delivery of the NEW PISTOLS and HOLSTERS shall be borne by S&W and shall be FOB destination.

2D.5 CITY shall have a reasonable time (but not less than 30 days or more than 60 days) after receipt of NEW PISTOLS and HOLSTERS to inspect them. CITY, at its option, may reject all or any portion of the NEW PISTOLS and HOLSTERS which do not, in CITY's sole discretion, comply in every respect with all terms and conditions of this contract.

2D.6 CITY agrees to ship at least 68 TRADE PISTOLS to S&W within six months of delivery of the shipment of the aforementioned NEW PISTOLS by S&W or by a date CITY and S&W mutually agree upon in writing, no less than 30 days prior to June 14, 2013. The costs of shipment of the TRADE PISTOLS shall be borne by CITY and shall be FOB point of shipment.

2D.7 CITY's obligation to ship a given amount of TRADE PISTOLS to S&W is contingent upon the delivery of a like amount of NEW PISTOLS and HOLSTERS to CITY by S&W. Should CITY receive fewer NEW PISTOLS and HOLSTERS, or should CITY reject any NEW PISTOLS and HOLSTERS pursuant to Section 2D.5 above, it shall ship the same quantity of TRADE PISTOLS as NEW PISTOLS and HOLSTERS received from S&W and accepted by CITY.

2D.8 Prior to a given shipment of TRADE PISTOLS to S&W, CITY shall fax or email to S&W a list of the serial numbers of the TRADE PISTOLS being shipped to S&W.

2D.9 The TRADE PISTOLS shall be in good working condition, as certified by SAPD’s Glock armorer specialist, utilizing the Glock checklist attached hereto as Exhibit I. Should any of the components of the TRADE PISTOLS be missing or damaged, CITY shall pay S&W in accordance with the payment schedule set out in Section 2D.12. S&W shall notify CITY, in writing, of any missing components or damage to components within 30 days of receipt of the TRADE PISTOLS.

2D.10 Should CITY fail to ship the required amount of TRADE PISTOLS to S&W within six months of delivery or a date agreed upon in accordance with Section 2D.6, CITY shall pay S&W in accordance with the payment schedule set out in Section 2D.12.

2D.11 CITY shall not be obligated, however, to ship TRADE PISTOLS where shipment is impossible. For example, where a TRADE PISTOL is evidence in a criminal prosecution, CITY shall not be obligated to ship the TRADE PISTOL. At the discretion of S&W, CITY shall either ship the TRADE PISTOL to S&W within 30 days of the date on which the condition causing the impossibility is eliminated or pay S&W in accordance with the payment schedule set out in Section 2D.12.

2D.12 Payment Schedule

no Glock 22 pistol	\$360.00
damaged Glock 22 pistol	cost of repairs and shipping, not to exceed \$360.00
no Glock fifteen-round magazine	\$20.00
damaged Glock fifteen-round magazine	\$20.00

2D.13 S&W agrees to engrave on the side of each NEW PISTOL the phrase "SAAPD" for a fee of \$2.00 per NEW PISTOL. Said engraving shall be done prior to delivery of the NEW PISTOLS to CITY and shall be invoiced by S&W prior to each delivery of NEW PISTOLS and paid for by CITY per the terms of each invoice.

C. ARSON UNIT Pistol Exchange

2E.1 This subarticle shall apply only to TRADE PISTOLS used by personnel of the ARSON UNIT POLICE.

2E.2 S&W agrees to exchange 20 NEW PISTOLS owned by S&W for 20 TRADE PISTOLS owned by CITY and used by ARSON UNIT personnel.

2E.3 S&W agrees to sell CITY 20 HOLSTERS for \$82.20 each. The cost of the HOLSTERS shall be invoiced by S&W prior to each delivery of NEW PISTOLS and HOLSTERS and paid for by CITY per the terms of each invoice.

- 2E.4 S&W shall deliver 20 NEW PISTOLS and 20 HOLSTERS to CITY on or before January 16, 2013. The costs of delivery of the NEW PISTOLS and HOLSTERS shall be borne by S&W and shall be FOB destination.
- 2E.5 CITY shall have a reasonable time (but not less than 30 days or more than 60 days) after receipt of NEW PISTOLS and HOLSTERS to inspect them. CITY, at its option, may reject all or any portion of the NEW PISTOLS and HOLSTERS which do not, in CITY's sole discretion, comply in every respect with all terms and conditions of this contract.
- 2E.6 CITY agrees to ship 20 TRADE PISTOLS to S&W within six months of delivery of the aforementioned NEW PISTOLS by S&W or by a date CITY and S&W mutually agree upon in writing, no less than 30 days prior to June 14, 2013. The costs of shipment of the TRADE PISTOLS shall be borne by CITY and shall be FOB point of shipment.
- 2E.7 CITY's obligation to ship a given amount of TRADE PISTOLS to S&W is contingent upon the delivery of a like amount of NEW PISTOLS and HOLSTERS to CITY by S&W. Should CITY receive fewer NEW PISTOLS and HOLSTERS, or should CITY reject any NEW PISTOLS and HOLSTERS pursuant to Section 2E.5 above, it shall ship the same quantity of TRADE PISTOLS as NEW PISTOLS and HOLSTERS received from S&W and accepted by CITY.
- 2E.8 Prior to a given shipment of TRADE PISTOLS to S&W, CITY shall fax or email to S&W a list of the serial numbers of the TRADE PISTOLS being shipped to S&W.
- 2E.9 The TRADE PISTOLS shall be in good working condition, as certified by SAPD's Glock armorer specialist, utilizing the Glock checklist attached hereto as Exhibit I. Should any of the components of the TRADE PISTOLS be missing or damaged, CITY shall pay S&W in accordance with the payment schedule set out in Section 2E.12. S&W shall notify CITY, in writing, of any missing components or damage to components within 30 days of receipt of the TRADE PISTOLS.
- 2E.10 Should CITY fail to ship the required amount of TRADE PISTOLS to S&W within six months of delivery or a date agreed upon in accordance with Section 2E.6, CITY shall pay S&W in accordance with the payment schedule set out in Section 2E.12.
- 2E.11 CITY shall not be obligated, however, to ship TRADE PISTOLS where shipment is impossible. For example, where a TRADE PISTOL is evidence in a criminal prosecution, CITY shall not be obligated to ship the TRADE PISTOL. At the discretion of S&W, CITY shall either ship the TRADE PISTOL to S&W within 30 days of the date on which the condition causing the impossibility is eliminated or pay S&W in accordance with the payment schedule set out in Section 2E.12.

2E.12 Payment Schedule

no Glock 23 pistol	\$360.00
damaged Glock 22 pistol	cost of repairs and shipping, not to exceed \$360.00
no Glock fifteen-round magazine	\$20.00
damaged Glock fifteen-round magazine	\$20.00

2E.13 S&W agrees to engrave on the side of each NEW PISTOL the phrase "SA ARSON" for a fee of \$2.00 per NEW PISTOL. Said engraving shall be done prior to delivery of the NEW PISTOLS to CITY and shall be invoiced by S&W prior to each delivery of NEW PISTOLS and paid for by CITY per the terms of each invoice.

F. Armorer School Training

2F.1 S&W will conduct two armorer training schools to train and certify the CITY's armorers and range staff at no cost to CITY. Enrollment in each school shall be limited to fifteen trainees. The training will be conducted at a mutually agreed upon time and place by both parties. Both schools shall be conducted no later than December 17, 2012.

III. PAYMENT AND BILLING

- 3.1 For any fee to which S&W is entitled, S&W shall submit an itemized invoice to CITY. Said invoice shall contain a representation that the fees are being invoiced pursuant to this contract.
- 3.2 Upon receipt of and approval by CITY of S&W's invoice, CITY agrees to pay S&W the amount invoiced, so long as the amount invoiced has been invoiced pursuant to the provisions of this contract.
- 3.3 CITY shall not be obligated or liable under this contract to any party other than S&W for payment of any monies or provision of any goods or services.
- 3.4 S&W shall be responsible for all expenses incurred by S&W in completing the work required by this contract.

IV. LICENSES AND CERTIFICATIONS

4.1 All licenses, legal certifications, or inspections required for the services, facilities, equipment, or materials and all applicable state and federal laws and local ordinances must be complied with by S&W. Failure to comply with this requirement shall be treated as a default and will result in termination of this contract.

V. CONFIDENTIALITY OF INFORMATION

- 5.1 No reports, information, project evaluation, project designs, data, or any other documentation developed by, given to, prepared by, or assembled by S&W under this contract shall be disclosed or made available to any individual or organization by S&W without the express prior written approval of CITY, unless required by law or court order.
- 5.2 S&W shall establish a method to secure the confidentiality of records and information that S&W may have access to, in accordance with any applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting the CITY's right of access to records or other information under this CONTRACT.
- 5.3 Should S&W receive inquiries regarding documents within its possession pursuant to this contract, S&W shall immediately forward such request to CITY for disposition.

VI. OWNERSHIP OF DOCUMENTS

- 6.1 All reports, information, and other data given to, prepared by, or assembled by S&W pursuant to this contract and any other related documents or items shall become the sole property of CITY. Such reports, information, and other data shall be delivered at no cost to CITY upon request or upon termination of this contract without restriction on future use. S&W may make copies of any and all documents for its files, at its sole cost and expense.
- 6.2 S&W shall retain all records owned by CITY or to which CITY has access for the retention periods specified by local, state, or federal law, if any, and otherwise in accordance with S&W's internal document retention policy as it may be amended from time to time.

VII. TERMINATION

- 7.1 For purposes of this contract, "termination" of this contract shall mean termination by expiration of the contract term, as set out in Article I, or earlier termination pursuant to any of the provisions of this contract.
- 7.2 CITY may terminate this contract in accordance with this article, in whole or in part, at any time, for any reason, upon written notice to S&W. Said notice shall specify the date of termination.
- 7.3 Should S&W fail to fulfill in a timely and proper manner, as determined solely by CITY, its material obligations under this contract, or violate any of the material terms of this contract, CITY shall have the right to immediately terminate the contract, in whole or in part. Notice of termination shall be provided in writing to S&W, effective upon the date set forth in the notice. CITY may, in CITY's sole discretion, provide an opportunity for S&W to cure the default. If CITY elects to offer an opportunity to cure, CITY shall provide notice to S&W, specifying the matters in default and the cure period. If S&W

fails to cure the default within the cure period, CITY shall have the right, without further notice, to terminate the contract, in whole or in part. Such termination shall not relieve S&W of any liability to CITY for damages sustained by virtue of any breach by S&W and shall not relieve CITY of its obligation to pay any sums due to S&W pursuant to this agreement and unpaid at the time such termination is effective.

- 7.4 In no event shall CITY's action of terminating this contract be deemed an election of CITY's remedies, nor shall such termination limit, in any way, at law or at equity, CITY's right to seek damages from or otherwise pursue S&W for any default hereunder or other action.
- 7.5 If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, this contract shall automatically terminate as of the effective date of such prohibition.

VIII. NON-WAIVER

- 8.1 Unless otherwise specifically provided for in this contract, a waiver by either party of a breach of any of the terms, conditions, covenants, or guarantees of this contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant, or guarantee herein contained. Further, any failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by either party hereto of any provision of this contract shall be deemed to have been made or shall be effective, unless expressed in writing and signed by the party to be charged. No act or omission by a party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

IX. INDEPENDENT CONTRACTOR

- 9.1 S&W covenants and agrees that S&W is an independent contractor and not an officer, agent, servant, or employee of City; that S&W shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and consultants; that the doctrine of respondent superior shall not apply as between CITY and S&W, its officers, agents, employees, contractors, subcontractors, and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners, or joint venturers between CITY and S&W. The parties hereto understand and agree that the CITY shall not be liable for any claims which may be asserted against S&W by any third party occurring in connection with the services to be performed by S&W under this agreement and that S&W has no authority to bind the CITY.

- 9.2 Regardless of where the work shall be performed, what supplies or resources are provided by CITY, what instruction or direction is provided by CITY, S&W and those persons designated by it to provide services shall not be deemed employees of CITY and shall not be entitled to wages or benefits from CITY, other than the compensation provided herein.

X. SUBCONTRACTING AND ASSIGNMENT

- 10.1 Any other clause of this contract to the contrary notwithstanding, none of the work or services covered by this contract shall be subcontracted without the prior written approval of CITY. Any work or services approved for subcontracting hereunder, however, shall be subcontracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this contract. Compliance by subcontractors with this contract shall be the responsibility of S&W.
- 10.2 Despite CITY approval of a subcontract, CITY shall, in no event, be obligated to any third party, including any subcontractor of S&W, for performance of work or services, nor shall CITY funds ever be used for payment of work or services performed prior to the date of contract execution or after the termination of this contract.
- 10.3 Except as otherwise stated herein, S&W may not sell, assign, pledge, transfer, or convey any interest in this contract, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, without the prior written consent of CITY. As a condition of such consent, if such consent is granted, S&W shall remain liable for completion of the services outlined in this contract in the event of default by the successor, assignee, transferee, or subcontractor.
- 10.4 Any attempt to transfer, pledge, or otherwise assign this contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should S&W assign, transfer, convey, delegate, or otherwise dispose of any part or all of its right, title, or interest in this contract, CITY may, at its option, cancel this contract and all rights, titles, and interest of S&W shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this contract. The violation of this provision by S&W shall in no event release S&W from any obligation under the terms of this contract, nor shall it relieve or release S&W from the payment of any damages to CITY, which CITY sustains as a result of such violation.

XI. CONFLICT OF INTEREST

- 11.1 S&W acknowledges that it is informed that the Charter of the City of San Antonio and CITY's Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land,

materials, supplies, or services, if any of the following individuals or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten percent or more of the voting stock or shares of the business entity, or ten percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

- 11.2 Pursuant to the subsection above, S&W warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of CITY. S&W further warrants and certifies that it has tendered to CITY a discretionary contracts disclosure statement in compliance with CITY's Ethics Code.

XII. INDEMNITY

- 12.1 S&W COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO S&W'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF S&W, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, S&W OR SUBCONTRACTOR OF S&W, AND THEIR RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF CITY, ITS OFFICERS OR EMPLOYEES, IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT S&W AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 12.2 THE PROVISIONS OF THIS INDEMNITY ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. S&W SHALL ADVISE THE CITY IN WRITING WITHIN**

TWENTY-FOUR HOURS OF ANY CLAIM OR DEMAND AGAINST CITY OR S&W KNOWN TO S&W RELATED TO OR ARISING OUT OF S&W'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT S&W'S COST. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING S&W OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

XIII. RESERVED

XIV. CHANGES AND AMENDMENTS

- 14.1 Except when the terms of this contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and S&W.
- 14.2 It is understood and agreed by the parties hereto that changes in local, state, and federal rules, regulations, or laws applicable hereto may occur during the term of this contract and that any such changes shall be automatically incorporated into this contract without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, or law.

XV. ENTIRE AGREEMENT

- 15.1 This contract and its exhibits constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and only executed by the parties.

XVI. SEVERABILITY

- 16.1 If any clause or provision of this contract is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including, but not limited to, the city charter, city code, or ordinances of the city of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality, or unenforceability shall not affect any other clause or provision hereof and that the remainder of this contract shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this contract that is invalid, illegal, or unenforceable, there be added as a part of the contract a clause or provision as similar in terms to such invalid, illegal, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

XVII. NOTICES

- 17.1 For purposes of this contract, all official communications and notices between the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY

City of San Antonio
SAPD Contract Administration Office
315 S. Santa Rosa
San Antonio, Texas 78207

S&W

Doug Grier
Smith & Wesson Corp.
Hull Street Road, PMB 224
Midlothian, Virginia 23112

with copy to:
Smith & Wesson Corp.
2100 Roosevelt Avenue
Springfield, Massachusetts 01104
Attn.: General Counsel

XVIII. LAW APPLICABLE

- 18.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.
- 18.2 VENUE AND JURISDICTION FOR ANY LEGAL ACTION OR PROCEEDING BROUGHT OR MAINTAINED, DIRECTLY OR INDIRECTLY, UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL LIE EXCLUSIVELY IN BEXAR COUNTY, TEXAS.

XIX. LEGAL AUTHORITY

- 19.1 The signer of this contract for S&W represents, warrants, assures, and guarantees that he has full legal authority to execute this contract on behalf of S&W and to bind S&W to all of the terms, conditions, provisions, and obligations herein contained.

XX. PARTIES BOUND

- 20.1 This contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns, except as otherwise expressly provided for herein.

XXI. GENDER

- 21.1 Words of any gender used in this contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXII. CAPTIONS

- 22.1 The captions contained in this contract are for convenience of reference only and in no way limit or enlarge the terms and/or conditions of this contract.

XXIII. WARRANTY OF NEW PISTOLS

- 23.1 For a period of one year, S&W warrants the NEW PISTOLS to be free from defects in material and workmanship, so long as S&W receives written notice within one year of the date of delivery of the defective NEW PISTOL to CITY and the defective NEW PISTOL is still owned by CITY. S&W shall repair or replace, at its option, the defective NEW PISTOL without charge after such notification and delivery of the NEW PISTOL to S&W.
- 23.2 The aforementioned written notification shall be sent to Smith & Wesson Corp., Customer Service Department, 2100 Roosevelt Avenue, Springfield, Massachusetts 01104. Said notification shall identify the model and serial number of the defective NEW PISTOL and shall provide a description of the difficulty being experienced.
- 23.3 For the lifetime of the NEW PISTOLS following the aforementioned one-year warranty period, S&W shall repair or replace, at its option, defective NEW PISTOLS where the defect is in material or workmanship, so long as the defective NEW PISTOL is still owned by CITY and the defect is functional and is not to the finish, the grips, the magazines, or the sights of NEW PISTOLS. Said repair or replacement shall be without charge after delivery of the NEW PISTOL to S&W.
- 23.4 S&W shall process defective NEW PISTOLS through its 911 Priority Repair Service. In any event, S&W shall repair or replace defective NEW PISTOLS within a reasonable period of time and return the functioning ones to CITY via overnight delivery.
- 23.5 CITY shall send defective NEW PISTOLS to Smith & Wesson Corp., Customer Service Department, 2100 Roosevelt Avenue, Springfield, Massachusetts 01104. CITY shall send with any defective NEW PISTOL a copy of the bill of sale in the owner's name or a copy of ATF Form 4473 indicating date of purchase.
- 23.6 The costs of transportation and the costs of insurance for loss or damage while in transit shall be borne by the party sending the NEW PISTOL, whether it be CITY, when sending the defective NEW PISTOL to S&W, or S&W, when returning it to CITY.

23.7 Despite the foregoing, S&W shall not be obligated to repair or replace a defective NEW PISTOL where the defect results from (1) careless handling, unauthorized adjustments or modifications made or attempted by anyone other than a qualified gunsmith following S&W authorized procedures, or failure to follow the disassembly instructions in the S&W manual; (2) use of defective or improper ammunition, corrosion, neglect, abuse, ordinary wear and tear, or unreasonable use; or (3) criminal misuse, negligence, or use under the influence of drugs or alcohol.

EXECUTED IN DUPLICATE ORIGINALS on _____, 2012.

CITY OF SAN ANTONIO

SMITH & WESSON CORP.

Erik Walsh
Deputy City Manager

Name: _____
Title: _____

APPROVED AS TO FORM:

City Attorney