

RD:RLT:LCP  
8-16-13

**FIRST AMENDMENT TO THE AGREEMENT  
FOR SECURITY GUARD SERVICES AT  
SAN JOSE/SANTA CLARA WATER POLLUTION CONTROL PLANT AND SAN  
JOSE MUNICIPAL WATER FACILITIES  
BETWEEN THE CITY OF SAN JOSE  
AND FIRST ALARM SECURITY & PATROL, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 ("Effective Date"), by the CITY OF SAN JOSE ("CITY"), a municipal corporation, and FIRST ALARM SECURITY & PATROL, INC., a California corporation ("CONTRACTOR").

**RECITALS**

**WHEREAS**, on March 29, 2013, CITY and CONTRACTOR entered into an agreement entitled "Agreement for Security Guard Services at San Jose/Santa Clara Water Pollution Control Plant and San Jose Municipal Water Facilities" ("AGREEMENT"); and

**WHEREAS**, on June 4, 2013, the CITY Council adopted Resolution No. 76653 revising the Living Wage Policy to require contractors to provide a minimum number of days of compensated time off to workers providing labor or service to the CITY pursuant to procurement initiated on or after June 5, 2013, and to amendments of existing agreements that require City Council approval; and

**WHEREAS**, CITY and CONTRACTOR wish to amend the AGREEMENT to implement the compensated time off that CONTRACTOR must provide to its employees consistent with the City Council direction on June 4, 2013 and Resolution No. 76653;


**NOW, THEREFORE**, the parties agree to amend the AGREEMENT as follows:

**SECTION 1.** EXHIBIT C, "COMPENSATION" is amended to read as shown in REVISED EXHIBIT C, attached and incorporated into this First Amendment.

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**SECTION 2.** All of the terms and conditions of the original AGREEMENT not expressly modified by this First Amendment remain unchanged and in full force and effect.

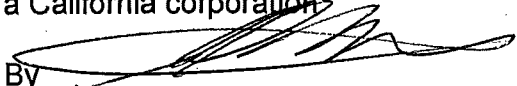
APPROVED AS TO FORM:

  
\_\_\_\_\_  
ROSA TSONGTAATARUI  
Sr. Deputy City Attorney

CITY OF SAN JOSÉ, a municipal corporation

By \_\_\_\_\_  
Name: MARK GIOVANNETTI  
Title: Purchasing Officer  
Date:

FIRST ALARM SECURITY & PATROL INC.,  
a California corporation

  
By \_\_\_\_\_  
Name: PRESIDENT CAL HORTON  
Title:  
Date: 10-04-13

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**REVISED EXHIBIT C  
COMPENSATION**

**1. Compensation**

1.1. CITY shall compensate CONTRACTOR for Security Guard Services according to the following Schedule before the Effective Date of the First Amendment:

**WPCP**

Description	Hourly Rate	Monthly Rate	Annual Compensation	5 Year Total Compensation
WPCP Scheduled Security Guard Services	\$21.35	\$12,027.17	\$144,326.04	\$721,630.20
WPCP Scheduled Security Patrol Guard Services	\$26.35	\$11,760.88	\$141,130.56	\$705,652.80
Muni Water Scheduled Security Patrol Guard Services	\$26.35	\$1,200.00	\$14,400.00	\$72,000.00
Contingency Amount (provided for supplemental work, imposed paid days off, and potential annual adjustment)				\$602,637.00
<b>TOTAL MAXIMUM COMPENSATION</b>				<b>\$2,101,920.00</b>

1.2 On or after the Effective Date of the First Amendment, CITY shall compensate CONTRACTOR for Security Guard Services according to the following schedule:

Description	Hourly Rate for Part Time Employee	Hourly Rate for Full Time Employee	Monthly Rate	Annual Compensation	5 Year Total Compensation
WPCP Scheduled Security Guard Services	\$21.74	\$22.11	\$12,455.30	\$149,463.60	\$747,318.00
WPCP Scheduled Security Patrol	\$26.83	\$27.29	\$12,180.44	\$146,165.24	\$730,826.20

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Guard Services					
Muni Water Scheduled Security Patrol Guard Services			\$1,242.84	\$14,914.08	\$74,570.40
Contingency Amount (provided for supplemental work and potential annual adjustment)					\$549,205.40
<b>TOTAL MAXIMUM COMPENSATION</b>					<b>\$2,101,920.00*</b>

\*Total Maximum Compensation calculated based on hourly rate paid to full time employees.

- 1.3 In the event CITY requires supplemental services for unscheduled work, CONTRACTOR shall provide a written quote that includes all costs to complete the supplemental service requested and shall obtain approval before start of work using the Supplemental Work Order Form in Exhibit G. Upon receiving CITY's written approval to proceed with the supplemental service, CONTRACTOR shall perform the supplemental service at a time mutually agreed upon by CONTRACTOR and according to the hourly rates specified below. Payments for supplemental work shall be based on the following schedule:

Supplemental Services for Unscheduled Work before the Effective Date of the First Amendment	
Job Classification	Hourly Rate
Guard services	\$21.35
Patrol Guard	\$26.35

Supplemental Services for Unscheduled Work on or after the Effective Date of the First Amendment	
Job Classification	Hourly Rate
Guard services:	
Full Time	\$22.11
Part Time	\$21.74
Patrol Guard:	
Full Time	\$27.29
Part Time	\$26.83

1.4 Additional Days Off Schedules

Pursuant to City Council Resolution No. 76653, CONTRACTOR is required to provide a certain number of minimum days off to its employees, inclusive of days off for vacation, holiday, personal and sick days. In the event that CONTRACTOR's base hourly rates are based on providing less than the minimum number of days off required by the CITY, CONTRACTOR's base hourly rates shall be adjusted by the following percentage increases:

**WPCP Financial Impact for Additional Days off (Starting hourly rate of \$21.35):**

No. of Additional Combined Days Off	Hourly % Increase	Adjusted hourly Rate (After hourly % Increase)	Adjusted Annual Compensation (After Hourly % Increase)	Financial Impact (Difference Between Annual Compensation and Adjusted Annual Compensation)
One	.28	\$21.41	\$144,730.11	\$404.11
Two	.61	\$21.48	\$145,206.39	\$880.39
Three	.89	\$21.54	\$145,610.50	\$1,284.50
Four	1.22	\$21.61	\$146,086.78	\$1,760.78
Five	1.50	\$21.67	\$146,490.89	\$2,164.89
Six	1.81	\$21.74	\$146,938.30	\$2,612.30
Seven	2.15	\$21.81	\$147,429.01	\$3,103.01
Eight	2.43	\$21.87	\$147,833.12	\$3,507.12
Nine	2.76	\$21.94	\$148,309.40	\$3,983.40
Ten	3.04	\$22.00	\$148,713.51	\$4,387.51
Eleven	3.29	\$22.05	\$149,074.33	\$4,748.33
Twelve	3.57	\$22.11	\$149,478.44	\$5,152.44

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**WPCP Financial Impact for Additional Days off (Starting hourly rate of \$26.35):**

No. of Additional Combined Days Off	Hourly % Increase	Adjusted hourly Rate (After hourly % Increase)	Adjusted Annual Compensation (After Hourly % Increase)	Financial Impact (Difference Between Annual Compensation and Adjusted Annual Compensation)
One	.28	\$26.42	\$155,925.77	\$395.17
Two	.61	\$26.51	\$156,391.50	\$860.90
Three	.89	\$26.58	\$156,786.66	\$1,256.06
Four	1.22	\$26.67	\$157,252.39	\$1,721.79
Five	1.50	\$26.75	\$157,647.56	\$2,116.96
Six	1.81	\$26.83	\$158,085.06	\$2,554.46
Seven	2.15	\$26.92	\$158,564.91	\$3,034.31
Eight	2.43	\$26.99	\$158,960.07	\$3,429.47
Nine	2.76	\$27.08	\$159,425.80	\$3,895.20
Ten	3.04	\$27.15	\$159,820.97	\$4,290.37
Eleven	3.29	\$27.22	\$160,173.80	\$4,643.20
Twelve	3.57	\$27.29	\$160,568.96	\$5,038.36

**1.5 Contractors Employees' Paid Days Off Before the Effective Date of the First Amendment:**

No. of Vacation Days	No. of Sick Days	No. of Personal Days	No. of Holidays
0	0	0	0

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**1.6 Contractors Employees' Paid Days Off on or after the Effective Date of the First Amendment:**

No. of Paid Days Off including vacation, sick, personal or holidays for full time employees	Number of Paid Days Off including vacation, sick, personal or holidays for part time employees
12	6

**1.7 All payments are based upon CITY's acceptance of CONTRACTOR's performance of security guard services as evidenced by successful completion of the deliverables for such services. CITY shall have no obligation to pay unless CONTRACTOR has successfully completed and CITY has approved the completed services for which payment is due.**

The maximum amount of compensation to be paid to CONTRACTOR for security guard services, including payments for scheduled, supplemental services (unscheduled work), any percentage increases that CITY may impose on CONTRACTOR to provide days off and/or pay its employees for additional days off mandated by CITY'S Council, and potential annual adjustments shall not exceed Two Million One Hundred One Nine Hundred Twenty Dollars (\$2,101,920.00). No supplemental services shall be performed unless both parties sign a Supplemental Work Order Form outlining the services requested and the compensation agreed upon for such services. Any hours worked without proper authorization (i.e., without both parties signing a Supplemental Work Order Form) and for which payment would result in a total exceeding the maximum amount of compensation set forth in this section shall be at no cost to CITY.

**2 Monthly Invoice**

CONTRACTOR shall submit to CITY a monthly invoice within fifteen (15) working days of the last day of each month, in arrears, for payment for services performed pursuant to this Agreement. The monthly invoice shall include a statement of work performed during the month. CITY shall review the monthly invoice submitted by CONTRACTOR and within ten (10) working days of receipt of the invoice, CITY shall notify CONTRACTOR of any discrepancies or deficiencies in said invoice.

**3 Payment to CONTRACTOR**

Except as otherwise provided in this Agreement, CITY shall make monthly payments within thirty (30) calendar days of CITY's approval of CONTRACTOR's invoice. If CITY makes any payments or incurs any costs for which CITY is entitled to reimbursement

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from any payment otherwise due to CONTRACTOR from CITY, CITY may deduct such reimbursement from any payment otherwise due to CONTRACTOR from CITY. CITY shall submit to CONTRACTOR written documentation in support of such deduction upon CONTRACTOR's request. In the event CITY does not deduct such reimbursement from CONTRACTOR's payment but submits to CONTRACTOR an invoice for reimbursement, CONTRACTOR shall reimburse CITY within thirty (30) days of receipt of such invoice.

#### 4 Pricing

Pricing shall be firm fixed the first year of this Agreement. During this period, CONTRACTOR's pricing may not increase.

#### 5 Price Adjustments

In the event that CITY makes additions or deletions to the Schedule of Services, CITY and CONTRACTOR shall execute an Addendum, using Form C-1 to document the change. The monthly price shall be adjusted accordingly. Following the first year of this Agreement, price adjustments may be considered by CITY if CONTRACTOR can demonstrate to the satisfaction of CITY that a price increase is warranted. Increases shall not exceed three percent (3%) annually unless the CITY's living/prevaling wage increases by greater than three percent (3%).

#### 6 LIQUIDATED DAMAGES

The parties hereto agree that it would be impractical and extremely difficult to determine the actual damage to CITY if CONTRACTOR were to terminate this Agreement prior to expiration or otherwise breach. In addition to the services provided, CITY expects to receive other benefit from CONTRACTOR's services. The parties mutually agree that liquidated damages set forth in this section are acceptable to each party and are a reasonable estimate of CITY's loss if CONTRACTOR fails to complete services in accordance with the Schedule of Performance.

**TABLE 1:**

<b>WPCP &amp; MUNI WATER LIQUIDATED DAMAGES</b>	
Failure to visit each of the identified check-in points	CONTRACTOR will only be allowed to miss one (1) check-in per week; subsequent misses, \$10 per occurrence for each missed check-in
Failure of a guard to be attired approved uniform	\$50 for each such occurrence and immediate removal and replacement of guard
Failure of guards to conduct themselves in a professional and courteous and cooperative manner as determined by CITY Supervisory Staff	\$100 for each such occurrence
Number of complaints against guard exceeds three (3) in any one calendar	\$50 for each subsequent complaint, and immediate dismissal of the guard



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WPCP & MUNI WATER LIQUIDATED DAMAGES	
month	
Failure to follow the directions of CITY Supervisory Staff	\$100 for each such occurrence
Guard fails to check in upon coming on duty, abandons or leaves post unattended without proper notice (i.e., getting approval from CITY's Project Manager or designee)	\$150 for each such occurrence
CONTRACTORs on duty personnel fail to provide credentials to law enforcement or CITY representative upon request	\$100 for each such occurrence

BY PLACING THEIR INITIALS BELOW, CITY AND CONTRACTOR ACKNOWLEDGE THAT THE AMOUNTS SET FORTH BELOW HAVE BEEN AGREED UPON AS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES.

**"CITY"**

**"CONTRACTOR"**

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

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