

**AGREEMENT FOR SECURITY GUARD SERVICES AT
NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT
BETWEEN THE CITY OF SAN JOSE
AND FIRST ALARM SECURITY & PATROL, INC.**

THIS AGREEMENT is made and entered into this _____ day of _____, 2013, between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and FIRST ALARM SECURITY & PATROL, INC., a California corporation (hereinafter "CONTRACTOR").

R E C I T A L S

WHEREAS, on September 13, 2012, CITY issued a Request for Proposal ("RFP"), RFP 12-13-01, for Citywide Security Patrol Guard Services, which RFP included a solicitation for Security Patrol Guard Services at Norman Y. Mineta San José International Airport; and

WHEREAS, CONTRACTOR has the necessary expertise and skill to perform such services, and CONTRACTOR's proposal can best meet CITY's needs;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1. AGREEMENT DOCUMENTS.

The documents forming the entire Agreement between CITY and CONTRACTOR shall consist of this Agreement including:

- Exhibit A - Scope of Services
- Exhibit B - Schedule of Performance
- Exhibit C - Compensation
- Exhibit D - Insurance Requirements
- Exhibit E - Labor Compliance Addendum
- Exhibit E-1 - Wage Requirements
- Exhibit E-2 - Labor Peace

Exhibit F - Notice of Exercise Option to Extend Agreement

Exhibit G - Supplemental Work Order Form

In the event any discrepancies or inconsistencies between the provisions of this Agreement and any of the above-referenced documents arise, the provisions of this Agreement will prevail.

This Agreement and the Exhibits set forth above, contain all of the agreements, representations and understandings of the parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written.

SECTION 2. **SCOPE OF SERVICES.**

CONTRACTOR shall perform those services specified in detail in the attached Exhibit A, entitled "Scope of Services," which is attached hereto and incorporated herein.

SECTION 3. **TERM OF AGREEMENT.**

- A. The term of this Agreement shall be from April 1, 2013 to March 31, 2018, inclusive, subject to the provisions of Section 8 and subsection 3B of this Agreement ("Initial Term").

- B. CITY has the right to extend the term of this Agreement for five (5) additional one-year periods (the "Additional Terms"), based upon the same conditions of the Initial Term, subject to adjustments for compensation as set forth in Exhibit C. CITY shall notify CONTRACTOR in writing of its intention to exercise its option for an Additional Term no less than thirty (30) days prior to the end of the then current Term.

- C. CITY's agreement to extend the term of this Agreement is not a waiver of the "time is of the essence" provision in Section 4.

- D. CITY's funding of this Agreement shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. CONTRACTOR acknowledges that CITY, a municipal corporation, is precluded by the California State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the CITY to appropriate funds for purposes of this Agreement. Accordingly, the parties agree that the Initial Term and any Additional Term is contingent upon the appropriation of funds by the CITY. This Agreement will terminate immediately if the funds necessary to continue the Agreement are not appropriated.

SECTION 4. SCHEDULE OF PERFORMANCE.

The services of CONTRACTOR are to be completed according to the schedule set out in Exhibit B, entitled "Schedule of Performance," which is attached hereto and incorporated herein. Time is of the essence in this Agreement.

SECTION 5. COMPENSATION.

- A. The compensation to be paid to CONTRACTOR for security guard services, including payments for scheduled, supplemental services (unscheduled work), any percentage increase 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 Ten Million Six Hundred Thirty-Two Thousand Eight Hundred Seventy-Five Dollars (\$10,632,875.00) for the Initial Term, subject to Section 3.D. The rate and schedule of payment is set out in Exhibit C, entitled "Compensation," which is attached hereto and incorporated herein.
- B. CONTRACTOR agrees that in the performance of this Agreement, CONTRACTOR shall adhere to City Council Policy 1-19, the following provisions of which are made applicable to this Agreement:

1. It is the policy of the CITY that the CITY's funds should not be used for the purchase of single-serving bottled water.
2. The following circumstances shall constitute exceptions to City Council Policy 1-19:
 - a. Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services.
 - b. High risk of cross-contamination with non-potable water.
 - c. Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water may need to be distributed for health and safety reasons.
3. CONTRACTOR acknowledges and agrees that an invoice seeking reimbursement from CITY for the cost of single-serving bottled water under the exception referenced above in Subsection 2(c) must be accompanied by a waiver form provided by CITY and signed by the department head of the CITY department administering this Agreement.

SECTION 6. TAXES AND CHARGES.

CONTRACTOR shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of CONTRACTOR's business.

SECTION 7. LABOR COMPLIANCE.

This Agreement is subject to CITY's Prevailing/Living Wage Policy and the applicable implementing regulations (collectively, the "Policy"). CONTRACTOR shall comply with the provisions of Exhibit E, entitled "Labor Compliance Addendum," and Exhibit E-1, entitled "Wage Requirements", which set forth CONTRACTOR's obligations under the Policy and are attached hereto and incorporated herein. CONTRACTOR's labor peace assurances are set forth in the Exhibit E-2, entitled "Labor Peace," which is attached hereto and incorporated herein.

SECTION 8. TERMINATION.

- A. CITY shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days' written notice of termination.

- B. If CONTRACTOR fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, CITY may terminate this Agreement immediately upon written notice.

- C. CITY's Director of Finance ("Director") is empowered to terminate this Agreement on behalf of CITY.

- D. In the event of termination, CONTRACTOR shall deliver to CITY copies of all reports, documents, and other work performed by CONTRACTOR under this Agreement, and upon receipt thereof, CITY shall pay CONTRACTOR for services performed and reimbursable expenses incurred to the date of termination.

SECTION 9. INDEMNIFICATION.

CONTRACTOR shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this Agreement due to the willful or negligent acts (active or passive) or omissions by CONTRACTOR's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

SECTION 10. INSURANCE REQUIREMENTS.

CONTRACTOR agrees to have and maintain the policies set forth in Exhibit D, entitled "Insurance Requirements," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of

San José as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONTRACTOR agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this Agreement.

SECTION 11. WAIVER.

CONTRACTOR agrees that waiver by CITY of any breach or violation of any terms or condition of this Agreement shall not be deemed to be a waiver of any other term or condition or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of any work or services by CONTRACTOR shall not be deemed a waiver of any term or condition of this Agreement.

SECTION 12. INDEPENDENT CONTRACTOR.

It is understood and agreed that CONTRACTOR, in the performance of this Agreement, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, CONTRACTOR shall obtain no rights to retirement benefits or other benefits which may accrue to CITY's employees, and CONTRACTOR hereby expressly waives any claim it may have to any such rights. CONTRACTOR shall maintain complete control over all of CONTRACTOR's employees, any subcontracting subcontractors, and CONTRACTOR's operations. Neither CONTRACTOR nor any person retained by CONTRACTOR may represent, act, or purport to act as the agent, representative or employee of CITY. Neither CONTRACTOR nor CITY is granted any right or authority to assume or create any obligation on behalf of the other.

SECTION 13. COMPLIANCE WITH LAWS.

CONTRACTOR shall comply with all applicable laws, ordinances, codes and regulations (collectively, "laws") of the federal, state and local governments. Without limiting the generality of the preceding sentence, CONTRACTOR shall comply with the provisions of CITY's Business Tax Ordinance in Chapter 4.76 of the San José Municipal Code.

SECTION 14. NONDISCRIMINATION.

CONTRACTOR shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

SECTION 15. GIFTS.

- A. CONTRACTOR is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. CONTRACTOR agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Agreement by CONTRACTOR. In addition to any other remedies CITY may have in law or equity, CITY may terminate this Agreement for such breach as provided in Section 8 of this Agreement.

SECTION 16. DISQUALIFICATION OF FORMER EMPLOYEES.

CONTRACTOR is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance"). CONTRACTOR shall not utilize either directly or indirectly any officer, employee, or agent of CONTRACTOR to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

SECTION 17. CONFIDENTIAL INFORMATION.

All data, documents, discussions or other information developed or received by or for CONTRACTOR in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by CITY, or as required by law.

SECTION 18. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by CONTRACTOR or any other person engaged directly or indirectly by CONTRACTOR to perform services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

SECTION 19. CONTRACTOR'S BOOKS AND RECORDS.

- A. CONTRACTOR shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONTRACTOR pursuant to this Agreement.
- B. CONTRACTOR shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONTRACTOR's address indicated for receipt of notices in this Agreement. CONTRACTOR acknowledges that under

certain circumstances specified in California Government Code Section 8546.7, this Agreement (if it involves an expenditure of \$10,000 or more of public funds) may be subject to examination and audit by the Auditor of the State of California pursuant to California Government Code Section 8546.7.

- D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT'S business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONTRACTOR, CONTRACTOR'S representatives, or CONTRACTOR'S successor-in-interest.

SECTION 20. **ASSIGNABILITY.**

The parties agree that the expertise and experience of CONTRACTOR are material considerations for this Agreement. CONTRACTOR shall not assign or transfer any interest in this Agreement nor the performance of any of CONTRACTOR'S obligations hereunder, without prior written consent of CITY, and any attempt by CONTRACTOR to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 21. **SUBCONTRACTORS.**

CONTRACTOR may not use subcontractors to perform any services authorized under this Agreement.

SECTION 22. **GOVERNING LAW.**

CITY and CONTRACTOR agree that the law governing this Agreement shall be that of the State of California.

SECTION 23. **VENUE.**

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- D. Where this Agreement requires or permits CITY to act and no officer of the CITY is specified, CITY's Manager or the designated representative of CITY's Manager has the authority to act on CITY's behalf.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written:

APPROVED AS TO FORM:

City of San José
a municipal corporation

Rosa Tsongtaatarii
Sr. Deputy City Attorney

By _____
Name: Julia H. Cooper
Title: Director of Finance
Date: _____

First Alarm Security & Patrol, Inc.,
a California corporation

By _____
Name:
Title:
Date: _____

EXHIBIT A
SCOPE OF SERVICES

CONTRACTOR shall perform the following services for the Norman Y. Mineta San José International Airport (“Airport”):

1. GENERAL REQUIREMENTS

- 1.1.** CONTRACTOR shall provide all labor, equipment, tools, materials and supplies to perform services under this Agreement and as described herein.
- 1.2.** Service level requirements will be based on the Schedule of Performance as set forth in Exhibit B.
- 1.3. PERSONNEL RECRUITMENT**
CONTRACTOR shall have an established comprehensive personnel recruitment program for new and replacement personnel, to include, but not be limited to, interviewing/test procedures, background checks (by type and degree), physical exams, psychological tests or drug testing (if any), education and work experience verification, etc.
 - 1.3.1.** All applicable governmental laws and regulations must be adhered to on the recruiting and hiring process.
 - 1.3.2.** All recruitments shall be in accordance with all applicable employee retention requirements set forth in Exhibit E-1
- 1.4. TRAINING PROGRAM – INITIAL & ONGOING**
CONTRACTOR shall have an established, comprehensive personnel training program that all security officers and other assigned staff will undergo in order to ensure that all security officers are competent to perform all duties required under this Agreement.
 - 1.4.1.** No additional hourly costs, to the billing rate, are to be charged to the CITY for any aspect of the training program.
- 1.5. STANDARDS OF CONDUCT AND APPEARANCE**
CONTRACTOR shall have established comprehensive standards of appearance for maintaining both professional standards of conduct and neat personal appearance for its employees.
- 1.6. LIQUIDATED DAMAGES**
CONTRACTOR may be subject to liquidated damages in the event CONTRACTOR fails to complete services as described in this Exhibit and as identified in Exhibit C, Section 6, Table 1.

2. SCOPE OF WORK

- 2.1.** CONTRACTOR shall maintain throughout the term of the this Agreement a work force capable of providing security guard services to the Airport sufficient to cover nine (9) one-person posts twenty-four (24) hours a day and seven (7) days a week. CONTRACTOR's employees designated for assignment at the Airport shall be required to take and pass Airport-specific training and certification (e.g., Airport badge/background check) before starting work. Airport-specific training and certification shall be at CONTRACTOR'S expense.
- 2.2.** CONTRACTOR shall at all times employ and provide sufficient and qualified personnel and equipment for executing the work in the manner and time required by these specifications. Any person employed by CONTRACTOR who the CITY determines does not perform work under the Agreement in a proper and skillful manner, is under the influence of drugs or alcohol, disorderly or abusive at assigned post, or does not demonstrate tact and diplomacy in dealing with others shall, at the request of CITY, be removed immediately and replaced by CONTRACTOR at no additional cost to CITY.
- 2.3.** If CONTRACTOR'S personnel loses or fails to maintain his/her security clearance or state certification, that person shall not be allowed to work at the Airport. Current identification access control badges and applicable State issued "guard cards" must be on all CONTRACTOR personnel at all times while performing work. Failure of a any personnel to meet these requirements shall result in corrective action and nonpayment by CITY to CONTRACTOR for such person's services. CONTRACTOR shall be required to immediately provide a replacement security officer as part of corrective action. CONTRACTOR's personnel may not begin work until they have completed all the training requirements as specified herein.
- 2.4.** CONTRACTOR shall provide professional and quality service at all times. No gaps in coverage are permissible. Any relief personnel required to ensure continual coverage of required areas shall be included in the hourly rate provided in Exhibit B and will not be reimbursable as a separate position.
- 2.5.** CONTRACTOR shall provide all services hereunder in compliance with applicable federal, state and local laws and regulations. All of CONTRACTOR's security personnel shall meet current federal and state requirements for licensing, certifications, permitting and background clearances.

- 2.6.** CONTRACTOR shall provide at all times, a project manager/supervisor, trained and qualified including all necessary licensures, certifications and requirements as applicable, who will manage all aspects of CONTRACTOR's personnel, including any and all CONTRACTOR support staff, visitors and vendors. Office space will be provided by the CITY. This individual will oversee all the requirements identified in this scope of services, and adherence to all policies, procedures, protocols, communications, standards, including but not limited to the safe, efficient and effective operation of contract security services.
- 2.7.** At all times, CONTRACTOR shall have supervisory staff available onsite to answer questions and concerns and respond to Airport Operations personnel as needed. Payment for supervisory staff shall be included in the hourly rate provided in Exhibit B and shall not be reimbursable as a separate position. At least one (1) operations supervisor must be available at all times and cannot be engaged in offsite activities including, but not limited to, fueling company vehicles or performing administrative tasks.
- 2.8.** Supervisory staff required as part of this Agreement shall be used solely to provide supervisory coverage specifically required. Supervisors shall not be used to cover breaks or provide supervisory coverage for positions not specifically required as part of this Agreement or otherwise specifically requested by Airport Operations.
- 2.9.** CONTRACTOR shall perform regular (defined as no less than once per week) quality assurance to ensure compliance with all federal, state and local regulations and with Airport requirements stated in this scope and rectify any observed problems. The quality assurance program data will be made available to the CITY within forty-eight (48) hours of the request being made. All data supporting this program must be maintained by the CONTRACTOR for the duration of a signed agreement and must be presented to the CITY no less than once per calendar month.
- 2.10.** CONTRACTOR shall provide to the CITY, no less than seven (7) calendar days in advance, a weekly schedule demonstrating coverage as defined within this Agreement.
- 2.11.** CONTRACTOR management will meet with the CITY no less than once per month. These will be scheduled meetings, and at these meetings the CONTRACTOR shall provide results of internal quality assurance tests as required in this Agreement.
- 2.12.** CONTRACTOR shall be aware minimum staffing levels may increase or decrease at any time during the contract period, as needed by the CITY, to meet daily security/safety requirement changes, seasonal demands, changing TSA requirements and budgetary changes. The CITY may

increase or decrease the hours of service with twenty-four (24)-hour advance notice to the CONTRACTOR.

- 2.13.** CONTRACTOR shall institute the change in assignments subject to the following:
- 2.14.1.** No additional charges will be assessed to the CITY unless additional hours of work shall be required by the change or overtime is required in urgent situations when additional personnel have not been recruited, trained and/or certified beyond minimum staffing levels.
 - 2.14.2.** Compensation will be adjusted at the hourly rates provided in the table under section 1.2 of Exhibit C for which the change is required.
 - 2.14.3.** CONTRACTOR shall maintain minimum staffing levels at all times.
 - 2.14.4.** CONTRACTOR shall demonstrate it has the ability to increase staffing to meet unanticipated Airport Operational needs such as large-scale emergencies or National Terrorism Advisory System Level increases. The CITY may waive some Airport specific training requirements and certifications in the event of such emergencies.
- 2.14.** CONTRACTOR shall provide uniforms and equipment to fulfill the terms of this Agreement. CITY will be the sole judge of the adequacy of the uniforms and equipment provided by CONTRACTOR.
- 2.15.** CONTRACTOR shall provide and assure that all uniforms and equipment are standardized, clean and identical when they are on duty. The uniform style, color, material, dress standards and equipment must be approved by CITY.
- 2.16. **Communications Equipment:**** CONTRACTOR shall provide each security officer on duty with a portable, two-way, handheld radio whereby the security officer can establish instantaneous, positive, reliable and clear communications with CITY staff from all Airport locations while on duty. The radios shall be compatible with the current specifications used by the CITY at the Airport and include a common use channel for communications between CITY staff and security officers for direction, security, emergencies and operational needs. If secondary radio communications are needed between CONTRACTOR's security officers and CONTRACTOR other staff for non-emergency communications, radios must have a secondary channel to support these communications. Radio frequencies will be disclosed prior to beginning services under this

Agreement. All additional radio frequencies must be approved by the CITY. At CITY'S discretion, CONTRACTOR shall provide radios with which the CITY staff can communicate with CONTRACTOR's management or supervisory personnel. CONTRACTOR is responsible for costs associated with programming all radios.

2.17. All CONTRACTOR supervisory personnel shall be equipped with both a two-way, handheld radio as specified above and a cellular phone for contact with CITY staff.

2.18. Miscellaneous Equipment: CONTRACTOR shall equip all security officers with traffic safety vests, flashlights, foul weather gear and any other equipment necessary for the services being performed.

2.19. CONTRACTOR shall be responsible for providing a complete range of security services under this Agreement, including but not limited to the following:

2.20.1. Airfield and terminal ramp security patrols

2.20.2. Access control check points, such as identification badge verifications and vehicle inspections.

2.20.3. Vehicle inspections

2.20.4. Traffic and parking control

2.20.5. Citation issuance upon request by the CITY inclusive in the hourly rate set forth under Exhibit C

2.20.6. Escort services for restricted area access

2.20.7. Physical security inspections/patrols

2.20.8. Inspection of delivered goods

2.20.9. Response to access control security door breaches and alarms

2.20.10. ID/Badging verification

2.20.11. Ramp licensing duties upon request by the CITY inclusive in the hourly rate set forth under Exhibit C

2.20.12. Customer service and assistance during security related incidents/events and Airport emergencies.

- 2.20.** CONTRACTOR may be required to contract independently with tenants and contractors located or working at the Airport in need of security services to comply with Airport security requirements. CONTRACTOR shall perform services in accordance with CITY policy and coordination with Airport Operations, but shall bill the Airport tenants and/or contractors separately for services performed.
- 2.21.** CITY staff shall work with the CONTRACTOR's representative to develop Post Orders for every post to which the CONTRACTOR is assigned. The Post Orders will describe the current duties and responsibilities for each security post and may be revised by CITY from time to time. Post orders are considered Sensitive Security Information per CFR 1520 and will be disclosed to CONTRACTOR prior to beginning services under this Agreement.
- 2.22.** While on duty, CONTRACTOR's personnel shall be alert and attentive, and shall not use personal wireless devices (including Bluetooth), socialize, or conduct personal business on their watch. CONTRACTOR's personnel shall not smoke or eat at a post. CONTRACTOR shall ensure that sufficient personnel are available to provide continuous coverage at posts during breaks.
- 2.23.** CONTRACTOR's personnel shall not discuss their duty assignments and sensitive security information (SSI) to anyone who does not have an official need to know.
- 2.24.** CONTRACTOR's personnel, who, in the performance of their official duties, become knowledgeable or aware of the details of an act of air piracy, terrorist activity, or unauthorized access, shall report it immediately to Airport authorities and not divulge sensitive security information (SSI) to unauthorized personnel. Such information includes, without limitation:
- 2.25.1.** Any information about the incident or efforts to resolve the incident, or any disclosure which may jeopardize the safety of any persons involved.
- 2.25.2.** Any information identified by officials of an agency of the U.S. Government which concerns techniques and procedures used for resolving acts of air piracy, the disclosure of which is likely to jeopardize the safety of domestic and international civil aviation.
- 2.25.3.** Any information about the security systems and procedures in operation at the Airport. This includes personnel information, shift schedules, computer access codes, personnel access procedures, and other security and safety information.

- 2.25.** CONTRACTOR is prohibited from making any video or audio recordings of incidents or responses regarding Airport issues without CITY approval.
- 2.26.** CONTRACTOR shall be responsible for directing and controlling the work of its employees to include disciplinary measures and incentives.
- 2.27.** CONTRACTOR shall be responsible for the repair, replacement and maintenance of all equipment and supplies necessary to satisfactorily perform the requirements and duties outlined in this specification.
- 2.28.** CONTRACTOR shall maintain an activity log, keeping track of each type of activity as specified by the CITY. Such information shall be provided to the CITY on a monthly and annual basis and as additionally requested.
- 2.29.** CONTRACTOR shall develop reporting forms, such as training records, log books, warning forms and all other records relating to functions or additional services proposed and accepted by CITY as part of this Agreement. These records are to be maintained and made readily available for inspection by CITY. The reports shall include all accidents, incidents, safety inspections and any safety violations occurring at the Airport. CONTRACTOR shall ensure that complete and proper reports are submitted as required to CITY.
- 2.30.** All personnel performing services under this Agreement shall be employees of the CONTRACTOR and CONTRACTOR shall pay all salaries, social security taxes, federal and state unemployment insurance, workers compensation, and any and all other taxes or other incidental expenses relating to such employees.
- 2.31.** CONTRACTOR shall immediately remove from duty any personnel whom CITY deems not to be properly trained or is in any way deficient or delinquent in any of the terms and conditions of this Agreement. Upon such removal, CONTRACTOR shall replace the removed personnel with another qualified individual. At no time shall the staffing level be allowed to go below the required level approved by CITY.
- 2.32.** No CONTRACTOR personnel may make or attempt to make any communication with the media or outside organization related in any way to work performed under this Agreement without the express permission of CITY.
- 2.33.** CONTRACTOR's management staff will be expected to develop and maintain good working relationships with all CITY management personnel and employees at the Airport, as well as Airport tenant representatives, other CITY employees or other governmental representatives with whom CONTRACTOR'S management staff may interact.

- 2.34.** CONTRACTOR must provide CITY with twenty-four (24) hour, seven (7) days week contact information for management representative authorized to make staffing and other critical decisions on behalf of CONTRACTOR. Response time: CONTRACTOR's manager(s) must respond via telephone to Airport staff within five (5) minutes and respond immediately to the Airport for serious security or emergency incidents. Managers shall meet regularly with CITY management staff for the Airport to determine the Airport's safety and security needs and ensure that the requested services are performed as desired.
- 2.35.** All security personnel must meet all applicable local and state requirements relating to security guards, including but not limited to training and certification required by the California Bureau of Security and Investigative Services (BSIS) for registration as a security guard.
- 2.36.** All security personnel must have successfully passed a complete background and fingerprint-based criminal history records check (CHRC) with Security Threat Assessment (STA) in accordance with Transportation Security Administration (TSA) requirements. Background investigations will be performed by the CITY at no cost to CONTRACTOR.
- 2.37.** Based on post assignments, the CITY may require select security personnel to possess California Peace Officers Standards and Training (POST) 832 certification (without firearms), or equivalent certification approved by CITY. In the even the City requires these select personnel with aforementioned POST 832 certification, CONTRACTOR shall bill per rates in Exhibit C.
- 2.38.** All security personnel must have the ability to exercise sound judgment and render immediate, appropriate decisions, under stressful and emergency situations.
- 2.39.** All security personnel must have and display maturity in conduct, behavior and attitude.
- 2.40.** All security personnel must be able to take orders, follow instructions, accept and assume responsibility for one's actions.
- 2.41.** All security personnel must be alert, attentive and professional in conduct, and have the ability to recognize, respond and take appropriate and corrective action to various situations.
- 2.42.** All security personnel must be able to effectively communicate, verbally and in writing, in English.

- 2.43.** All security personnel must be courteous and cooperative in their interactions with the public, Airport employees and tenants, law enforcement (federal, state and local) and other security personnel.
- 2.44.** All security personnel must be well-groomed, neat in appearance and have good personal hygiene.
- 2.45.** Security personnel must be a high school graduate or equivalent. CONTRACTOR shall ensure that a copy of each individual's high school diploma or General Educational Development (GED) certificate is made available for CITY's review upon request.
- 2.46.** Security personnel must not have any TSA-disqualifying convictions under 49 U.S.C. §44936(b)(1)(B) prior to or during the security personnel's performance of services under this Agreement, or be otherwise prohibited under applicable federal, state or local laws, regulations or official determinations from providing the security services under this Agreement.
- 2.47.** If any security personnel is arrested for any disqualifying crime under 49 U.S.C. §44936(b)(1)(B) or felony, CONTRACTOR must return their access badge to the Airport and the individual will be prohibited from performing duties under this Agreement pending final resolution of the investigation by law enforcement agencies.
- 2.48.** Prior to the start date of this Agreement, the Airport will provide free of charge an extensive in-house training program for all Airport specific rules and regulations and on-the-job training. The training program will not exceed twenty (20) hours. This training does not include time required for TSA mandated computer based security training. CONTRACTOR shall also be required to have a complete familiarization with the Airport and its facilities, completed all Airport training of staff, in addition to the training requirements described below, and be prepared to fully comply with all contract provisions two (2) weeks prior to the commencement of the onsite installation of CONTRACTOR's personnel at the Airport.
- 2.49.** CONTRACTOR shall train and require all security personnel to understand the provisions of all federal, state and local laws and regulations regarding security services and their specific responsibilities relevant to Airport operations. The final form and content of the CONTRACTOR's training plan must be approved by CITY. The plan and training manual shall be oriented for work at the Airport with respect to California state law, Airport security requirements, safety and customer service.
- 2.50.** CONTRACTOR's training shall be completed prior to performing job duties associated with this Agreement. Frequency of training is indicated below.

If nothing is stated, topic is an initial training requirement. Training shall include, but not be limited to the following:

- 2.51.1.** Security Guard training requirements specified in the California Business and Professions Code §§7583.5 and 7583.6 and Title 16, California Code of Regulations, §643.
 - 2.51.2.** California POST 832 certification (without firearms) (if applicable)
 - 2.51.3.** Customer service
 - 2.51.4.** Responsibilities under position specific post orders (annually)
 - 2.51.5.** Security/Airport operations and badging related testing and qualification (annually)
 - 2.51.6.** Emergency evacuation procedures (as necessary)
 - 2.51.7.** Airport terminal passenger security evacuation procedures (as necessary)
 - 2.51.8.** Airport familiarization training including airport layout
 - 2.51.9.** Any other training courses as needed and requested by CITY, to include recurrent training.
 - 2.51.10.** CONTRACTOR shall maintain copies of training reports and, on a timely basis, provide appropriate reports to CITY upon request.
- 2.51.** CONTRACTOR must demonstrate that all security personnel have been trained using the approved curriculum and that all security personnel have been trained to the level necessary to ensure compliance with all applicable requirements in this Agreement. Training shall include both classroom and onsite training, with a minimum number of hours communicated to, and approved by the CITY. The CITY reserves the right to provide instruction for specific training topics related to Airport Operations and observe and audit training classes and review training records any time this Agreement is in effect. CONTRACTOR shall coordinate with Airport Operations for training schedules. Training shall be completed prior to performing job duties associated with this Agreement. All training will be at CONTRACTOR's expense unless explicitly stated to the contrary.
- 2.52.** Reports – CONTRACTOR will prepare and complete inspection logs, complaint logs, activity logs, and accident and incident reports in a form by

CITY. Accident and incident reports may be deemed confidential and must be treated as such.

- 2.53.** Citation Forms – CITY may require the CONTRACTOR to issue administrative citations for violations of the San José Municipal Code (SJMC) as authorized by the Director of Aviation using forms obtained from CITY and in accordance with the procedures established by CITY. CONTRACTOR may also be required to issue Parking and Traffic Enforcement citations obtained from CITY in accordance with established procedures. For purposes of this subsection only, CONTRACTOR shall be the agent of CITY. CONTRACTOR shall be responsible for the control, security, safeguard, accountability and proper use of these forms if required to issue citations. CONTRACTOR shall work with the CITY on established protocols for the notification to Airport Operations, issuance, processing and tracking of citations if applicable.
- 2.54.** Audits – During the term of this Agreement, CITY reserves the right to audit without prior notice CONTRACTOR's records related to this Agreement and prior to making payment for the security services rendered.
- 2.55. Please note:** In the event the CITY is required to pay monetary fines for violation of federal, state or local laws and regulations that are caused wholly or in part by CONTRACTOR's acts or omissions related to this contract, CONTRACTOR will reimburse the CITY for that percentage of the fine for which the CONTRACTOR is responsible.
- 2.56. EMERGENCY AND/OR ADDITIONAL SECURITY COVERAGE**
As security demands dictate, additional CONTRACTOR security personnel may be required by CITY on short notice and/or for various lengths of time. CONTRACTOR shall have available for immediate assignment supplemental security personnel sufficient to cover all regularly assigned duties and other occasional services.

EXHIBIT B
SCHEDULE OF PERFORMANCE FOR SCHEDULED SECURITY GUARD SERVICES

CONTRACTOR shall provide security guard services for the Airport twenty-four (24) hours a day and seven (7) days a week for nine (9) posts as indicated below:

Line	Post	Description	Post Weekly Coverage
1	1	Guard Services	24 hours/day; 7 days/week
2	2	Guard Services	24 hours/day; 7 days/week
3	3	Guard Services	24 hours/day; 7 days/week
4	4	Guard Services	24 hours/day; 7 days/week
5	5	Guard Services	24 hours/day; 7 days/week
6	6	Guard Services	24 hours/day; 7 days/week
7	7	Guard Services	24 hours/day; 7 days/week
8	8	Guard Services	24 hours/day; 7 days/week
9	9	Guard Services	24 hours/day; 7 days/week
Total Hours per Week			1512

**EXHIBIT C
COMPENSATION**

1. Compensation

1.1. CITY shall compensate CONTRACTOR for Security Guard Services according to the following Schedule:

Description	Hourly Rate	Monthly Rate	Annual Compensation	5 Year Total Compensation
Scheduled Security Guard Services	\$22.15	\$145,126.80	\$1,741,521.60	\$8,707,608.00
Contingency Amount (provided for supplemental work, imposed paid days off, and potential annual adjustment)				\$1,925,267.00
TOTAL MAXIMUM COMPENSATION				\$10,632,875.00

1.2. 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 Sections below.

Supplemental Services for Unscheduled Work			
Job Classification	Straight Time Hourly Rate	Overtime Hourly Rate	Holiday Hourly Rate
Patrol Guard	\$21.35	\$29.50	\$29.50
Supervisor	\$24.64	\$34.00	\$34.00
Patrol Guard/Post 832 Certified	\$26.81	\$37.00	\$37.00

1.3. Additional Days Off Pricing

In the event CITY requires CONTRACTOR to provide additional days off

to its employees, that is, in addition to days already provided by CONTRACTOR for combined days off for vacation, holiday and sick days, CITY will adjust CONTRACTOR's existing hourly pricing by the following percentage increases:

Airport Financial Impact for Additional Paid Days off (Starting Hourly Rate of \$22.15):

No. of Additional Combined Days Off	Hourly %Increase	Adjusted hourly Rate (After hourly % Increase)	Adjusted Annual Compensation (After Hourly % Increase)	Annual Financial Impact (Difference Between Annual Compensation and Adjusted Annual Compensation)
One	.28	\$22.21	\$1,746,397.86	\$4,876.26
Two	.61	\$22.29	\$1,752,144.88	\$10,623.28
Three	.89	\$22.35	\$1,757,021.14	\$15,499.54
Four	1.22	\$22.42	\$1,762,768.16	\$21,246.56
Five	1.50	\$22.48	\$1,767,644.42	\$26,122.82
Six	1.81	\$22.55	\$1,773,043.14	\$31,521.54
Seven	2.15	\$22.63	\$1,778,964.31	\$37,442.71
Eight	2.43	\$22.69	\$1,783,840.57	\$42,318.97
Nine	2.76	\$22.76	\$1,789,587.60	\$48,066.00
Ten	3.04	\$22.82	\$1,794,463.86	\$52,942.26
Eleven	3.29	\$22.88	\$1,798,817.66	\$57,296.06
Twelve	3.57	\$22.94	\$1,803,693.92	\$62,172.32

1.4. CONTRACTOR'S EMPLOYEES EXISTING PAID DAYS OFF:

Years of Service	No. of Vacation Days	No. of Sick Days	No. of Personal Days	No. of Holidays
After 1 year	0	0	0	0
After 5 years	0	0	0	0
After 10 years	0	0	0	0

- 1.5. 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 Ten Million Six Hundred Thirty-Two Thousand Eight Hundred Seventy-Five Dollars (\$10,632,875.00). 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 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. In the event CITY elects to exercise its option for annual renewals, 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:

AIRPORT LIQUIDATED DAMAGES	
DESCRIPTION	AMOUNT PAYABLE
No on-site supervisor	\$100 per hour
Failure to comply with Law Enforcement Officer summoning policies in accordance with TSA mandates and security protocols	\$50 for each occurrence
Failure to respond in writing to complaint against guard within five (5) calendar days of such complaint (CONTRACTOR shall provide Airport a copy of such written response)	\$50 for each day past the five (5) calendar day response period
Failure of a guard to be attired in the CITY-approved uniform	\$50 for each day and immediate removal and replacement of guard
Failure of guards to conduct themselves in a professional and courteous and cooperative manner as determined by the CITY	\$100 for each such occurrence
Number of complaints against guard exceeds three (3) in any one calendar month	\$50 for each complaint in excess of three (3) in one calendar month, and immediate dismissal of the guard.
Failure to follow the directions of the Director of Aviation or designee	\$100 for each such occurrence
Violations of Airport rules and regulations	\$100 for each such occurrence
Violation of Airport-issued "Post Orders," issued to each position	\$100 for each such occurrence
Failure to follow rules and regulations as	\$100 for each such occurrence

AIRPORT LIQUIDATED DAMAGES	
stipulated in security badge training or as defined in the "Post Orders" for each position	
Loss of Post Orders	\$1000 per incident

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: _____

EXHIBIT D
INSURANCE REQUIREMENTS

CONTRACTOR, at CONTRACTOR's sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONTRACTOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by CITY'S Risk Manager.

B. Minimum Limits of Insurance

CONTRACTOR shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and

4. Professional Liability Errors & Omissions: \$1,000,000 per occurrence/aggregate limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors; or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, leased or used by CONTRACTOR; and automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
 - b. CONTRACTOR 's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONTRACTOR 's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by CONTRACTOR shall not affect coverage provided CITY, its officers, employees, agents, or contractors.
 - d. Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain a waiver of subrogation in favor of the CITY, its officers, employees, agents and contractors.

2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San José, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY'S Risk Manager.

F. **Verification of Coverage**

CONTRACTOR shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to Riskmgmt@sanjoseca.gov or mailed to the following postal address or any subsequent address as may be directed in writing by the Risk Manager:

City of San José – Finance
Risk Management
200 East Santa Clara Street, 13th Floor Tower
San José, CA 95113-1905

G. **Subcontractors**

CONTRACTOR shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.



**EXHIBIT E
LABOR COMPLIANCE ADDENDUM
SAN JOSÉ LIVING WAGE AND PREVAILING WAGE POLICIES**

AGREEMENT TITLE:	AGREEMENT FOR SECURITY GUARD SERVICES AT NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT BETWEEN THE CITY OF SAN JOSE AND FIRST ALARM SECURITY & PATROL, INC.
CONTRACTOR Name and Address:	First Alarm Security & Patrol, Inc. 1731 Technology Drive #800 San Jose, CA 95110

By executing this Addendum, Contractor acknowledges and agrees that the work performed pursuant to the above referenced Agreement or Service Order is subject to all applicable provisions.

Payment of Minimum Compensation to Employees. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate and/or Living Wage Rate as indicated in the attached Exhibit(s) titled **Work Classification and/or Living Wage Determination**.

A. Prevailing Wage Requirements. California Labor Code and/ or Resolutions of the San Jose City Council require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Contractor shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.

B. Living Wage Requirements. Any person employed by Contractor or subcontractor or City financial recipient or any sub recipient whose compensation is attributable to the City’s financial assistance, who meets the following requirements is considered a covered employee. The employee: 1) is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; 2) spends at least half of his or her time on work for the City [4 hours a day or 20 hours a week]; 3) is at least eighteen (18) years of age; and 4) is not in training for the period of training specified under training standards approved by the City.

C. Reports. Contractor shall file a completed and executed copy of this Addendum with the Department of Finance/Purchasing Division. Upon award the Department of Finance/Purchasing Division shall provide the contractor with compliance

documents to be completed and returned (with supporting documentation) to the Office of Equality Assurance. **These documents must be returned within 10 days of receipt.** Contractor shall not perform on site work on this contract until labor compliance documents are filed. Contractor shall also report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Policy.

D. Coexistence with Any Other Employee Rights. These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

E. Audit Rights. All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

F. Enforcement.

1. **General.** Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Requirement promotes each of the following (collectively "Goals"):
 - a. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
 - b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
 - c. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
 - d. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions.

- a. **WITHHOLDING OF PAYMENT:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Agreement. **THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. THIS PROVISION MEANS THAT CITY CAN WITHHOLD ALL OR PART OF A PAYMENT TO CONTRACTOR UNTIL ALL REQUIRED DOCUMENTATION IS SUBMITTED.** Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Requirement or the Documentation Provision.
- b. **RESTITUTION:** Require the employer to pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- c. **SUSPENSION OR TERMINATION:** Suspend and/or terminate Agreement for cause;
- d. **DEBARMENT:** Debar Contractor or subcontractor from future City contracts and/or deem the recipient ineligible for future financial assistance.
- e. **LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY AS**

**LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE
DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND
THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.**

City

Contractor

By _____
Name: Mark Giovannetti
Title: Chief Purchasing Officer
Date: _____

By _____
Name: _____
Title: _____
Date: _____



CITY LIVING WAGE DETERMINATION

SCOPE: Security Guard Services for City Departments/Locations: Public Works; Department of Transportation; Parks, Recreation and Neighborhood Services; Water Pollution Control Plant; and Work2Future; Norman Y. Mineta San Jose International Airport

ISSUANCE

DATE: February 13, 2013

Living Wage Rate With Health Benefits	Living Wage Rate Without Health Benefits
\$14.73	\$15.98

Hours and Days of Work

(Industrial Welfare Commission Order No. 4-2001)

Employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh (7th) consecutive day of work in a workweek.

RATES WILL BE SUBJECT TO ADJUSTMENT ON THE ANNIVERSARY DATE OF THE AGREEMENT

ATTACHMENT E-1 WAGE REQUIREMENTS AND INFORMATION

Pursuant to City of San Jose Living Wage Policy, Contractor and any Subcontractor shall be obligated to pay not less than the living wage in accordance with the requirements of this Policy document, and the Wage Determination as indicated in **Exhibit 1** to this attachment.

I. CITY COUNCIL WAGE POLICY

A. Living Wage Policy

Under City Council Resolution No. 68900, contractors awarded certain City service and labor contracts are required to pay a minimum level of compensation to covered employees who work on these projects.

Living wages shall mean the wages paid under a collective bargaining agreement between the Contractor and a recognized union representing employees who will perform services pursuant to the Agreement.

If the wage rates set forth in the collective bargaining agreement fall below the then current Living Wage Rate set by the City of San Jose, the required rate of pay shall be the City's Living Wage Rate unless the collective bargaining agreement expressly provides that the agreement shall supersede the requirements of the Living Wage Policy.

If there is no collective bargaining agreement as described above, not less than the following Living Wage Rate must be paid to covered employees performing work identified in the applicable wage determination issued by the City of San Jose's Office of Equality Assurance.

1. If health insurance benefits are provided, a wage of not less than **Fourteen Dollars and Seventy-Three Cents (\$14.73)** per hour.
2. If health insurance benefits are not provided, a wage of not less than **Fifteen Dollars and Ninety-Eight Cents (\$15.98)** per hour.

B. Reports

The Office of Equality Assurance will monitor the payment of living wages by requiring Contractor and all Subcontractors to file a LABOR COMPLIANCE WORKFORCE STATEMENT (**Exhibit 2**) and LABOR COMPLIANCE FRINGE BENEFIT STATEMENT (**Exhibit 3**) with supporting documentation. Contractor and Subcontractors shall also report such other additional information, including certified payrolls, as requested by the Director of

Equality Assurance to ensure adherence to the Policies. The above referenced documents shall be submitted within 10 days of execution of this Agreement to the address below.

City of San Jose
Office of Equality Assurance
200 East Santa Clara Street
Fifth Floor
San Jose, CA 95113
Phone: 408-535-8430

II. LIVING WAGE POLICY PROVISIONS

On November 17, 1989, by Resolution No. 68554 and amended on June 8, 1999 by Resolution No. 68900, the San Jose City Council adopted its Living Wage Policy to meet the employment and economic development needs of low wage workers by mandating:

1. A minimum level of compensation for workers employed by contractors and subcontractors who are awarded certain City of San Jose service and labor contracts with an expenditure in excess of \$20,000 and recipients who receive direct monetary financial assistance from the City in the amount of \$100,000 or more in any twelve month period, excluding non-profit corporations;
2. The provision of health insurance benefits or the ability to afford health insurance;
3. Retention of employees when certain new contractors take over a continuing City service;
4. An environment of labor peace; and
5. Employee Work Environment Evaluation (Third Tier Review)

A. WAGE REQUIREMENTS

1. Covered Employees Defined:

For the purpose of this provision, Covered Employees means any person employed by Contractor or Subcontractor who meets the following conditions:

- a) The person does not provide volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;
- b) The person expends at least half of his/her time on work for the City;
- c) The person is at least eighteen (18) years of age; and
- d) The person is not in training for the period of training specified under training standards approved by the City of San Jose.

B. EMPLOYEE RETENTION REQUIREMENTS

One of the provisions of the Living Wage Policy is a requirement that on certain agreements over \$50,000, Contractor must retain the workers who have been performing the services under the previous contractor. Employee retention is applicable to Contractor and all Subcontractors under the Agreement in two respects: (1) Contractor will be obligated to adhere to these requirements in hiring; and (2) Contractor will also be obligated to cooperate with the City in transitioning to a new contractor at the end of the term of the Agreement.

The following provisions are applicable to this RFP and will become a part of the Agreement:

1. Qualified Retention Employee Defined

Qualified Retention Employee means any person employed by predecessor contractor or any subcontractor to the predecessor contractor who meets the following requirements:

- a) The person provides direct labor or service on the Agreement;
- b) The person is not an “exempt” employee under the Fair Labor Standards Act (FSLA); and
- c) The person has been employed on the City contract by the predecessor service contractor or subcontractor for at least six months prior to the date of the new Agreement.

2. Current Eligible Retention Employee Defined

Current Eligible Retention Employee means a current employee of new Contractor who meets the following requirements:

- a) The person has been employed by Contractor for at least six months prior to the date of the new service or labor agreement;
- b) The person would otherwise need to be terminated as a result of the implementation of the City of San Jose Living Wage Policy; and
- c) Contractor chooses to designate the person as a Current Eligible Retention Employee.

Contractor must establish requirements i. and ii. above by submitting payroll records or other reliable evidence satisfactory to the Director of Equality Assurance. If Contractor cannot submit such evidence, the employee cannot be designated a Current Eligible Retention Employee.

C. EMPLOYMENT OF QUALIFIED RETENTION EMPLOYEES

Contractor shall offer continued employment to all Qualified Retention Employees who are interested in such continued employment.

The City's Office of Equality Assurance will provide Contractor with information regarding which employees of the predecessor contractor are Qualified Retention Employees to the extent such information is available to the City of San Jose.

Notwithstanding anything to the contrary in this provision, Contractor may deem an employee not to be a Qualified Retention Employee if, and only if:

1. The employee has been convicted of a crime that is related to the job or to his/her job performance; or
2. Contractor can demonstrate to the City that the employee presents a significant danger to customers, co-workers or City staff.

In the event that Contractor does not have enough positions available to hire all Qualified Retention Employees desiring continued employment and to retain its Current Eligible Retention Employees, Contractor shall hire Qualified Retention Employees and retain Current Eligible Retention Employees by seniority within each employment classification. For any positions that become available during the initial ninety (90) day period of the contract, Contractor shall hire Qualified Retention Employees and rehire its Current Eligible Retention Employees by seniority within each employment classification.

1. Retention Requirements

- a) Qualified Retention Employees hired by Contractor may not be discharged without cause during the initial ninety (90) day period of their employment.
- b) Contractor shall offer continued employment to each Qualified Retention Employee who received a satisfactory performance evaluation at the end of the initial ninety (90) day period of employment. Such employment shall be offered under the same terms and conditions established by Contractor for all of its employees.

2. Third Part Beneficiary

Qualified Retention Employees are third party beneficiaries of this Agreement which means that the employee has the right to enforce the provisions of the Agreement independent of the City's right to enforce the provisions of the Agreement. The third party rights will become effective only when the Agreement becomes effective. No third party rights are intended to apply to any employee.

3. Obligations Upon Termination

Upon termination of this Agreement, Contractor shall fully cooperate with all City requests regarding contacts with Contractor's employees to enable a transition in the workforce to a new Contractor.

D. EMPLOYEE WORK ENVIRONMENT AND LABOR PEACE ASSURANCE

Contractor has provided a work environment and labor peace assurance and is attached. Contractor warrants and represents the above listed benefits and complaint procedure will be maintained for the term of the agreement, and Contractor declares that, to the best of its ability, it intends to ensure that essential services and labor for which it has been contracted will be provided efficiently and without interruption.

E. ENFORCEMENT

1. General

Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Contract, it is required to pay workers either a prevailing or living wage ("Wage Provision") and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further

acknowledges the City has determined that the Wage Provision promotes each of the following (collectively “Goals”):

- a) It protects City job opportunities and stimulates the City’s economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- b) It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
- c) Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
- d) It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. Remedies for Contractor’s Breach of Prevailing Wage/Living Wage Provisions

- a) **Withholding Of Payment:** Contractor agrees that the Documentation Provision is critical to the City’s ability to monitor Contractor’s compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor’s compliance with this Provision, as well as the Wage Requirement, is an express condition of City’s obligation to make each payment due to the Contractor pursuant to this Agreement. The City is not obligated to make any payment due the Contractor until Contractor has performed all of its obligations under these Provisions. This Provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor’s failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.

- b) **Restitution:** Contractor agrees that in the event of a breach of its obligations it will pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- c) **Liquidated Damages For Breach Of Wage Provision:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing/living wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impractical and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, Contractor shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.
- d) **Additional Remedies:** Contractor agrees that in addition to the remedies set forth above City retains the right to suspend or terminate the Agreement for cause and to debar Contractor or subcontractors from future City contracts and/or deem the recipient ineligible for future financial assistance.

F. AUDIT RIGHTS

All records or documents required to be kept pursuant to this Contract to verify compliance with the Wage Provision shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

G. COEXISTENCE WITH ANY OTHER EMPLOYEE RIGHTS

These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

**Exhibit E-2
Labor Peace**

Place holder for Employee Work Environment and Labor Peace Questionnaire.

**EXHIBIT F
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT**

AGREEMENT TITLE:	
CONTRACTOR Name and Address:	
DATE:	

Pursuant to Section ____ of the Agreement referenced above, the City of San José (“City”) hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
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NEW OPTION TERM

Begin date:	
End date:	

MAXIMUM COMPENSATION for New Option Term:	
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For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor’s services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

<p>CITY OF SAN JOSE, a municipal corporation</p> <p>By _____ Name: Title: Date: _____</p>
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**EXHIBIT G
SUPPLEMENTAL WORK ORDER FORM FOR SECURITY GUARD SERVICES**

Date: _____

Pre-approval required before start of work: _____
(City Project Manager Printed Name)

Date	Time: From/To	Hours	Hourly Pay Rate	Amount	Description Of Work
Total Amount Due				\$	

CITY PROJECT MANAGER SIGNATURE

CONTRACTOR PROJECT MANAGER
SIGNATURE