

THIRD AMENDMENT TO THE AGREEMENT FOR SECURITY GUARD SERVICES AT PARKING FACILITIES OF THE DEPARTMENT OF TRANSPORTATION BETWEEN THE CITY OF SAN JOSE AND UNIVERSAL PROTECTION SERVICE, LP DBA ALLIED UNIVERSAL SECURITY SERVICES

This Third Amendment to the Agreement for Security Guard Services at Parking Facilities of the Department of Transportation between the City of San José (hereinafter “City”), a municipal corporation, and Universal Protection Service, LP dba Allied Universal Security Services (formerly First Alarm Security and Patrol Inc.) (hereinafter “Contractor”), a California corporation, is entered into on the date of execution by City (“Effective Date”). Each of City and Contractor are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, on March 29, 2013, City and Contractor entered into an agreement entitled “Agreement for Security Guard Services at Parking Facilities of the Department of Transportation between the City of San José and First Alarm Security & Patrol, Inc.” (“Agreement”); and

WHEREAS on December 19, 2013, City and Contractor entered into the First Amendment to the Agreement to meet the requirements of 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; and

WHEREAS, between May 28, 2014, and March 17, 2017, the City executed four (4) Notices of Compensation Adjustment to adjust compensation due to increases in the City’s living wage; and

WHEREAS on December 1, 2017, City and Contractor entered into the Second Amendment to the Agreement to add parking compliance services and related compensation to the Agreement; and

WHEREAS, between April 13, 2018, and March 11, 2022, the City exercised five (5) options, including amended and restated options, to extend the Agreement through March 31, 2023; and

WHEREAS, on May 23, 2022, City and Contractor executed an Assignment and Assumption, retroactively effective November 21, 2020, to transfer all rights and obligations under the Agreement from First Alarm Security and Patrol Inc. to Universal Protection Service, LP dba Allied Universal Security Services; and

WHEREAS, City and Contractor now desire to amend the Agreement to add one (1) Additional Term for a total of six (6) Additional Terms to extend the term through March 31, 2024, subject to an executed Notice of Exercise of Option to Extend Agreement (Exhibit F);

NOW, THEREFORE, the Parties agree to further amend the Agreement as follows:

SECTION 1. Section 3 “Term of Agreement” subsection B is hereby amended in its entirety to read as set forth below:

- B. CITY has the right to extend the term of this Agreement for six (6) 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.

SECTION 2. Section 25 “Miscellaneous,” is hereby amended to add Subsections E entitled “Counterparts,” F entitled “Use of Electronic Signatures,” and G entitled “Compliance with City Policies” as set forth below:

- E. **Counterparts:** This Agreement may be executed in any number of counterparts and by each Party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.
- F. **Use of Electronic Signatures:** Unless otherwise prohibited by law or City policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.
- G. **Compliance with City Policies:** Contractor shall comply with all applicable City Policies, including [City Policy Manual 1.3.12](#), COVID-19 Mandatory Vaccination, which requires all contractors who provide onsite services to the City be vaccinated for COVID-19.

SECTION 3. The Agreement is hereby amended to add Section 26 entitled “Wage Theft Provisions” as set forth below:

WAGE THEFT PROVISIONS

- A. **Definition:** For purposes of this provision, “Wage Theft” means a final judgement, order, or other determination of a federal or state court, or of a federal, state, or local administrative agency that a contractor or subcontractor failed to pay its workers in accordance with any applicable federal, state, or local wage and hour laws, regulations, or other requirements. A judgement, order, or other determination is "final" if the contractor or subcontractor has exhausted all appeals, and the time period to appeal has expired.
- B. **Compliance with Wage and Hour Laws:** The Contractor must comply with all applicable federal, state, and local wage and hour laws, regulations, and policies, as required by City Council Policy 0-44 <https://www.sanjoseca.gov/home/showdocument?id=12945>. The Contractor must include this requirement in each of its subcontracts.
- C. **Representations in Wage Theft Disclosure Certification Forms:** The City awarded this Agreement to the Contractor, in part, based on the representations made by the Contractor and its listed subcontractors in the Proposal Certification or Wage Theft Disclosure Certification Form that they completed as part of the of procurement process.
1. **Contractor Warranty:** By executing this Agreement, the Contractor affirms the accuracy of the representation it made in its Proposal Certification or Wage Theft Disclosure Certification Form. It is a material breach of this Agreement if the City determines that the Proposal Certification or Wage Theft Disclosure Certification Form contained any material inaccuracies. The following circumstances shall constitute exceptions to City Council Policy 1-19:
 2. **Listed Subcontractors:** The Contractor must include in the subcontract of all subcontractors that it listed during the procurement, a provision that does the following:
 - a. Requires the subcontractor to warrant the accuracy of the Proposal Certification or Wage Theft Disclosure Certification Form that it submitted during the procurement of this Agreement,

- b. Allows the Contractor to terminate the subcontract if the City or the Contractor determines that the Proposal Certification or Wage Theft Disclosure Certification Form contained any material inaccuracies.
 - 3. **Termination of Subcontractor:** The Contractor must terminate a listed subcontractor if requested by the City based on the subcontractor's submittal of a materially inaccurate Proposal Certification or Wage Theft Disclosure Certification form.
- D. **Subcontractors Not Listed:** Before contracting with a subcontractor not listed during the procurement process, the Contractor will require the subcontractor to complete a Wage Theft Disclosure Certification Form provided by the City's Office of Equality Assurance through their website at <https://www.sanjoseca.gov/home/showdocument?id=64354>. The Contractor must provide the completed certification form to the City within ten (10) calendar days of executing the subcontract.
 - 1. The Contractor cannot use any subcontractor that has one (1) or more Wage Theft violations, or has one (1) outstanding, unpaid Wage Theft violation, within five (5) years before the date it certified the Wage Theft Disclosure Certification Form.
 - 2. The Contractor must include a provision in each subcontract allowing the Contractor to terminate the subcontract based on the subcontractor's submission of a materially inaccurate Wage Theft Disclosure Certification Form. The Contractor must terminate a subcontractor if requested by the City based on the subcontractor's submittal of a materially inaccurate Wage Theft Disclosure Certification Form.
- E. **Occurrence or Discovery of Wage Theft:** The Contractor must notify, in writing, the City's Office of Equality Assurance no more than fifteen (15) calendar days after either of the following events: (1) any Wage Theft that occurs during the term of the Agreement involving the Contractor or a subcontractor, and (2) the Contractor becomes aware of Wage Theft by the Contractor or a subcontractor that should have been previously disclosed but was not.
 - 1. **Satisfaction by Contractor:** The Contractor must promptly satisfy and comply with a Wage Theft judgement, order, or other determination against it. The Contractor must provide the City's Office of Equality Assurance with documentary

evidence that it satisfied and complied with the Wage Theft judgement, order, or other determination within five (5) calendar days of doing so.

2. **Satisfaction by Subcontractor:** The Contractor must include appropriate provisions in each subcontract requiring the subcontractor to do the following: (a) promptly satisfy and comply with a Wage Theft judgement, order, or other determination against it and (b) provide the Contractor and the City's Office of Equality Assurance with documentary evidence that it satisfied and complied with the Wage Theft judgement, order or other determination within five (5) calendar days of doing so.
3. **City's Right to Withhold Payment:** The City has the right to withhold any moneys owing the Contractor in the amount of the Wage Theft against the Contractor or a subcontractor.

- F. **Material Breach:** Failure to comply with any part of this Section 33 constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.
- G **Notice:** Notice provided to the Office of Equality Assurance as required under this Section 28 shall be addressed to: Office of Equality Assurance, 200 East Santa Clara Street, 5th Floor, San José, CA 95113. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

SECTION 4. All terms and conditions of the Agreement not specifically modified by this Third Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year set forth beneath the respective name below.

City of San José (“City”),
a municipal corporation

**Universal Protection Service, LP dba Allied
Universal Security Services (“Contractor”),**
a California corporation

Jennifer Cheng

By Email: jennifer.cheng@sanjoseca.gov _____

Jennifer Cheng
Deputy Director, Finance

06/24/2022 GMT-07:00
Date: _____

Kelly Murcray

By Email: kelly.murcray@aus.com _____

Kelly Murcray
Senior Regional Vice President

06/24/2022 GMT-07:00
Date: _____

APPROVED AS TO FORM:

Diana Yuan

Email: diana.yuan@sanjoseca.gov _____

Diana Yuan
Deputy City Attorney