

## CROSSING GUARD PROGRAM AGREEMENT

THIS AGREEMENT, ("Agreement") made and entered into this 16 day of Sept, 2014 by and between ALL CITY MANAGEMENT SERVICES, a California corporation (hereinafter "Contractor"), and the City of West Covina, a municipal corporation organized and existing under the Constitution and laws of the State of California (hereinafter "City").

### RECITALS

- A. Contractor is a professional contractor, experienced and properly certified/licensed to provide the crossing guard services described herein, and is familiar with the plans and needs of the City. Contractor represents that Contractor has the special skill and knowledge and is able and willing to provide such services for the City.
- B. The City desires to engage Contractor to provide crossing guard services for the City. Consultant shall furnish all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the crossing guard services.

**NOW THEREFORE**, in consideration of the mutual and respective promises, and subject to the terms and conditions hereafter set forth, the parties agree as follows:

### I. SCOPE OF SERVICES

Contractor shall perform school crossing guard services for the City of West Covina. The scope of work shall be as follows:

- A. The Contractor shall monitor, supervise, and assure the safety of all school children who utilize intersections and crosswalks while moving to and from school zones.
- B. The Contractor shall perform all work:
  - 1. In accordance with this Agreement;
  - 2. In a skillful, competent and timely manner, consistent with the standards generally recognized as being employed by contractors for crossing guard services in the State of California;
  - 3. In compliance of all applicable local, state and federal laws, rules and regulations; and
  - 4. In a manner deemed reasonably satisfactory by the Chief of Police or the Chief of Police's designee.
- C. Contractors shall provide an estimated 10,260 hours per year of crossing guard services by qualified adult crossing guards approved by the City during pre-determined time periods at specific locations throughout the City as shown in Attachment 1. Although the estimated hours above are calculated based on the number of hours per day multiplied by the number of annual school days, the Contractor is required to staff the crossing guard positions whenever the schools modify their schedules to accommodate the academic needs of their students. 10,260 hours is the number of hours of crossing guard services provided in 2013. The actual number of hours of crossing guard services provided may be greater or less than 10,260. The Contractor shall be compensated 3.0 hours per day, per crossing guard position, unless the Contractor fails to provide services under this Agreement.

- D. The City reserves the right to determine the hours and locations when and where Crossing Guards shall be furnished by the Contractor. The Contractor shall notify the City in writing of any changes which may need to occur in hours of work or locations. The City further has power to add to, delete from, or revise the work schedule and/or locations at any time. Should the City elect to reduce the services contracted by more than three (3) sites, the pricing shall be established by mutual consent of both parties.
- E. Contractor shall maintain detailed records and reports of the total number of hours of service provided. These records shall list the names of individuals and numbers of hours worked at each location. These records shall be made available for inspection and audit by the City of West Covina upon request.
- F. Contractor shall provide all administrative duties associated with this Agreement in the City of West Covina.
- G. The Contractor shall utilize only its employees to provide services under this Agreement. The Contractor shall be required to provide for the supervision of all employees associated with conducting the Crossing Guard Program; including the recruitment, pre-employment screening, fingerprinting, TB testing, hiring, discipline, and termination of employees.
- H. The Contractor shall provide personnel equipped and trained in appropriate procedures for crossing pedestrians in marked crosswalks. Such personnel shall herein be referenced as Crossing Guards. In the performance of their duties Crossing Guards and all other agents of the Contractor shall conduct themselves in accordance with the conditions of this Agreement and the laws and codes of the State of California and the City of West Covina.
- I. Contractor shall provide all facilities, vehicles and other associated equipment related to conducting the Crossing Guard Program. Required equipment shall, at a minimum, include Class II ANSI 107 rated reflectorized traffic safety vests, stop signs, whistles, rain gear, and photo-identification badges.
- J. The Contractor shall provide all Crossing Guards with apparel by which they are readily visible and easily recognized as Crossing Guards. Such apparel shall be uniform for all persons performing the duties of Crossing Guards and shall be worn at all times while performing said duties. This apparel must be appropriate for weather conditions. The Contractor shall also provide all Crossing Guards with handheld Stop signs and any other safety equipment which may be necessary. Apparel and equipment shall be pre-approved by the Chief of Police or the Chief's designee.
- K. Contractor shall provide all employees with equipment that complies with all applicable laws and established safety standards.
- L. The Contractor shall maintain adequate reserve personnel to be able to furnish alternate Crossing Guards in the event that any person fails to report to work. The Contractor shall arrange for and provide all substitute employees, ensuring that all designated locations are staffed during the required time periods. The Contractor shall contact the West Covina Police Department immediately if a position cannot be filled by the Contractor. The West Covina Police

Department shall staff that position and back-charge the Contractor for the period of time spent covering that post in accordance with the West Covina Police Department's existing staff cost recovery procedures.

- M. The Contractor shall be responsible to coordinate with the affected schools and school district to ensure coverage is provided at designated locations when school schedules are modified and/or changed for any reason that requires children to arrive or depart at a time that is different than the norm.
- N. The Contractor shall provide all of the required training for employees selected to be crossing guards. Employees provided by the Contractor as Crossing Guards shall be trained in the laws and codes of the State of California in the City of West Covina pertaining to general pedestrian safety in school crossing areas.
- O. The Contractor shall certify that all employees selected to perform the duties of a crossing guard in the City of West Covina have never been convicted of, or pled nolo contendere to, any felony, a crime of moral turpitude, or a crime against children. Not limited to, and including the following:

- Conduct which requires registration under California Penal Code § 290;
- Conduct which requires registration under California Health and Safety Code § 11590;
- Conduct which requires registration under California Penal Code § 457.1;
- Conduct in violation of California Penal Code §§ 220, 245.3, 245.5, 261, 264.1, 266(e), 266(h), 266(i), 314, 315, 316, 318, 647(a), 647(b), or 647(d);
- Any offense listed in California Penal Code § 12021;
- Any offense involving the use of force or violence upon another person;
- Any offense involving theft, fraud, dishonesty or deceit;
- Any offense involving the manufacture, sales, possession, or use of a controlled substance, as defined by the California Health and Safety code.
- Conspiracy or attempt to commit any of the aforementioned offenses.

The Contractor shall not provide Crossing Guards that are:

- Currently, or have been within the past five years, an unlawful user of a controlled substance as defined by the California Health and Safety Code; and/or within a class of persons defined in the California Welfare and Institutions Code §§ 8100 or 8103.

In addition, the recruitment process shall incorporate a Pre-Employment Screening Program that includes:

- An employment reference check;
- A criminal background check and a fingerprint check;
- A drug and alcohol screening test;
- Social Security verification; and
- Only documented, authorized Contractor employees are eligible to work or permitted on or in City facilities (Verification of the INS-9 forms must be provided to the City upon request).

In order to establish identity and ineligibility under this Agreement, Contractor shall provide the City with a recent photograph of all Crossing Guards on an annual basis. Fingerprints shall be taken at a Livescan facility within the West Covina Police Department.

Contractor shall also ensure that its employees, sub-contractors and agents comply with the requirements of Education Code Section 45125.1. If required by Education Code Section 45125.1, the Consultant must provide for the completion of a Fingerprint Certification form, prior to any of the Contractor's employees coming into contact with the children. Contractor further acknowledges that other fingerprinting requirements may apply, as set forth in Education Code Section 45125 *et seq.*, and will comply with any such requirements.

- P. Any employee whose conduct is not satisfactory, as determined by the City of West Covina, shall be removed from providing crossing guard services in the City of West Covina.
- Q. The Contractor shall investigate all public complaints concerning crossing guard services. In the event of a complaint, the Contractor shall contact the West Covina Police Department at (626) 939-8556 within two (2) hours to advise the nature of the complaint and the course of action/remedy/resolution of said complaint. Contractor shall furnish a written report of the incident to the West Covina Police Department within five (5) business days after the occurrence.

## II. COMPENSATION

- A. City agrees to pay, and Contractor agrees to accept as a total payment for its services, the rates and charges identified in Exhibit A. Hourly rates and charges shall not change during the course of a fiscal year. The total sum to be expended under this Agreement shall not exceed:
  - 1. \$143,846 (not to exceed) during the first partial school year of this Agreement, based upon an hourly rate of \$14.02 (fiscal year one ending June 30, 2015).
  - 2. \$163,647 during the following twelve (12) months of this Agreement, based upon an hourly rate of \$15.95 (fiscal year two effective Jul 1, 2015).
  - 3. \$163,647 during the following twelve (12) months of this Agreement, based upon an hourly rate of \$15.95 (fiscal year three effective July 1, 2016).
- B. Payment by the City shall be made within thirty (30) days following the receipt of proper invoice evidencing work performed, subject to City accounting procedures. Payment need not be made for work which fails to meet the standards of performance set forth in this Agreement.
- C. "Fiscal year," as used in this Agreement, is defined as the date range beginning on July 1 and ending on June 30 of the following calendar year.

## III. TERM

This Agreement is for a period that shall commence on or about October 20, 2014 and end on June 31, 2017, unless terminated earlier in accordance with Section 11, below. Thereafter, the term of this Agreement shall automatically renew on July 1, 2017 and on the first day of each

subsequent fiscal year thereafter, upon mutual agreement by both parties, unless terminated earlier in accordance with Section 11, below. Proposed changes in rates and charges shall be provided to the City at least one hundred eighty (180) prior to the beginning of the fiscal year in which the change may occur. Any changes in rates and charges must be approved in writing by the City.

#### **IV. INDEPENDENT CONTRACTOR**

Contractor shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the manner in which Contractor provides services which are the subject matter of this Agreement; however, the services to be provided by Contractor shall be provided any manner consistent with all standards set forth in this Agreement. Contractor shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

#### **V. INSURANCE**

Prior to undertaking performance of work under this Agreement, Contractor shall maintain and shall require its subcontractors, if any, maintain in full force and effect at its own cost and expense the following insurance coverage with insurers with an A.M. Best's rating of no less than A:VII:

- A. Workers Compensation insurance with statutory limits, any employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per accident.
- B. Commercial general liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence OR with a combined single limit of not less than Five Million Dollars (\$5,000,000) per occurrence. If such insurance contains a general aggregate limit, such limit shall apply separately to each project the Contractor performs for the City of West Covina. Such insurance shall (a) name the City of West Covina, its officers, agents, representatives, volunteers, and employees as additional insureds; (b) be primary with respect to insurance of self-insurance programs maintained by the City of West Covina; and (c) contain standard separation of insured provisions; and (d) give to the City of West Covina prompt and timely notice of claim made or suit instituted arising out of Contractor's operations hereunder.
- C. Business Automobile Liability insurance or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for owned, hired and non-owned vehicles.
- D. The following requirements apply to the insurance to be provided by Contractor pursuant to this section:
  1. Contractor shall maintain all insurance required above in full force and effect for the entire period covered by this Agreement.

2. Certificates of insurance shall be furnished to the City upon execution of this Agreement shall be approved in form by the Administrative Services Director.
  3. Contractor shall file a Certificate of Insurance with the City prior to the City's execution of this Agreement, and prior to engaging in any operation or activity set forth in this Agreement. The Certificate of Insurance shall provide in writing that the insurance afforded by this Certificate shall not be suspended, voided, canceled, reduced in coverage or in limits without providing thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. In addition, the insured shall provide thirty (30) days prior written notice to the City of any suspension, cancellation, reduction of coverage or in limits, or voiding of the insurance coverage required by this agreement. The City reserves the right to require complete certified copies of policies.
- E. If Contractor fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and pay for, the City shall have the right, at the City's election, to forthwith terminate this Agreement. Such termination shall not affect Contractor's right to be paid for its time and materials expended prior to notification of termination. Contractor waives the right to receive compensation and agrees to indemnify, defend, and hold harmless the City for any work performed prior to approval of insurance by the City.
- F. Waiver of Subrogation. The insurer agrees to waive all rights of subrogation against the City, its officers, employees and agents.
- G. Defense Costs. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusions.

## **VI. INDEMNIFICATION**

Contractor shall be required to take all reasonable precautions to prevent the occurrence of any loss, claim, liability, or injury, including death, to any person or any damage to any property arising out of the act or omissions of this Contractor, its agents, or employees.

- A. Contractor shall be required to indemnify, defend and hold harmless to the maximum extent described below, the City of West Covina, the City Council, its officers, agents, representatives, volunteers, and employees from and against any and all liabilities, suits, actions, proceedings, judgments, liens, injuries (whether in contract or in tort, including, but not limited to, personal injury, accidental death or property damage and regardless of whether the allegations are false, fraudulent or groundless), claimed demands, costs losses or damages or expenses (including reasonable attorney's fees and costs), that arise out of or result from, or connected with, or which are alleged to have arisen out of or have been connected with, in whole or in part, (1) the acts or omissions of the Contractor, its employees, agents or subcontractors, whether directly or indirectly employed (2) this Agreement (3) the breach by the Contractor of any of its obligations, duties or other responsibilities under this Agreement.

- B. Contractor shall be required, at its sole cost, expense and risk, to defend all claims and legal proceedings that may be brought against the City of West Covina, the City Council, and their officers, agents, representatives, volunteers, and employees with counsel reasonably acceptable to the City, and Contractor shall satisfy any resulting judgment or settlement, not to exceed the level of liability imposed upon or assessed against the Contractor by said judgment or settlement, whether or not the liability, suit, action, proceeding, judgment, lean, injury, claim, demand, cost, loss damage or expense was actually or allegedly caused in part through the negligent, wrongful or tortuous conduct of any such other persons, but not if the same was actually caused solely by any such other person.
- C. Contractor's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon Contractor whether such injury or damage shall accrue, or maybe discovered, before or after termination of this Agreement.
- D. Contractor's failure to comply with this section's provisions shall constitute a material breach upon which the City may immediately terminate or suspend the Agreement.

#### **VII. CONFLICT OF INTEREST CLAUSE**

Contractor covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

#### **VIII. NOTICE**

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by Facsimile or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:

City Clerk  
City of West Covina  
1444 West Garvey Avenue  
West Covina, CA 91790  
Facsimile (626) 939-8682

With courtesy copies to:

Chief of Police  
City of West Covina  
1444 West Garvey Avenue  
West Covina, CA 91790  
Facsimile (626) 939-8679

A party may change its address by giving notice in writing to the other party. Thereafter, any notice, tender, demand, delivery or other communication shall be addressed and transmitted to

the new address. If sent by mail, any notice, tender, demand, delivery or other communication shall be effective for deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by Facsimile, any notice, tender, demand, delivery, or other communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends federal, state, county, or city holidays shall be excluded.

#### **IX. EXCLUSIVITY AND AMENDMENT**

This Agreement represents the complete and exclusive statement between the City and Contractor, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City of and by an authorized representative of Contractor. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereafter, shall not bind or obligate the Contractor nor the City. Each party to this Agreement acknowledges that no representations, inducements, promises, agreements, family or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

#### **X. ASSIGNMENT**

Inasmuch as this Agreement is intended to secure the specialized services of the Contractor, Contractor may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject of this Agreement performed by City personnel or by other Contractors retained by the City.

#### **XI. TERMINATION**

This Agreement may be terminated by the City or the Contractor, with or without cause, upon one-hundred eighty (180) days written notice of termination. In such event, Contractor shall be entitled to receive and the City shall pay Contractor compensation for all services performed by Contractor prior to receipt of such notice of termination, subject to the following conditions:

- A. Payment need not be made to work which fails to meet the standards of performance specified in this Agreement.
- B. Payment need not be made for work not performed as the result of termination of this Agreement.
- C. Payment need not be made for any consequential or collateral damages alleged to be a result of termination or otherwise.



If this Agreement is terminated as provided in this Section, the City may require Contractor to provide all finished or unfinished documents, data, code, reports or any other items prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such documents and other information within fifteen (15) days of the request.

## **XII. DISCRIMINATION**

Contractor shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Contractor affirms that it is an equal opportunity employer and shall comply with all federal, state and local laws and regulations.

## **XIII. JURISDICTION – VENUE**

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the causes of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Los Angeles County, California, shall be the venue for any action or proceeding that may be brought or arising out of, in connection with or by reason of this Agreement.

## **XIV. PROFESSIONAL LICENSE**

Contractor shall, to the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of West Covina and all other government agencies. Contractor shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.


## **XV. MISCELLANEOUS PROVISIONS**

- A. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or withdrawn.
- B. All Exhibits referenced herein and attached thereto shall be incorporated as if fully set forth in the body of this Agreement.
- C. If any action is brought by either party against the other party hereunder, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action.
- D. Alternative Dispute Resolution.

1. Any and all disputes arising in connection with the terms and conditions of this Agreement or payment for Services performed under this Agreement shall be submitted to, and finally determined by, arbitration conducted in the City of West Covina, California in accordance with the rules of the American Arbitration Association by a single arbitrator appointed in accordance with such rules. Judgment upon the final arbitration award may be entered in any court having proper jurisdiction thereof.
  2. Mediation. In addition to Arbitration, disputes arising from this Agreement may be submitted to mediation if mutually agreeable to the Parties hereto. The type and process of mediation to be utilized shall be subject to the mutual agreement of the Parties.
- E. Time is of the essence for each and every provision of this Agreement.
- F. In interpreting this Agreement, it shall be deemed that it was prepared jointly by the Parties with full access to legal counsel of their own. No ambiguity shall be resolved against any party on the premise that it or its attorneys were solely responsible for drafting this Agreement or any provision thereof.
- G. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one agreement.

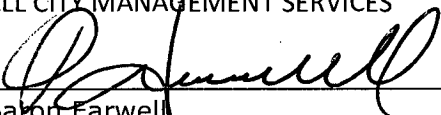
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

CITY OF WEST COVINA

  
\_\_\_\_\_  
STEVE HERFERT  
Mayor

10/4/2014  
Date


ALL CITY MANAGEMENT SERVICES

  
\_\_\_\_\_  
Baron Farwell  
President and General Manager

9/24/14  
Date


APPROVED AS TO FORM:

Kimberly Hall Barlow  
City Attorney

By:   
\_\_\_\_\_  
10/1/14  
Date

ATTEST:

NICK LEWIS  
City Clerk

By:   
\_\_\_\_\_  
10/8/14  
Date