

**AMENDED AND RESTATED AGREEMENT BETWEEN
THE CITY OF SUNNYVALE AND ALL CITY MANAGEMENT SERVICES INC.
FOR CROSSING GUARD SERVICES**

THIS AGREEMENT dated _____ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and ALL CITY MANAGEMENT SERVICES ("CONTRACTOR").

WHEREAS, CITY conducted Request for Proposals F16-102 to solicit proposals from qualified contractors to provide crossing guard services at schools throughout CITY; and

WHEREAS, CITY entered into a services agreement with ACMS on December 7, 2016 in the amount of \$540,553 for the provision of crossing guards characterized as temporary employees; and

WHEREAS, CITY wishes to amend and restate the ACMS AGREEMENT to change the status of crossing guards to that of independent contractors; and

WHEREAS, an amendment to the original AGREEMENT is also necessary to account for increases to the Sunnyvale minimum wage and to add crossing guard hours for summer school programs.

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AMENDED AND RESTATED AGREEMENT.

1. Services by CONTRACTOR

CONTRACTOR shall provide qualified individuals to provide crossing guard services pursuant to Exhibit "A", Scope of Services, attached and incorporated by reference. Each individual performing the required services under this Agreement shall be approved by CITY in advance.

2. Time for Performance

The term of this Agreement shall be from December 7, 2016 through September 30, 2017, unless otherwise terminated. Agreement may be renewed for up to four (4) additional years, subject to available funding.

3. Compensation

CITY agrees to pay CONTRACTOR at the billing rate of \$31.94 per hour, per guard. Total compensation shall not exceed Five Hundred Ninety Thousand Eight Hundred Ninety One and No/100 Dollars (\$590,891.00).

CONTRACTOR shall submit invoices to CITY no more frequently than monthly for services provided to date. All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707 or accountspayable@sunnyvale.ca.gov. Payment shall be made within thirty days upon receipt of an accurate itemized invoice by CITY's Accounts Payable unit.

4. Conflict of Interest

CONTRACTOR shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to immediately notify CITY of any facts that may give rise to a conflict of interest. CONTRACTOR is aware of the prohibition that no officer of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement

CONTRACTOR shall not accept employment or an obligation which is inconsistent or incompatible with CONTRACTOR'S obligations under this Agreement.

5. Confidential Information

CONTRACTOR shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONTRACTOR may become aware in the performance of its services.

6. Compliance with Laws

- (a) CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, gender, age (persons 40 years or older), disability, or any other basis to the extent prohibited by federal, state, or local law. All employees of CONTRACTOR shall be treated during employment without regard to their race, creed, color or national origin.
- (b) CONTRACTOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

7. Independent Contractor

CONTRACTOR is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONTRACTOR. CONTRACTOR is responsible for paying all required state and federal taxes.

8. Indemnity

CONTRACTOR agrees to indemnify, defend and hold harmless the CITY, its officers, employees and agents against, and will hold and save each of them harmless from, any and all actions, claims for damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of the intentional or negligent acts, errors, or omissions of CONTRACTOR, its agents, employees, subcontractors, or invitee, provided for herein.

- a) CONTRACTOR will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations or liabilities and will pay all costs and expenses including attorney's fees incurred in connection herewith.
- b) CONTRACTOR will promptly pay any judgment rendered against the CITY, its officers, agents or employees for any such claims, damages, penalties, obligations or liabilities.
- c) In the event the CITY, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against CONTRACTOR for such damages or other claims arising out of or in connection with the sole negligence of CONTRACTOR hereunder, CONTRACTOR agrees to pay CITY, its officers, agents, or employees, any and all costs and expenses incurred by the City, its officers agents or employees in such action or proceeding, including, but not limited to, reasonable attorney's fees.

9. Insurance

CONTRACTOR shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "B" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "B."

10. CITY Representative

Shawn Ahearn, Public Safety Captain, as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

11. CONTRACTOR Representative

Patricia Pohl, Director of Operations, shall represent CONTRACTOR in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CONTRACTOR pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONTRACTOR representative.

12. Notices

All notices required pursuant to this Contract shall be communicated in writing, and shall be delivered in person, by commercial courier or by first class or priority mail delivered by the United States Postal Service. Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by email or fax, to accomplish timely communication. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three business days after mailing. All notices sent pursuant to this Contract shall be addressed as follows:

To CITY: Captain Shawn Ahearn
 Department of Public Safety
 CITY OF SUNNYVALE
 P. O. Box 3707
 Sunnyvale, CA 94088-3707

To CONTRACTOR: Patricia Pohl, Director of Operations
 All City Management Services, Inc.
 10440 Pioneer Boulevard, Suite 5
 Santa Fe Springs, CA 90670

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

13. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

14. Termination

A. If CONTRACTOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of satisfactory services performed or materials furnished (in relation

to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONTRACTOR shall present CITY with any work product completed at that point in time.

B. Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONTRACTOR shall present CITY with any work product completed at that point in time.

C. If CITY fails to pay CONTRACTOR, CONTRACTOR at its option may terminate this Agreement if the failure is not remedied by CITY within (30) days after written notification of failure to pay.

16. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

17. Governing Law, Jurisdiction and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflict of law or choice of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

18. Severability Clause

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

19. Execution and Counterparts

This Agreement may be executed in multiple counterparts and/or with the signatures of the Parties set forth on different signature sheets and all such counterparts, when taken together, shall be deemed one original.

20. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

By _____
City Clerk

CITY OF SUNNYVALE ("CITY")

By _____
City Manager

APPROVED AS TO FORM:

ALL CITY MANAGEMENT SERVICES INC.
("CONTRACTOR")

By _____
City Attorney

By _____

Name and Title

By _____

Name and Title

EXHIBIT A
SCOPE OF SERVICES

1. The Contractor will provide personnel equipped and trained in appropriate procedures for crossing pedestrians in marked crosswalks. Such personnel shall be herein referred to as a Crossing Guard. The Contractor is an independent contractor and the Crossing Guards to be furnished by it shall at all times be its employees and not those of the City.
2. The City shall determine the locations where Crossing Guards shall be furnished by the Contractor. The Contractor shall provide at each designated location personnel properly trained as herein specified for the performance of duties as a Crossing Guard. The Contractor shall provide supervisory personnel to see that Crossing Guard activities are taking place at the required places and times, and in accordance with all items of this Agreement.
3. The Contractor shall maintain adequate reserve personnel to be able to furnish alternate Crossing Guards in the event that any person fails to report for work at the assigned time and location and agrees to provide immediate replacement.
4. In the performance of their duties the Contractor and all employees 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 Sunnyvale.
5. Persons provided by the Contractor as Crossing Guards shall be trained in the laws and codes of the State of California and the City of Sunnyvale pertaining to general pedestrian safety in school crossing areas.
6. Crossing Guard Services shall be provided by the Contractor at the designated locations, at the designated times, on all days in which school is in session during the regular school year. In addition, services shall be provided at all locations which serve schools hosting Summer School Programs sanctioned by the School Districts served. The Contractor also agrees to maintain communication with the designated schools to maintain proper scheduling.

The Contractor will notify the City and the appropriate school if any designated location will not be staffed on a day school is in session. Notification will be provided at least two hours prior to the scheduled start time.

The Contractor shall maintain a telephone system in operation at its office during regular business hours to receive compliments, concerns, or complaints from the public regarding the services provided. Contractor is responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all complaints relating to services provided. Contractor will maintain a log of all complaints, noting the name, address, and telephone number of the complaining caller, date and time that the complaint was received, identification of the employee receiving the complaint and characterization of the complaint.

The Contractor shall provide monthly reporting while school is in session regarding the coverage of all designated intersections. Reporting will also include records of any complaints and their resolution.

7. 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 hand held Stop signs and any other safety equipment which may be necessary.

8. Contractor agrees to indemnify the City, its officers, employees and agents against, and will hold and save each of them harmless from, any and all actions, claims for damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of the intentional or negligent acts, errors, or omissions of Contractor, its agents, employees, subcontractors, or invitee, provided for herein.
 - a) Contractor will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations or liabilities and will pay all costs and expenses including attorney's fees incurred in connection herewith.
 - b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims, damages, penalties, obligations or liabilities.
 - c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the sole negligence of Contractor hereunder, Contractor agrees to pay City, its officers, agents, or employees, any and all costs and expenses incurred by the City, its officers agents or employees in such action or proceeding, including, but not limited to, reasonable attorney's fees.
9. The City agrees to pay the Contractor for services rendered pursuant to this Agreement the sum of Thirty-one Dollars and Ninety-four Cents (**\$31.94**) per hour, per guard during year one of the contract period.

This pricing is based upon 18,500 billing hours per school year (which consists of 18,225 hours for the regular school year and 275 summer school hours), unless Contractor fails to perform service. The Not to Exceed Price for contract year one totals: \$590,891.00.

The Contractor may exercise a price increase during the contract period as a result of any legislative mandated increases in wages or benefits for State of California employees. The Contractor shall provide the City with 60 days-notice and justification of its request to adjust pricing. The City agrees to review and respond to said notice within 30 days of service.
10. The Contractor will hire all current City of Sunnyvale Crossing Guards provided the guards meet ACMS Physical Requirements and Other Requirements as outlined in ACMS Crossing Guard Job Description incorporated below.

The Contractor agrees to employ Crossing Guards for a period not less than sixty (60) calendar days from the start of service. The Contractor retains the right to terminate employment for cause including but not limited to; Non-compliance with company policy for notice of absences /tardiness, repeated tardiness, insubordination, alcohol or drug use on duty, requested removal from duty by City of Sunnyvale or School District staff.

11. The City shall have an option to renew this contract for up to four (4) additional years. In the event this Agreement is extended beyond the initial term; the compensation and terms for services shall be established by mutual consent of both parties.

EXHIBIT B

INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Contractor, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance Contractor shall maintain limits no less than:

1. **Commercial General Liability**: \$2,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
2. **Automobile Liability**: \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. **Workers' Compensation** Statutory Limits and **Employer's Liability**: \$1,000,000 per accident for bodily injury or disease.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The Contractor shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** policy shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Contractor's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The 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.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

Contractor shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.