

**AGREEMENT FOR SECURITY SERVICES
BETWEEN THE CITY OF SAN JOSÉ and
FIRST ALARM SECURITY & PATROL, INC.**

This Agreement is entered into as of February 1, 2010 between the City of San José, a municipal corporation ("City"), and First Alarm Security & Patrol, Inc., a California corporation, ("Contractor").

RECITALS

1. City has issued a Request for Proposal ("RFP") for Security Services at the Water Pollution Control Plant;
2. 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:

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 - Compensation
- Exhibit C - Insurance Requirements
- Exhibit D - Labor Compliance Addendum

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.

2 SCOPE OF SERVICES

Contractor shall perform those services specified in detail in the attached Exhibit A, entitled "Scope of Services".

3 TERM OF AGREEMENT

3.1 Initial Term

The term of this Agreement is from February 1, 2010 to March 31, 2011, inclusive, subject to the provisions of Section 8 and subsection 3.2.

3.2 Options

City has the right to extend the term of this Agreement for two (2) 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 B. City shall notify Contractor in writing of its exercise of its option for an Additional Term no less than thirty (30) days prior to the end of the then current Term.

3.3 No Waiver

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.

4 SCHEDULE OF PERFORMANCE

Contractor's services must be completed according to the schedule set out in the attached Exhibit A, entitled "Scope of Services." Time is of the essence in this Agreement.

5 COMPENSATION

City shall pay Contractor an amount not to exceed \$225,139.00 for Contractor's services and reimbursable expenses, if any. The terms, rate and schedule of payment are set forth in the attached Exhibit B, entitled "Compensation."

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.

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 the attached Labor Compliance Addendum (Exhibit D), which sets forth Contractor's obligations under the Policy.

8 TERMINATION

8.1 Termination for Convenience

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

8.2 Termination for Default

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.

8.3 Termination Authority

The Director of Finance ("Director") is empowered to terminate this Agreement on behalf of City.

8.4 Consequences of Termination

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.

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.

10 INSURANCE REQUIREMENTS

Contractor agrees to have and maintain the policies set forth in Exhibit C, entitled "Insurance Requirements," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Risk Manager of the City of San Jose 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.

11 WAIVER

Contractor agrees that City's waiver of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. City's acceptance of the performance of any of Contractor's services will not be a waiver of any provision of this Agreement.

12 INDEPENDENT CONTRACTOR

Contractor, in the performance of this Agreement, is an independent contractor. 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.

13 COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws, ordinances, codes and regulations (collectively, "laws") of the federal, state and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

14 CONFLICT OF INTEREST

Contractor shall avoid all conflict of interest or the appearance of conflict of interest in performance of this Agreement.

15 NONDISCRIMINATION

Contractor agrees that there shall be no discrimination against, or segregation of, any person, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, marital status, or family status, in connection with or related to the performance of this Agreement.

16 GIFTS

16.1 Prohibition on Gifts

Contractor acknowledges that Chapter 12.08 of the San Jose Municipal Code prohibits City's officers and designated employees from accepting gifts as defined in Chapter 12.08.

16.2 No Offer

Contractor agrees not to offer any City officer or designated employee any gift prohibited by Chapter 12.08.

16.3 Breach of Agreement

Contractor's offer or giving of any gift prohibited by Chapter 12.08 will constitute a material breach of this Agreement. 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.

17 DISQUALIFICATION OF FORMER EMPLOYEES

Contractor is familiar with Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance") relating to the disqualification of City's former officers and employees in matters which are connected with their former duties or official responsibilities. 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.

18 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.

19 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 Contractor's services are City's property without restriction or limitation upon their use.

20 CONTRACTOR'S BOOKS AND RECORDS

20.1 Maintenance during Term

Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other 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.

20.2 Maintenance after Term

Contractor shall maintain all documents 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.

20.3 Inspection

Any documents required to be maintained pursuant to this Agreement must be made available for inspection or audit, 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. Contractor shall provide copies of such documents 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.

20.4 Custody of Records

Where City has reason to believe that any of Contractor's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, City may, by written request by any of the above-named officers, require that custody of the Contractor's documents be given to City and that these documents be maintained in City Hall. City agrees to grant access to Contractor's documents to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

21 ASSIGNABILITY

The parties agree that the expertise and experience of Contractor are material considerations for this Agreement. Unless specifically authorized by this Agreement, Contractor may not assign the performance of any obligation or interest under this Agreement without the prior written consent of City. Any attempt by Contractor to assign this Agreement, in violation of this Section, will be voidable at City's sole option.

22 SUBCONTRACTORS

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

22.1 Authorized Subcontractors

Notwithstanding Section 21 (Assignability) above, Contractor may use designated subcontractors approved in advance by City in performing Contractor's services. Contractor must obtain City's prior written consent in order to change or add subcontractors. Contractor shall be responsible for directing the work of the approved

subcontractors and for any compensation due to subcontractors. City assumes no responsibility whatsoever concerning such compensation.

22.2 Compliance with Agreement

Contractor shall ensure that Contractor's subcontractors comply with this Agreement. At City's request, Contractor shall require any or all of Contractor's subcontractors to sign an agreement with Contractor requiring compliance with this Agreement.

23 GOVERNING LAW

This Agreement must be construed -- and its performance enforced--under California law.

24 VENUE

In the event that suit is brought by either party to this Agreement, the parties agree that venue must be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

Contractor further agrees that in the event a lawsuit involving this Agreement is filed by City, Contractor will unconditionally accept the jurisdiction of a federal or state court located in Santa Clara County, California.

25 NOTICES

All notices and other communications required or permitted to be given under this Agreement must be in writing and must be personally served, or mailed, postage prepaid via U. S. mail, or sent via courier service, addressed to the respective parties as follows:

To City: Director of Finance
 City of San Jose
 200 East Santa Clara St.
 San Jose, CA 95113

To Contractor: First Alarm Security & Patrol, Inc.
 1111 Estates Dr.
 Aptos, CA 95003
 Cal Horton, President

Notice will be effective on the date personally delivered or if sent by courier service, on the date of receipt. If mailed, notice will be effective three (3) days after deposit in the mail.

The parties may change their respective addresses in accordance with the provisions of this Section.

26 MISCELLANEOUS

26.1 Survival of Provisions

If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable.

26.2 Assignment

Subject to the provisions of Section 21 (Assignability), this Agreement binds and inures to the benefit of the parties and their respective successors and assigns.

26.3 Headings

The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.

26.4 Authority of City Manager

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.

APPROVED AS TO FORM:

City of San José
a municipal corporation

Kenneth D. Johnson
Senior Deputy City Attorney

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

FIRST ALARM SECURITY & PATROL, INC.
A CALIFORNIA CORPORATION

By _____
Name: Cal Horton
Title: President

**EXHIBIT A
SCOPE OF SERVICES**

Contractor shall perform the following services:

GENERAL REQUIREMENTS

1. PERSONNEL RECRUITMENT

Contractor shall have an established, comprehensive personnel recruitment program for new and replacement personnel, to include interviewing/test procedures, background checks (by type and degree), physical exams, psychological tests or drug testing (if any), education and work experience verification, etc.

NOTE: All applicable governmental laws and regulations must be adhered to on the recruiting and hiring process.

2. 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 guards are competent to perform all duties required under this contract.

NOTE: No additional hourly costs, to the billing rate, are to be charged to the City for any aspect of the training program.

3. 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.

WATER POLLUTION CONTROL WPCP

1. DESCRIPTION OF SERVICES

- 1.1 The Contractor shall provide all manpower, material, supplies, vehicles and equipment (except as otherwise provided by the City-WPCP) and shall plan, schedule, train, coordinate and insure the effective performance of all services as described below. The contractor shall provide security services in accordance with the requirements of this specification at:

**San Jose/Santa Clara Water Pollution Control Plant (WPCP)
700 Los Esteros Road
San Jose, Ca. 95134**

- 1.2 Contractor shall provide at least 168 weekly hours of unarmed coverage. In addition to those hours, Contractors may be required to schedule additional personnel to cover unplanned occurrences or as security demands dictate. In any case the weekly and monthly total hours must be flexible (up or down) to meet the changing needs of WPCP.

**EXHIBIT A
SCOPE OF SERVICES**

- 1.3 The actual volume of work may fluctuate up or down over the term of this agreement as City requirements dictate. City shall notify Contractor of schedule changes and demands for additional services in writing authorized by City's project manager.

2. SCOPE OF WORK:

- 2.1 The Contractor shall provide trained Security Officers at all times to perform the services prescribed by the Contract and the Post Orders.
- 2.2 Security Officers employed by the Contractor shall perform the duties outlined in the most recent Post Orders which have been prepared by the Water Pollution Control Plant project manager for each security post.

General Requirements:

- A. Contractor shall be familiar with City and WPCP rules and regulations.
- B. Contractor shall discover and report persons attempting to gain unauthorized access to WPCP property.
- C. Contractor shall prepare and submit required reports on accidents, bomb and other threats, unusual incidents, unlawful acts, etc.
- D. Contractor shall respond to emergency situations as required by established procedures posted in the Guard Shack at the entrance to WPCP. This includes responding to emergency evacuation procedures as assigned and directed by the designated WPCP Safety Officer.

3. SUPERVISION, MANAGEMENT CONTROLS & COMMUNICATION:

- 3.1 The Contractor shall be fully responsible for the direct supervision of its own employees by its own supervisory and management personnel. The Contractor shall also provide an overall Project Manager to manage this contract. The Project Manager must have the responsibility and authority to fully represent the Contractor on all matters pertaining to this contract.
- 3.2 The Project Manager's responsibilities shall include, but are not limited to:
- 3.2.1 Develop Security Post Orders in coordination with WPCP staff and implement approved Post Orders. The Security Post Orders shall be reviewed on an as needed basis and changes will be made through the Project Manager.
- 3.2.2 Serve as the contact person for the WPCP in the administration of this contract.
- 3.2.3 Administer Contractors training program.
- 3.2.4 Administer personnel, which includes hiring, assignments, firings, schedules, timekeeping and payroll, quality standards, employee evaluations, etc.
- 3.2.5 Review of all officer reports - Daily Activity Reports, Incident Reports, etc.

EXHIBIT A
SCOPE OF SERVICES

3.2.6 Review on a monthly basis all security operations under this contract and make any recommendations for improvements to the WPCP management in person or in writing.

3.2.7 Communicate staffing changes prior to or within 24hrs after the change.

3.3 The Gate House Security Guard and Roving Patrol Guard are required to carry WPCP walkie-talkie radios at all times so they can be in constant communication with WPCP Supervisors. Radios shall be supplied by WPCP. The WPCP shall also provide a telephone number in the Gate House for security use.

4. POST ORDERS:

4.1 Post orders are subject to revision at the start of each contract term, and at least one additional time within a contract period.

4.2 Post orders are as follows:

4.2.1 WPCP Front Gate:

4.2.1.1 Contractor shall provide one guard for the Front Gate. Front Gate hours of operations are Monday – Friday, 5:00am to 6:00pm, except for holidays unless instructed otherwise. During the hours of operation under no circumstances is the front gate to be left open and unattended. Contractor shall operate and enforce a system of personnel identification, visitor entrance and delivery control procedures as described below.

a. Provide a high visibility presence and control access to the WPCP to insure that NO unauthorized entry occurs at this key security point.

b. The guard shall lock the gate shut if he or she needs to be away from the post or are unavailable for any reason, including trips to the restroom or parking lot, etc. After securing the gate the guard shall notify the Senior Operator and transfer gate control temporarily until the guard returns.

c. The security officer shall step out of the gatehouse frequently to observe vehicles and drivers closely and to verify identification.

d. While on duty at the front gate the officers are responsible for observing and positively identifying every person prior to admittance by the following procedure. The patrol guard must assist as needed in mornings with the gate-entry identification procedure, as called out below.

4.2.1.2 For a City Employee w/badge – Check and verify their official City I.D. badge.

4.2.1.3 For an ESD Employee w/o badge – Stop the employee, check against employee list, sign the employee in and issue the 24hr. visitor badge.

4.2.1.4 For a City Employee's w/o badge – Treat as a first time visitor, (Reference 4.2.1.5 4a below).

4.2.1.5 For a Non-City persons who will fit into one of these categories;

a. For a First Time Visitor – First check the visitor's name with the pre-authorized "Day List". If the name is listed then notify the contact person and arrange contact

EXHIBIT A
SCOPE OF SERVICES

between the two parties (note: it is mandatory that WPC personnel meet first time visitors in the Admin lobby or at the front gate). If the name is not found on the "Day List" then direct the visitor to the Administration Building lobby. If the visitor is here to see someone in ESB or Stores then direct them to the appropriate entrance location.

b. For a Return non-City personnel will fall into one of two categories; Short Term – Check name against pre-authorized lists (contractors, vendors, septic haulers, etc.) and if on list sign the person(s) in and issue a 24hr. visitors badge before admitting. If you cannot find them on any list do not allow them to enter. Refer them to the Administration Building lobby or call the Shift Supervisor.

c. For a Long Term (3 months or greater) – They may be issued a temporary City I.D. badge but likely will follow the short-term procedure until their badge is issued.

4.3. Note that detained vehicles should be relocated to the curbside or directed to the Admin parking lot so as not to block passage to others.

4.3.1 All deliveries for the City of San Jose must be directed to the Stores receiving compound located on Zanker Rd. just south of the WPCP rear gate and the ESB. The only exceptions to this procedure are commodities being delivered to tanks on site (chemicals, fuels, etc.) and these drivers fall under the non-City I.D. policy above.

4.3.2 Deliveries to contractors need pre-notification and a contact person to call. Drivers are subject to above I.D. policy.

4.3.3 Every time an officer comes on duty they should check in with the WPC Shift Supervisor. If an officer fails to check in or is discovered to have abandoned his post unannounced then the Shift Supervisor must be informed. The Supervisor will close the gates if left opened and return control to the Senior Operator in the Computer Control Room. The Shift Supervisor will then determine if it is necessary to replace the guard. If so, the Computer Senior Operator will be instructed to call the Contractor for a replacement guard.

4.3.4 The CSO should observe the gate via the security camera and keep it closed until it can be manned. The gate-entry card reader should be de-activated and all persons/vehicles identified prior to gaining access.

4.3.5 The Shift Supervisor will assign an available WPCP Operator, Operator-in-Training or Senior Operator to monitor the gate until relieved if needed. The key to the guard shack is kept in the Computer Control Room when security guards are not present.

4.3.6 The Assistant Operations Manager will continue as Operations Liaison for security issues.

4.3.7 Alarms: The security officer is required to open the exit gate from the WPCP during any emergency evacuation alarms. Employees will be driving out to their evacuation locations. The incoming entrance gate must remain closed during evacuations. The security officer should be prepared to quickly admit Emergency Response Vehicles. The security officer should monitor exiting vehicles. The Shift Supervisor will notify the Security Officer if it is necessary to evacuate the gatehouse during an emergency.

EXHIBIT A
SCOPE OF SERVICES

4.4 Vehicle Patrol:

4.4.1 Contractor shall provide one guard for vehicle patrol when occupancy of the guard shack is not required. Security officer will be in a marked vehicle patrolling the interior and exterior perimeters of the WPCP facility. The vehicle for this patrol shall be dedicated to the WPCP and equipped with light bar and spot light. It may not be out of service for greater than 24 hours without a replacement vehicle. In addition to perimeter patrol Contractor shall monitor site-specific high-level security areas as described below. Contractor shall monitor and report safety concerns or illegal dumping during the course of their patrol.

4.4.2 The patrol officer shall be stationed on the WPCP perimeter adjacent to the Disinfection area rail tank car compound on Los Esteros Rd (near or at the Outfall gate).

4.4.3 The patrol officer shall watch for and react to any vehicle or person(s) that may approach or stop along Los Esteros Road. If a vehicle parks in a posted zone, the driver should be asked to move from the posted "No Parking" zone. If the vehicle is not moved then the officer should call the Shift Supervisor to assess the situation. If time does not permit this call or the threat risk seems severe then call 911 for a police response immediately.

4.4.4 The patrol officer shall patrol the Water Pollution Control WPCP fence line perimeter along Los Esteros Road and Zanker Road and a perimeter security check internal to the fence line at one-hour intervals. This patrol should include the buffer land and WPCP from approximately the Los Esteros Road / Grand Boulevard intersection in Alviso to the Zanker Road / Highway 237 interchange. The officer should look for any suspicious vehicles, persons, or conditions (Holes in the fence, containers or dumped debris, etc.) on either side of the road. The officer should communicate any observations or concerns to the Shift Supervisor immediately and consult with him on the appropriate response needed on a case-by-case basis.

4.4.5 The patrol officer shall not stop or block traffic on the streets unless it is necessary to protect life or property. In such cases appropriate measures need to be taken i.e. flares set up, SJPD notified and traffic redirected.

4.4.6 Both incoming lanes should be used as necessary to keep traffic from backing up to Los Esteros Rd

4.4.7 There shall be a minimum of 5 check-in stations along the regular patrol route, and a paper or electronic tracking method to record the visits by the guards at these stations.

5. PERSONNEL RECRUITMENT, SCREENING AND SELECTION:

5.1 The Contractor is expected to conduct a thorough recruitment, screening and selection process before assignment of any individual to WPCP. This process must be documented and available to WPCP upon request.

5.2 Security Guards and Supervisors shall possess valid credentials evidencing Security Guard Registration with the Bureau of Security and Investigative Services of the California Department of Consumer Affairs. These credentials must be in the possession of the guard at all times, and must be presented at any time to any law

EXHIBIT A
SCOPE OF SERVICES

enforcement officer or DOT representative. Failure of a guard to meet this requirement shall result in nonpayment by City to Contractor for such guard's services. Contractor shall also be required to immediately provide a replacement guard.

NOTE: WPCP reserves the right, at its sole discretion, to refuse the services of any particular guard. In such cases, Contractor shall immediately remove said guard from the WPCP and provide a replacement guard.

6. EMERGENCY AND/OR ADDITIONAL SECURITY COVERAGE:

6.1 As security demands dictate, additional Contractor employees may be required by WPCP on short notice and for various lengths of time. The Contractor shall have available for immediate assignment to WPCP supplemental personnel sufficient to cover all regularly assigned posts and other occasional post additions.

7. CITY/WPCP FURNISHED ITEMS:

7.1 WPCP will provide the following;

7.1.1 Gate controls, communications equipment, CCTV monitors, alarm systems and fire/safety equipment.

7.1.2 Telephones deemed necessary by WPCP for conduct of official business under this contract.

7.1.3 Utilities necessary for the performance of this contract.

7.2 Postposition building space and any furnishings deemed necessary by WPCP.

7.3 Hand held radios for communication between post officers and WPCP-City personnel.

7.3.1 CONTRACTOR FURNISHED ITEMS:

7.3.1.1 Security Officer uniforms & guard equipment (flashlight, emergency equipment, etc.)

7.3.1.2 Marked patrol vehicle equipped with light bar and high-powered spot light & fuel for Roving Patrol Guards.

7.4 All operational forms, reports and office supplies required to fulfill this contract.

**EXHIBIT B
COMPENSATION**

COMPENSATION

1.1 City shall compensate Contractor on a monthly basis for Security Services designated in Exhibit A, "Scope of Work".

CITY DEPARTMENT	HOURLY RATE	MONTHLY CHARGE
Water Pollution Control Plant (WPCP)	\$17.96 – Guard \$20.56 Patrol Guard & Vehicle	\$14,509.92
TOTAL ANNUAL CHARGES (2/01/10 – 3/31/11)		\$203,138.88
AMOUNT AVAILABLE FOR ADDITIONAL/SUPPLEMENTAL ASSIGNMENTS		\$22,000.12
TOTAL MAXIMUM AMOUNT OF COMPENSATION FOR INITIAL TERM		\$225,139.00

1.2 The following rates are for additional/supplemental work assignments authorized by WPCP project manager.

JOB CLASSIFICATION	STRAIGHT TIME HOURLY RATE	OVERTIME HOURLY RATE	HOLIDAY HOURLY RATE
Patrol Guard	\$20.56	\$27.38	\$27.38
Guard	\$17.96	\$24.78	\$24.78

1.3 All Payments are based upon City's acceptance of Contractor's performance of security services as evidenced by successful completion of the deliverable for those services. City shall have no obligation to pay unless Contractor has successfully completed and City has approved the services for which payment is due.

1.4 The maximum amount of compensation to be paid to Contractor for the Initial Term, including both payment for monthly security services and reimbursable expenses, shall not exceed Two Hundred Twenty Five Thousand dollars (\$225,139.00). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to City.

EXHIBIT B
COMPENSATION

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.

2.1 In the event City exercises its right to make changes pursuant to Exhibit A, Contractor shall submit a proposed change in the monthly charge based upon the same criteria submitted in the Contractor's proposal. WPCP shall review the proposed changes and must approve the new monthly rate schedule.

3. PAYMENT TO CONTRACTOR

Except as otherwise provided in this Agreement, City shall make monthly payments within ten (10) business 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. OPTION PERIOD ADJUSTMENT TO COMPENSATION RATES - CPI ADJUSTMENT

4.1 The Contractor's compensation rates shall be subject to adjustment on each anniversary of the performance period. The adjustment shall be calculated as follows:

4.1.1 The base for computing the adjustment shall be a percentage of increase "up to" the Consumer Price Index for Urban Wage Earners and Clerical Workers (with a base year of 1982-1984=100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor Statistics ("Index"), which is published most immediately preceding the commencement of the applicable extension term ("Extension Index"), shall be compared with the Index published most immediately preceding the commencement date of the then expiring term ("Beginning Index"). If the Extension Index published has increased over or decreased under the Beginning Index, the monthly compensation rates for the extension term shall be set by multiplying the then expiring term's monthly compensation rate by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. Upon adjustment of the monthly compensation rates, the parties shall immediately execute a written amendment to the Agreement setting forth the new monthly compensation rates, and attach the same as a revised exhibit to the Agreement.

4.1.2 If the Index is changed so that the base year differs from that used as of the month immediately preceding the Agreement's commencement date, the Index shall be converted in accordance with the conversion factor published by the United States

EXHIBIT B
COMPENSATION

Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of the Agreement such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

4.1.3 The preceding provision of this Section notwithstanding, the adjustment of any monthly compensation rate for any extension term shall not exceed 7% of the previous term's monthly compensation rate.

4.1.4 For the purpose of illustration only, if a Beginning Index is 115 and the Extension Index is 124, the monthly compensation rate to be paid during the extension term shall be \$ X (the then expiring term's monthly compensation rate) multiplied by 124/115.

**EXHIBIT C
INSURANCE**

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 automobile; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Crime Coverage

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: \$5,000,000 combined single limit 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

**EXHIBIT C
INSURANCE**

4. Crime Coverage

A Combination Crime policy with minimum limits not less than \$1,000,000 for

Form A: Employee Dishonesty

Form B: Forgery or Alteration

Form C: Theft, Disappearance, Destruction Inside/Outside Premises

Form D: Robbery and Safe Burglary Inside/Outside Premises

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. Insured. The City of San Jose, 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. Contribution Not Required. 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. Provisions Regarding the Insured's Duties After Accident or Loss. 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. 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.

**EXHIBIT C
INSURANCE**

- e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors.
- 2. Workers' Compensation and Employers Liability Coverage shall contain a waiver of subrogation in favor of the City, its officials, 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's Risk Manager, except that ten (10) days prior written notice shall apply in the event of cancellation for non-payment 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 mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

CITY OF SAN JOSE- Human Resources
Risk Management Division
200 East Santa Clara St, 2nd Floor Wing
San Jose, 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 D



LABOR COMPLIANCE ADDENDUM

AGREEMENT TITLE:	Agreement for Security Services at the Water Pollution Control Plant
CONTRACTOR Name and Address:	First Alarm Security & Patrol, Inc. 1111 Estates Dr. Aptos, CA 95003

By executing this Addendum, Contractor acknowledges and agrees that the work performed pursuant to the above referenced Agreement or Service Order, including all renewals and extensions, 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. Upon award the Department of Finance 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.

EXHIBIT D

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**

EXHIBIT D

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:** 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 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.**

- 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.

City

Contractor

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

By _____
Name: Cal Horton
Title: President
Date: 1/14/10

EXHIBIT D



City of San José Living Wage Determination

CONTRACT SCOPE: SECURITY SERVICES @ WATER POLLUTION CONTROL PLANT

1. Contracts governed by both the City of San Jose's Living Wage Policy (Resolution No. 68900) and its Prevailing Wage Policy (Resolution No. 61144) are subject to the Policy with the higher wage requirements.

2. LIVING WAGE RATES

Classification	Living Wage Rate With Health Benefits	Living Wage Rate Without Health Benefits
Security Guard	\$12.83	\$14.08

NOTE: The full amount of the total hourly rate must be paid directly to the worker, unless the Contractor is making payments to a medical benefit plan.

Hours and Days of Work

(Industrial Welfare Commission Order No. 16-2001)

City of San Jose agreements subject to City prevailing wage or living wage policies will use the same guidelines for all covered classifications/employees.

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.

WAGE RATES WILL BE SUBJECT TO ANNUAL ADJUSTMENT ON THE ANNIVERSARY DATE OF THE CONTRACT.