



AGREEMENT FOR CROSSING GUARD SERVICES

This AGREEMENT FOR CROSSING GUARD SERVICES (the “Agreement”) is effective as of July 1, 2020 and is between the CITY OF WAUKESHA (hereinafter called the “City”) and ALL CITY MANAGEMENT SERVICES, INC., a California corporation (hereinafter called the “Contractor”).

WITNESSETH

The parties hereto have mutually covenanted and agreed as follows:

1. This Agreement is for a term which commences on or about July 1, 2020 and ends on June 30, 2021 and for such term thereafter as the parties may agree upon.
2. 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.
3. The City’s representative in dealing with the Contractor shall be designated by the Waukesha Police Department.
4. 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 the terms of this Agreement. Contractor shall ensure that Crossing Guards perform their duties according to the following standards:
 - a. Crossing Guards shall be neat, clean, wearing their uniforms, and be equipped with a hand-held stop sign.
 - b. Crossing Guards shall be courteous and polite to students and the general public.
 - c. Crossing Guards shall be sober, well-rested and alert, and shall not have any amount of intoxicating substances in their blood.
 - d. Crossing Guards shall be at their designated locations at all times, and shall make every effort to not allow students to cross streets without the Crossing Guard controlling the intersection and stopping traffic.
 - e. Crossing Guards shall be at least 18 years of age and display good judgment and responsibility.
 - f. Crossing Guards shall not use cell phones or other distracting devices while on duty.
 - g. Crossing Guards shall at all times act in the highest interest of the safety of students.
 - h. Crossing Guards shall comply with all directions for traffic control and pedestrian safety given by the Waukesha Police Department.
5. Contractor shall not, in the performance of its services under this Agreement, employ, or use the volunteer services of, any persons who have been convicted of child molestation or sexual assault

against a minor. Contractor shall deliver all records used in checking the backgrounds of its employees to City upon request as allowed by State and Federal law.

6. Contractor shall not, in the performance of its services under this Agreement, employ or use the volunteer services of, any persons who have been convicted of possession of controlled substances. Provider shall deliver all records used in checking the backgrounds of its employees to City upon request as allowed by State and Federal law.
7. 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.
8. In the performance of its duties the Contractor and all employees of the Contractor shall conduct themselves in accordance with the conditions of this Agreement and all applicable laws of the state in which the Services are to be performed.
9. Persons provided by the Contractor as Crossing Guards shall be trained in all applicable laws of the state in which the Services are to be performed pertaining to general pedestrian safety in school crossing areas, and in handling traffic, crossing children safely, appearance, emergency conditions including injuries and motor vehicle accidents, courtesy, dealing with children, dealing with motorists, dealing with the general public, and proper wearing of the uniform, all at the Contractor's sole expense.
10. Crossing Guard Services (the "Services") shall be provided by the Contractor at the locations designated by the City on all days in which school is in session in the area under City's jurisdiction. The Contractor also agrees to maintain communication with the designated schools to maintain proper scheduling.
11. The Contractor shall provide all Crossing Guards with apparel by which they are readily visible and easily recognized as Crossing Guards, including a DOT/MUTCD ANSI II compliant/approved safety vest or coat with reflective stripes. 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.
12. The Contractor shall at all times provide workers' compensation insurance covering its employees and shall provide and maintain liability insurance for Crossing Guard activities. The Contractor will provide to the City a Certificate of Insurance naming the City and its officials, officers and employees as additional insureds. Such insurance shall include commercial general liability with a combined single limit of not less than \$1,000,000.00 per occurrence and \$9,000,000 aggregate for property damage and bodily injury. Such insurance shall be primary with respect to any insurance maintained by the City and shall not call on the City's insurance contributions. Such insurance shall be endorsed for contractual liability and personal injury and shall include the City, its officers, agents and interest of the City. Such insurance shall not be canceled, reduced in coverage or limits or non-renewed except after thirty (30) days written notice has been given to the City.
13. Contractor agrees to defend, indemnify and hold harmless the City, its officers, employees, agents and representatives, from and against any and all actions, claims for damages to persons or property, penalties, obligations or liabilities (each a "Claim" and collectively, the "Claims") that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization to the extent they arise out of the negligent acts or omissions, or willful misconduct, of Contractor, its agents, employees, subcontractors, representatives or invitees.

- 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.
 - d. In the event that a court determines that liability for any Claim was caused or contributed to by the negligent act or omission or the willful misconduct of City, liability will be apportioned between Contractor and City based upon the parties' respective degrees of culpability, as determined by the court, and Contractor's duty to indemnify City will be limited accordingly.
 - e. Notwithstanding anything to the contrary contained herein, Contractor's indemnification obligation to City for Claims under this Agreement will be limited to the maximum combined aggregate of Contractor's general liability and umbrella insurance policies in the amount of Nine Million Dollars (\$9,000,000.00).
 - f. Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable.
14. Either party shall have the right to terminate this Agreement by giving sixty (60) days written notice to the other party.
 15. The Contractor shall not have the right to assign this Agreement to any other person or entity except with the prior written consent of the City.
 16. The City agrees to pay the Contractor for the Services rendered pursuant to this Agreement the sum of Twenty-two Dollars and One Cent (**\$22.01**) per shift (not to exceed 0.75 hours per shift), per Crossing Guard during the term. Based on a minimum of nineteen (19) sites and upon a projected 6,840 shifts of service, the cost shall not exceed One Hundred Fifty Thousand Five Hundred Forty-Eight Dollars and Forty Cents (\$150,548.40) per year, unless Contractor fails to perform services as required by this Agreement.
 17. Payment is due within thirty (30) days of receipt of Contractor's properly-prepared invoice.
 18. Contractor may request a price increase during the term as a result of any legally-mandated increases in wages or benefits imposed in the state or municipality in which the Services are to be performed and to which Contractor's employees would be subject. Contractor shall provide City with 60 days-notice of its request to increase pricing. City may terminate this contract upon the receipt of such notice, by written notice of termination to Contractor, delivered within 30 days of receipt of Contractor's notice of price increase.
 19. The City shall have an option to renew this Agreement. In the event this Agreement is extended beyond the end of the term set forth above, the compensation and terms for the Services shall be established by mutual consent of both parties.

20. This Agreement constitutes the complete and exclusive statement of the agreement among the parties with respect to the subject matter hereof and supersedes all prior written or oral statements among the parties, including any prior statements, warranties, or representations. This Agreement is binding upon and will inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors, and assigns. Each party hereto agrees that this Agreement will be governed by the law of the state in which the Services are to be performed, without regard to its conflicts of law provisions. Any amendments, modifications, or alterations to this Agreement must be in writing and signed by all parties. There will be no presumption against any party on the ground that such party was responsible for preparing this Agreement or any part of it. Each provision of this Agreement is severable from the other provisions. If any provision of this Agreement is declared invalid or contrary to existing law, the inoperability of that provision will have no effect on the remaining provisions of the Agreement which will continue in full force and effect.
21. The individuals executing this Agreement for the parties warrant and represent that they are authorized to do so by their respective governing bodies, and that their signatures will bind the parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year written below.

City of Waukesha

All City Management Services, Inc.

By Shawn N. Reilly, Mayor

Date: _____

By D. Farwell, Corporate Secretary

Date: _____

Attested by Gina. L. Kozlik, City Clerk-Treasurer

Diane M. Gard, Interim Finance Director