

AGREEMENT

THIS AMENDED AND RESTATED AGREEMENT ("Agreement") is made and entered into this 20th day of August, 2019, by and between the County of Fresno, a political subdivision of the State of California ("COUNTY"), and Silicon Valley Fire, Inc., a California corporation, whose address is 117 Bernal Rd., #70-341, San Jose, CA, ("CONTRACTOR"). COUNTY and CONTRACTOR may be referred to as a "Party" or collectively as "Parties" to this Agreement.

WITNESSETH

WHEREAS, COUNTY and CONTRACTOR entered into Purchasing Agreement No. P-17-013-T (the "Purchasing Agreement"), for a total maximum compensation amount of \$80,000, effective January 26, 2017, for a three-year term, with the option for two (2) additional one-year extensions, for fire extinguishers, inspections, maintenance, and training services;

WHEREAS, on July 9, 2019, COUNTY and CONTRACTOR entered into a First Amendment to the Purchasing Agreement ("First Amendment"), to increase the total maximum compensation payable under the Original Agreement by \$19,000, for a total maximum compensation amount of \$99,000;

WHEREAS, the Purchasing Agreement, together with the First Amendment, may be referred to hereafter as, "the Purchasing Agreement, as Amended";

WHEREAS, the Parties desire to enter into an agreement which would amend, restate and supersede the Purchasing Agreement, as Amended, in order to fulfill an increased demand for fire extinguishers, inspections, and training services; and

WHEREAS, this Agreement shall be retroactive to January 26, 2017, and shall replace, restate, and supersede the Purchasing Agreement, as Amended, in its entirety.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, the Parties agree that the Purchasing Agreement, as Amended, shall be amended, superseded, and replaced in its entirety by this Agreement, and further agree as follows:

SECTION 1. -- SERVICES

A. CONTRACTOR's scope of work and pricing, attached as Attachment B, is incorporated by

reference, and is made a part of this Agreement.

- B. CONTRACTOR shall comply with all applicable Federal, State, County, and City regulations regarding wages, hours, and working conditions.
- C. COUNTY shall appoint the Director of Internal Services/Chief Information Officer (CIO), or his designee, as COUNTY's Contract Administrator, with full authority to deal with CONTRACTOR in all matters concerning this Agreement.
- D. Upon execution of this Agreement, COUNTY's Contract Administrator shall designate County representative(s) to represent the COUNTY, who will work with CONTRACTOR to carry out CONTRACTOR's obligations under this Agreement.
- E. SECURITY – Failure to fully comply with the security requirements as set forth in this Section 1(F) will be considered a breach of contract, and may result in termination of this Agreement for default.

1. CONTRACTOR acknowledges that the Juvenile Justice Campus (JJC) and the Fresno Sheriff – Coroner's Office (FSCO) Jail Detention Facilities are "no-hostage facilities". CONTRACTOR(S) shall ensure that its employees and any sub-contractors working in the JJC and associated facilities agree to abide by COUNTY'S rules for a no-hostage facility, as set forth in Attachments C and D, which are attached and incorporated by this reference. COUNTY may change these policies and procedures at any time, without any prior notice to CONTRACTOR. CONTRACTOR shall plan and execute all work in such a manner as to prevent a security breach of the JJC and FSCO detention facilities, or any other COUNTY secured facility.
2. CONTRACTOR shall comply with all Prison Rape Elimination Act (PREA) standards for juvenile correctional facilities, as set forth in Attachment E, which is attached and incorporated by this reference. Trainings will be provided by Probation, as necessary, at no charge to CONTRACTOR. CONTRACTOR shall comply with all Probation Department Policies and Procedures. In the event of a dispute involving COUNTY staff and a CONTRACTOR employee or subcontractor,

1 the on-duty Facility Administrator will have the final decision. Information on the
2 Prison Rape Elimination Act can be found at: <http://www.prearesourcecenter.org/>.

- 3 3. CONTRACTOR may be required to comply with "Background Investigations and
4 Identification Badges," as set forth in Attachment F, which is attached and
5 incorporated by this reference, for work at specific facilities, such as detention
6 facilities. The decision to require or not require a background check and
7 investigation for a specific service will be at the sole discretion of Facility Services,
8 and will be relayed to CONTRACTOR when needed.

- 9 F. In accordance with Labor Code section 1770, et seq., the Director of the Department of
10 Industrial Relations of the State of California has determined the general prevailing wages
11 rates and employer payments for health and welfare pension, vacation, travel time and
12 subsistence pay as provided for in Section 1773.1, apprenticeship or other training
13 programs authorized by Section 3093, and similar purposes applicable to the work to be
14 done.

15 Information pertaining to applicable Prevailing Wage Rates may be found on the
16 website for the State of California – Department of Industrial Relations:

17 <http://www.dir.ca.gov/oprl/PWD/index.htm>. Information pertaining to applicable prevailing
18 wage rates for apprentices may be found on the website for the State of California –
19 Department of Industrial Relations:

20 <http://www.dir.ca.gov/oprl/pwappwage/PWAppWageStart.asp>.

21 It shall be mandatory upon the CONTRACTOR and upon any subcontractor to pay
22 not less than the prevailing wage rates, including overtime and holiday rates, to all workers,
23 laborers, or mechanics employed on this public work project, including those workers
24 employed as apprentices. Further, CONTRACTOR and each subcontractor shall comply
25 with Labor Code sections 1777.5 and 1777.6 concerning the employment of apprentices. A
26 copy of the above-mentioned prevailing wage rates shall be posted by the CONTRACTOR
27 at the job site where it will be available to any interested party.
28

1 CONTRACTOR shall comply with Labor Code section 1775, and shall forfeit as a
2 penalty to COUNTY Two Hundred Dollars (\$200.00) for each calendar day or portions
3 thereof, for each worker paid less than the prevailing wage rates for the work or craft in
4 which the worker is employed for any work done under this project by CONTRACTOR or
5 by any subcontractor under CONTRACTOR in violation of Labor Code section 1770, et
6 seq. In addition to the penalty, the difference between the prevailing wage rates and
7 amount paid to each worker for each calendar day or portion thereof for which each worker
8 was paid less than the prevailing wage rate shall be paid to each worker by the
9 CONTRACTOR or subcontractor.

10 CONTRACTOR and subcontractor shall keep an accurate record showing the
11 name, address, social security number, work classification, straight time and overtime
12 hours worked each day and week, and the actual per diem wages paid to each
13 journeyman, apprentice, worker, or other employee employed by him or her in connection
14 with this public work project. In accordance with Labor Code section 1776, each payroll
15 record shall be certified and verified by a written declaration under penalty of perjury stating
16 that the information within the payroll record is true and correct and that the
17 CONTRACTOR or subcontractor has complied with the requirements of Labor Code
18 sections 1771, 1811 and 1815 for any work performed by its employees on this public work
19 project. These records shall be open at all reasonable hours to inspection by the COUNTY,
20 its officers and agents, and to the representatives of the State of California – Department of
21 Industrial Relations, including but not limited to the Division of Labor Standards
22 Enforcement.

23 **SECTION 2. -- TERM**

24 The term of this Agreement shall be retroactive to the original commencement date of the
25 Purchasing Agreement, and shall commence on January 26, 2017 ("Effective Date"), and shall
26 continue through and including January 25, 2020 ("Term"). This Agreement shall automatically
27 renew for two (2) one (1) year terms upon the same terms and conditions herein set forth, unless
28

1 written notice of non-renewal is given by COUNTY, no later than thirty (30) days prior to the close
2 of the then-current agreement term. COUNTY's CIO or his or her designee, is authorized to
3 execute such notice of non-renewal on behalf of COUNTY.

4 **SECTION 3. -- COMPENSATION**

5 COUNTY shall only provide compensation and payment to CONTRACTOR for work
6 authorized by the COUNTY. CONTRACTOR agrees that this Agreement does not constitute a
7 guarantee or promise that CONTRACTOR shall provide any certain amount of work or services
8 to COUNTY under this Agreement. COUNTY agrees to pay CONTRACTOR, and
9 CONTRACTOR agrees to receive compensation in accordance with the rates provided in
10 Attachment B, which is attached and incorporated by this reference.

11 In no event shall the total compensation paid to CONTRACTOR under this Agreement
12 exceed one hundred sixty thousand (\$160,000) dollars for the entire potential term. All amounts
13 previously paid to CONTRACTOR under the Purchasing Agreement, as Amended, are included
14 in this total not to exceed amount. It is understood that all expenses incidental to
15 CONTRACTOR's performance of services under this Agreement shall be borne by
16 CONTRACTOR.

17 **SECTION 4. -- INVOICING**

18 CONTRACTOR shall submit invoices in accordance with the rates and charges agreed upon
19 for the services provided to the COUNTY by CONTRACTOR during the previous monthly billing
20 period on the first day of the month. CONTRACTOR shall submit itemized invoices in duplicate to
21 the requesting County department. Each invoice shall reference this Agreement number, the
22 responsible COUNTY department, the date and name of the facility where the services were
23 performed, and shall include a clear breakdown of services to the user department within the
24 County of Fresno. Payment addresses are noted in Section 12, "Notices", herein. COUNTY will
25 pay CONTRACTOR within forty-five (45) days of receipt of an approved invoice.

26 **SECTION 5. -- INDEPENDENT CONTRACTOR**

27
28

1 In performance of the work, duties, and obligations assumed by CONTRACTOR under
2 this Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all
3 of CONTRACTOR's officers, agents, subcontractors, and employees shall at all times be acting
4 and performing as independent contractors, and shall act in an independent capacity and not as
5 an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY.
6 Furthermore, COUNTY shall have no right to control or supervise or direct the manner or
7 method by which CONTRACTORS shall perform their work and function. However,
8 CONTRACTOR's methods must be compatible with COUNTY's standards, and must result in
9 satisfactory and timely completion of the work assigned, and the quality and quantity of work
10 produced must be acceptable to the COUNTY. COUNTY retains the right to verify that
11 CONTRACTOR is performing its obligations in accordance with this Agreement's terms and
12 conditions. CONTRACTOR and COUNTY shall comply with all applicable provisions of law and
13 the rules and regulations, if any, of governmental authorities having jurisdiction over matters
14 covered by this Agreement.

15 Because of its status as an independent contractor, CONTRACTOR shall have
16 absolutely no right to employment rights and benefits available to COUNTY employees.
17 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, their
18 employees all legally required employee benefits. In addition, CONTRACTOR shall be solely
19 responsible, and shall hold the COUNTY harmless from all matters relating to payment of
20 CONTRACTORS' employees, including compliance with Social Security withholding, and all
21 other regulations governing such matters. It is acknowledged that during the term of this
22 Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to
23 this Agreement.

24 **SECTION 6. -- TERMINATION OF AGREEMENT**

25 This Agreement may be terminated for the following reasons:

- 26 A. Non-Allocation of Funds - The terms of this Agreement and any extensions, and the
27 services to be provided, are contingent on the approval of funds by the appropriating
28 government agency. If sufficient funds are not allocated, the services provided may be

1 modified, or this Agreement terminated at any time without penalty by giving
2 CONTRACTOR thirty (30) days advance written notice.

3 B. Breach of Contract - COUNTY may immediately suspend or terminate this Agreement in
4 whole or in part, where in the determination of the COUNTY there is:

- 5 1. An illegal or improper use of funds;
- 6 2. A failure to comply with any term of this Agreement;
- 7 3. A substantially incorrect or incomplete report submitted to the COUNTY;
- 8 or
- 9 4. Improperly performed services.

10 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of
11 any breach of this Agreement or any default which may then exist on the part of the
12 CONTRACTOR. Such payment shall not impair or prejudice any remedy to the
13 COUNTY with respect to the breach or default. COUNTY shall have the right to demand
14 of the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the
15 CONTRACTOR under this Agreement, which in the judgment of the COUNTY were not
16 expended in accordance with the terms of this Agreement. CONTRACTOR shall
17 promptly refund any such funds upon demand.

18 C. Without Cause - Under circumstances other than those set forth above, this Agreement
19 may be terminated by either Party by giving thirty (30) days advance written notice of an
20 intention to terminate. In the event of such termination, CONTRACTOR shall be paid for
21 satisfactory services or supplies provided up until the date of termination. County's CIO
22 or his or her designee, is authorized to execute such non-renewal on behalf of COUNTY.

23 **SECTION 7. -- HOLD HARMLESS AND INDEMNIFICATION**

24 CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY's request
25 defend the COUNTY, its officers, agents and employees, from any and all costs and expenses
26 (including attorney's fees and costs), claims, suits, liabilities, losses and damages occurring or
27 resulting to COUNTY in connection with the performance, or failure to perform, by
28 CONTRACTOR, its officers, agents or employees, and from any and all costs and expenses

(including attorney's fees and costs), damages, liabilities, claims and losses occurring or resulting to any person, firm or corporation who may be injured or damaged by the performance, or failure to perform, of CONTRACTOR, its officers, agents, subcontractors, assigns, or employees. The provisions of this Section 7 shall survive the termination of this Agreement.

SECTION 8. -- INSURANCE

Without limiting COUNTY's right to obtain indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance policies throughout the term of this Agreement:

A. Commercial General Liability

Commercial General Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars (\$2,000,000). This policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed necessary because of the nature of this contract.

B. Automobile Liability

Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and for property damage. Coverage should include owned and non-owned vehicles used in connection with this Agreement.

C. Professional Liability

If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, One Million Dollars (\$1,000,000.00) annual aggregate.

D. Worker's Compensation

A policy of Worker's Compensation insurance as may be required by the California Labor Code.

1 E. Additional Requirements Relating to Insurance

2 CONTRACTOR shall obtain endorsements to the Commercial General Liability
3 insurance naming the County of Fresno, its officers, agents, and employees, individually and
4 collectively, as additional insured, but only insofar as the operations under this Agreement are
5 concerned. Such coverage for additional insured shall apply as primary insurance and any other
6 insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees shall
7 be excess only and not contributing with insurance provided under CONTRACTOR's policies
8 herein. This insurance shall not be cancelled or changed without a minimum of thirty (30) days
9 advance written notice given to COUNTY.

10 Contractor hereby waives its right to recover from County, its officers, agents, and
11 employees any amounts paid by the policy of worker's compensation insurance required by this
12 Agreement. Contractor is solely responsible to obtain any endorsement to such policy that may
13 be necessary to accomplish such waiver of subrogation, but Contractor's waiver of subrogation
14 under this paragraph is effective whether or not Contractor obtains such an endorsement.

15 Within thirty (30) days from the date CONTRACTOR signs and executes this
16 Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated
17 above for all of the foregoing policies, as required herein to: County of Fresno, Facility Services,
18 4590 E. Kings Canyon, Fresno, CA 93702, stating that such insurance coverages have been
19 obtained and are in full force; that the County of Fresno, its officers, agents and employees will
20 not be responsible for any premiums on the policies; that for such worker's compensation
21 insurance the CONTRACTOR has waived its right to recover from the COUNTY, its officers,
22 agents, and employees any amounts paid under the insurance policy and that waiver does not
23 invalidate the insurance policy; that such Commercial General Liability insurance names the
24 County of Fresno, its officers, agents and employees, individually and collectively, as additional
25 insured, but only insofar as the operations under this Agreement are concerned; that such
26 coverage for additional insured shall apply as primary insurance and any other insurance, or
27 self-insurance, maintained by COUNTY, its officers, agents and employees, shall be excess
28 only and not contributing with insurance provided under CONTRACTOR's policies; and that this

insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to COUNTY.

If CONTRACTOR fails to keep in effect at all times all required insurance coverages, COUNTY may, in addition to other remedies it may have, suspend or terminate this Agreement.

All policies shall be issued by admitted insurers licensed to do business in the State of California, and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A FSC VII or better.

SECTION 9. -- MODIFICATION

This Agreement may be modified from time to time by the written consent of all the parties without, in any way, affecting the remainder.

SECTION 10. -- NON - ASSIGNMENT

CONTRACTOR shall not assign, transfer or subcontract this Agreement or any of its respective rights or duties hereunder, without the prior written consent of the COUNTY.

SECTION 11. -- AUDITS AND INSPECTIONS

CONTRACTOR shall at any time during business hours, and as often as the COUNTY may deem necessary, make available to the COUNTY for examination all of its records and data with respect to the matters covered by this Agreement. CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of such records and data necessary to ensure CONTRACTORS' compliance with the terms of this Agreement. If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the California State Auditor for a period of three (3) years after final payment under contract (Government Code Section 8546.7).

SECTION 12. -- NOTICES

The persons and their addresses having authority to give and receive written notices under this Agreement include the following:

<u>COUNTY OF FRESNO</u>	<u>CONTRACTOR</u>
Director of Internal Services/ Chief Information Officer	Silicon Valley Fire, Inc. 117 Bernal Rd., 70-341

1 333 W. Pontiac Way, Clovis, CA 93612

San Jose, CA 95119

2 All notices between the COUNTY and the CONTRACTOR provided for or permitted under
3 this Agreement must be in writing and delivered either by personal service, by first-class United
4 States mail, by an overnight commercial courier service, or by telephonic facsimile transmission.
5 A notice delivered by personal service is effective upon service to the recipient. A notice delivered
6 by first-class United States mail is effective three COUNTY business days after deposit in the
7 United States mail, postage prepaid, addressed to the recipient. A notice delivered by an
8 overnight commercial courier service is effective one COUNTY business day after deposit with the
9 overnight commercial courier service, delivery fees prepaid, with delivery instructions given for
10 next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile is
11 effective when transmission to the recipient is completed (but, if such transmission is completed
12 outside of COUNTY business hours, then such delivery shall be deemed to be effective at the
13 next beginning of a COUNTY business day), provided that the sender maintains a machine record
14 of the completed transmission. For all claims arising out of or related to this Agreement, nothing in
15 this section establishes, waives, or modifies any claims presentation requirements or procedures
16 provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of
17 the Government Code, beginning with section 810).

18 **SECTION 13. – LEGAL AUTHORITY**

19 The County's CIO reserves the right to at any time during the term of this Agreement to add
20 and remove building locations from the facilities listed in Attachment B.

21 Each individual executing this Agreement on behalf of CONTRACTOR hereby
22 covenants, warrants, and represents: (i) that he or she is duly authorized to execute or attest
23 and deliver this Agreement on behalf of such entity, e.g. (without limitation), corporation, limited
24 liability company, limited partnership, partnership or sole proprietorship, in accordance with all
25 applicable formalities and under California law; (ii) that this Agreement is binding on such entity;
26 and (iii) that CONTRACTOR (as applicable) is a duly organized and legally existing corporation,
27 limited liability company, limited partnership, partnership or sole proprietorship in good standing
28 in the State of California.

SECTION 14. -- GOVERNING LAW

Venue for any action arising out of or relating to this Agreement shall only be in Fresno County, California. The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

SECTION 15. -- DISCLOSURE OF SELF-DEALING TRANSACTIONS

This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit or non-profit corporation) or if during the term of this Agreement, the CONTRACTOR changes its status to operate as a corporation.

Members of CONTRACTOR's Board of Directors shall disclose any self-dealing transactions that they are a party to while CONTRACTOR is providing goods or performing services under this Agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party and in which one or more of its directors has a material financial interest. Members of CONTRACTOR's Board of Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a *Self-Dealing Transaction Disclosure Form* (Attachment A) and submitting it to the COUNTY prior to commencing with the self-dealing transaction or immediately thereafter.

SECTION 16. -- ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between CONTRACTOR and COUNTY with respect to the subject matter hereof, and supersedes all previous agreements, agreement negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever, including, without limitation, the Purchasing Agreement as Amended, which Purchasing Agreement shall be deemed null and void and of no further force and effect whatsoever following the Effective Date of this Agreement.

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the
2 Effective Date.

3
4 **CONTRACTOR**

5 **SILICON VALLEY FIRE, INC.**

6 
7 _____
8 Chuck Gardner, President

COUNTY OF FRESNO

9
10
11 
12 _____
13 Nathan Magsig, Chairman of the Board of
14 Supervisors of the County of Fresno

15
16
17 **ATTEST:**

18 Bernice E. Seidel
19 Clerk of the Board of Supervisors
20 County of Fresno, State of California

21 By:

22 
23 _____
24 Deputy

25 FOR ACCOUNTING USE ONLY:

26 ORG No.: 8935

27 Account No./Fund: Various
28