

AGREEMENT

This Agreement (Agreement) is entered into this 13TH day of FEB, 2023, by and between Advanced Combat Evolutions-sole proprietor, (Contractor) and the City of Fresno, a California municipal corporation (City).

WHEREAS, the Police Department of the City provides a 1-week California Peace Officers Standards and Training (CA POST) in approved Basic Sniper class certification; and

WHEREAS, the increased need and growth of such a Basic Sniper course has made it necessary for the City to obtain the services from Advanced Combat Evolutions, to administer all basic sniper courses as a certified instructor.

Therefore, the parties do hereby agree as follows:

1. CONTRACTOR RESPONSIBILITIES:

- a. Contractor shall provide the services of teaching a CA POST certified Basic Sniper course at the Regional Training Center (RTC).
- b. Contractor may teach up to five times per year.

2. EFFECTIVE TERM AND DATE:

It is the intent of the parties that this Agreement be effective as of July 1, 2022 and shall continue in full force and effect through June 30, 2025, as to all the terms and conditions of the Agreement. At the conclusion of the three-year term, the City will have the option to renew this Agreement for two one-year terms. Each annual term is reflected as follows:

Year 1:	July 1, 2022 through June 30, 2023
Year 2:	July 1, 2023 through June 30, 2024
Year 3:	July 1, 2024 through June 30, 2025
Year 4:	July 1, 2025 through June 30, 2026 (If option to renew is exercised by City)
Year 5:	July 1, 2026 through June 30, 2027 (If option to renew is exercised by City)

3. COMPENSATION:

For the aforementioned services, the City agrees to pay Contractor eighty-six percent (86%) of the received tuition per course for three years. After the initial three-year term, the compensation amount for the additional one-year terms (if exercised by the City) will remain in effect until such new fees are negotiated. The City will receive and retain all subventions collected through the existing agreement with State Center Community College District. Payment by the City shall be made within 30 days after each course.

4. INDEPENDENT CONTRACTORS:

In performance of the work, duties and obligation assumed by Contractor under this Agreement, it is mutually understood and agreed that Contractor, including any and all of Contractor's officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of City. Furthermore, City shall have no right to control or supervise or direct the manner or method by which Contractor shall perform its work and function. However, City shall retain the right to administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions thereof. Contractor and City shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters subject thereof.

Because of its status as an independent contractor, Contractor shall have absolutely no right to employment rights and benefits available to City employees. Contractor shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, Contractor shall be solely and save City harmless from all matters relating to payment of Contractor's employees, including compliance with Social Security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, Contractor may be providing services to others unrelated to the City or to this Agreement.

5. INDEMNIFICATION:

To the furthest extent allowed by law, CONTRACTOR shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, CONTRACTOR or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this agreement), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. CONTRACTOR'S obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of CITY or any of its officers, officials, employees, agents or volunteers.

If CONTRACTOR should subcontract all or any portion of the work to be performed under this Agreement, CONTRACTOR shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

6. INSURANCE:

(a) Throughout the life of this Agreement, CONTRACTOR shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONTRACTOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONTRACTOR shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONTRACTOR of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONTRACTOR shall not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONTRACTOR, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-

owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance, or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to CONTRACTOR'S profession.

MINIMUM LIMITS OF INSURANCE

CONTRACTOR shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. COMMERCIAL GENERAL LIABILITY

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY

\$1,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. **EMPLOYER'S LIABILITY:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. **PROFESSIONAL LIABILITY** (Errors and Omissions):

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event CONTRACTOR purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

CONTRACTOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONTRACTOR shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) CONTRACTOR shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. CONTRACTOR is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONTRACTOR shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONTRACTOR shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. CONTRACTOR shall establish additional insured status for the City and for all operations under the Commercial General Liability policy by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- (iv) The Commercial General and Automobile Liability insurance shall contain, or be endorsed to contain, that the CONTRACTORS' insurance shall be primary to and require no contribution from the City. The Commercial General insurance policy is required to include primary and non-contributory coverage in favor of the City for both the ongoing and completed operations

coverage. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. If CONTRACTOR maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by CONTRACTOR.

- (v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- (vi) For any claims related to this Agreement, CONTRACTOR'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
- (vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.
- (viii) The Commercial General and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONTRACTOR.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONTRACTOR, CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to CITY for review.

5. These requirements shall survive expiration or termination of the Agreement.

VERIFICATION OF COVERAGE

CONTRACTOR shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONTRACTOR shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

SUBCONTRACTORS

If CONTRACTOR subcontracts any or all of the services to be performed under this Agreement, CONTRACTOR shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate side agreement with the City to provide required indemnification and insurance protection. Any required side agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no side agreement is required, CONTRACTOR shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein and CONTRACTOR shall ensure that CITY, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with CONTRACTOR, and CITY, prior to commencement of any work by the subcontractor.

7. NONDISCRIMINATION:

Contractor shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. During the performance of this Agreement, Contractor agrees as follows:

- a. Contractor will comply with all laws and regulations, as applicable. No person in the United States shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to

discrimination under any program or activity made possible by or resulting from this Agreement.

- b. Contractor will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Contractor shall take affirmative action to ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of the nondiscrimination clause.
- c. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

8. COMPLIANCE WITH LAW:

In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

9. WAIVER:

The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

10. INTERPRETATION:

The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement

be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

11. TERMINATION OF AGREEMENT:

- a. This Agreement may be terminated immediately by either party upon thirty (30) calendar days prior written notice should the other party fail substantially to observe, fulfill or perform any obligation, covenant, term or condition in accordance with this Agreement. A party will have failed substantially to observe, fulfill or perform any obligation, covenant, term or condition of this Agreement, if such failure is not cured within such thirty (30) calendar days prior written notice and this shall constitute a material default and breach of this Agreement.
- b. In the event either party terminates the Agreement pursuant to this section, such party may exercise any right, remedy (in law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law or proceed by appropriate court action to enforce the terms of the Agreement, or to recover direct, indirect, consequential or incidental damages for the breach of the Agreement.
- c. The City may terminate this Agreement without cause by giving thirty days written notice to Contractor.
- d. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

12. RECORDS:

1. Records of Contractor's expenses pertaining to its performance hereunder shall be kept on a generally recognized accounting basis. All records pertaining to Contractor's performance under this Agreement shall be maintained and made available in the City of Fresno to City or its authorized representative(s) upon request during regular business hours throughout the life of this Agreement and for a period of three (3) years after final payment and for any period required by law. In addition, all books, documents, papers, and records of Contractor pertaining to its performance hereunder shall be available in the City of Fresno to City or its authorized representative(s) for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This section shall survive expiration or termination of this Agreement.

13. NOTICES:

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

City
Paco Balderrama
Chief of Police
Fresno Police Department

2323 Mariposa Mall
Fresno, CA 93721

Contractor
Matt Alexander
Owner
Advanced Combat
Evolutions
P.O. Box 1266.
Fresno, CA 93715

Any and all notices between the City and Contractor provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal service, when deposited in the United States mail, postage prepaid, addressed to such party,

14. GOVERNING LAWS:

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement of interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

15. ATTORNEY'S FEES:

If either party is required to commence any proceeding or legal action to enforce any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

16. SEVERABILITY:

The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

17. EXTENT OF AGREEMENT:

This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and Contractor.

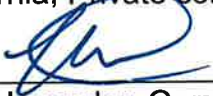
[SIGNATURES FOLLOW ON THE NEXT PAGE.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in Fresno, California on the day and year first above written.

CITY OF FRESNO, a California
Municipal Corporation

ADVANCED COMBAT EVOLUTIONS, a
California, Private company

Paco Balderrama, Chief of Police
Fresno Police Department



Matt Alexander, Owner
Advanced Combat Evolutions

Date: 2/13/2023

Date: _____

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

Pauline Brickey 3/15/23

Date
Deputy City Attorney

ATTEST:
TODD STERMER, CMC
City Clerk

Date
Deputy