

**CITY OF CATHEDRAL CITY
PROFESSIONAL SERVICES AGREEMENT
FOR ADMINISTRATION OF FALSE ALARMS PROGRAM**

THIS PROFESSIONAL SERVICES AGREEMENT (hereinafter "Agreement") is made and entered into, to be effective the _____ day of _____, by and between the CITY OF CATHEDRAL CITY ("City") and CITYSUPPORT, a limited liability company, dba CathedralCityAlarm.org ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and are hereinafter collectively referred to as the "Parties".

RECITALS

A. City has determined that there is a need to retain professional assistance in the administration of the City's false alarms programs, including the issuance and updating of permits, maintenance of records related to false alarms, and the collection of fees and fines as such fees and fines become due and payable to the City ("Project");

B. City desires to retain Consultant to provide such services; and

C. Consultant is qualified by virtue of experience, training, education, and expertise to provide these services and has agreed to provide such professional services as provided herein.

NOW, THEREFORE, in consideration of the promises and mutual benefits which will result to the Parties in carrying out the terms of this Agreement, it is mutually agreed as follows:

AGREEMENT

1. Scope of Work.

City agrees to retain Consultant, and Consultant agrees to perform the services set forth in the SCOPE OF SERVICES described in Exhibit "A" ("Services"). Consultant is authorized to act as an agent of the City in the administration of the City's False Alarm program, generally described in Chapter 8.28 of the Cathedral City Municipal Code. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that Consultant is a provider of first class work and professional services and Consultant possesses ample experience performing the work and services contemplated in this Agreement and in light of such status and experience, Consultant covenants that it shall follow the highest professional standards in performing the work and services required under this Agreement. For purposes of this Agreement, "highest professional standards" shall mean those standards of practice recognized as high quality among well-qualified and experienced professionals performing similar work under similar circumstances.

2. Term.

This Agreement shall commence upon the effective date of this Agreement and continue in full force and effect for three (3) years from the date of this Agreement, unless terminated earlier as provided in this Agreement. Upon the expiration of the initial term, this Agreement shall be automatically extended for successive three (3) year periods (each such three-year period herein referred to as "term"), unless Company or City delivers written notice to the other not less than ninety (90) days prior to the expiration of the applicable term.

3. Compensation.

A. Maximum Contract Sum.

For the Services rendered pursuant to this Agreement, Consultant shall only be compensated by City in accordance with the "Schedule of Compensation" attached to this agreement as Exhibit "B" except as may be provided pursuant to Section 6 herein. Compensation for necessary expenditures for reproduction costs, telephone expenses, transportation expenses must be approved in advance by the Contract Officer designated pursuant to Section 8.B, and will only be approved if such expenses are also specified in the Schedule of Compensation. Consultant acknowledges that it accepts the risk that the services identified in the Scope of Services may be more costly or time-consuming than Consultant anticipates, that Consultant shall not be entitled to additional compensation therefore, and the provisions of Section 6 shall not be applicable to Services identified in the Scope of Services.

4. Retention of Funds.

City may deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder ("Dispute Retention") or (ii) any amounts which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City ("City Loss Retention"), and (iii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligations under this Agreement ("Third Party Claims Retention"). In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

5. Performance Schedule

A. Time of Essence.

Time is of the essence in the performance of this Agreement.

B. Schedule of Performance.

Consultant shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all Services within the time period(s) as the Contract Officer may reasonably require.

C. Force Majeure.

The time period(s) for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant (financial inability excepted), including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, and/or acts of any governmental agency, including the City, if Consultant, within ten (10) days of the commencement of such delay, notifies the City Manager in writing of the causes of the delay. The City Manager shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City Manager such delay is justified. The City Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

6. Additional Services.

Contract Officer shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from such work. No such extra work may be undertaken unless a written order is first given by the City to the Consultant, incorporating therein any adjustment in (i) the Maximum Contract Sum, if any, and (ii) the time to perform this Agreement, if any, which adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to twenty-five percent (25%) of the Maximum Contract Sum or \$25,000, whichever is less, or in the time to perform of up to thirty (30) days may be approved by the Contract Officer designated pursuant to Section 8.B. as may be needed to perform any extra work. Any greater increases, occurring either separately or cumulatively, must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein, regardless of whether the time or

materials required to complete any work or service identified in the Scope of Services exceeds any time or material amounts or estimates provided therein.

7. Scope Changes.

In the event of a change in the scope of the Services, as requested by City under section 6 of this Agreement, the Parties hereto shall execute an addendum to this Agreement, setting forth, with particularity, the proposed changes to this Agreement, including but not limited to any additional or reduced compensation.

8. Coordination of Work.

A. Representative of Consultant.

Consultant shall from time to time designate as being the representatives of Consultant persons to act in its behalf with respect to the work specified herein and make all decisions in connection therewith.

It is expressly understood that the experience, knowledge, capability and reputation of any Consultant's Representative is paramount for City. Therefore, the Consultant's Representative shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the Services hereunder.

B. Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City, and is subject to change by the City Manager. It shall be the Consultant's responsibility to ensure that the Contract Officer is kept informed of the progress of the performance of the Services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

9. Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the Services under this Agreement. If the Services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of Services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the Services hereunder, Consultant shall immediately inform the City of

such fact and shall not proceed except at Consultant's risk until written instructions are received from the City.

10. Assignments and Subcontracting.

The experience, knowledge, capability, and reputation of Consultant, its representatives and employees were a substantial inducement for City to enter into this Agreement. Consultant may not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written approval of City. Consultant shall not contract with any other entity to perform the Services required without prior written approval of City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor(s) in the same manner as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the work will be considered employees of Consultant. City will deal directly with and will make all payments to Consultant. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant from any liability hereunder without the express written consent of City.

11. Insurance and Security

A. Types of Insurance and Security. Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, the insurance and security described herein for the duration of this Agreement, including any extension thereof, or as otherwise specified herein, against claims which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees. Insurance and security required herein shall be provided by a reputable insurance company or bonding company admitted to issue insurance or bonds in the State of California and having a minimum A.M. Best's Guide Rating of A-, Class VII or better, unless such requirements are waived in writing by the City Manager or his/her designee due to unique circumstances. In the event the City Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies and the performance bond required by this Section 11 may be changed accordingly upon receipt of written notice from the City Manager or his/her designee; provided that the Consultant shall have the right to appeal a determination of increased coverage by the City Manager to the City Council of City within ten (10) days of receipt of notice from the City Manager. Consultant shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein.

All insurance provided pursuant to this Agreement shall be on an occurrence basis.

1. Workers' Compensation Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, Workers' Compensation Insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by State of California law. Consultant agrees to waive and obtain endorsements from its worker's compensation insurer waiving subrogation rights under its worker's compensation insurance policy against City and to require each of its subcontractors, if any, to do likewise under their worker's compensation insurance policies.

2. Commercial General Liability Insurance. Consultant shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of commercial general liability insurance written on a per occurrence basis with a combined single limit of at least One Million Dollars (\$1,000,000.00) bodily injury and property damage including coverages for contractual liability, personal injury, independent contractors, broad form property damage, products and completed operations. The commercial general liability policy shall name the City as an additional insured in accordance with standard ISO additional insured endorsement form CG2010(1185) or equivalent language.

Consultant shall either: (a) certify in writing to the City that Consultant is unaware of any liability claims made against Consultant, and is unaware of any facts which may lead to such a claim against Consultant; or (b) if Consultant does not provide the certification pursuant to (a), Consultant shall procure from the commercial general liability insurer an endorsement providing that the required limits of the policy shall apply separately to occurrences during the rendition of services pursuant to this Agreement.

B. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager. Consultant guarantees payment of all deductibles and self-insured retentions. City reserves the right to reject deductibles or self-insured retentions in excess of \$10,000, and the City Manager may require evidence of pending claims and claims history as well as evidence of Consultant's ability to pay claims for all deductible amounts and self-insured retentions proposed in excess of \$10,000.

C. Other Insurance Provisions. The following provisions shall apply to the insurance policies required of Consultant pursuant to this Agreement:

1. The commercial general, business automobile and employer liability policies shall be endorsed to contain the following provisions: "City

and its officers, council members, officials, employees, agents and volunteers, and any public agencies whose approval of the project is required, are additional insureds with respect to: liability arising out of acts or omissions of or on behalf of Consultant; products and completed operations of Consultant; premises owned occupied or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant.” The coverage shall contain no special limitations on the scope of protection afforded to additional insureds. Additional insured endorsements are not required for the Worker’s Compensation policies.

2. For any claims related to this Agreement, Consultant’s coverage shall be primary insurance as respects City and its officers, council members, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City and its officers, council members, officials, employees, agents and volunteers shall be in excess of Consultant’s insurance and shall not contribute with it. The insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, council members, officials, employees, agents and volunteers, and their respective insurers.

3. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties shall not affect coverage provided to City and its officers, council members, officials, employees, agents and volunteers.

4. Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, cancelled or modified by either party, or reduced in coverage or in limits, except after thirty (30) days prior written notice by First Class U. S. Mail, postage prepaid, has been provided to City. Notwithstanding the foregoing in this Subsection D.4, if coverage is to be suspended, voided or cancelled because of Consultant’s failure to pay the insurance premium, the notice provided to City shall be by ten (10) days prior written notice.

D. Verification of Coverage. Consultant shall furnish City certificates of insurance and original endorsements, including additional insured endorsements, in a form acceptable to the City, effecting all of the coverages required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Consultant shall provide to City all certificates and endorsements required by this Agreement before work commences.

E. Fiduciary Bond. Concurrently with execution of this Agreement, Consultant shall deliver to City a fiduciary bond in the amount of \$100,000.00, in the form acceptable to the City Manager, which secures and guarantees the honest accounting of all public funds administered by Consultant and the faithful performance

of the Consultant under this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Consultant promptly and faithfully performs all terms and conditions of this Agreement and City accepts such performance in writing.

12. Indemnification.

To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense), protect and hold harmless City and its officers, council members, officials, employees, agents and volunteers and all other public agencies whose approval of the project is required, (individually "Indemnified Party"; collectively "Indemnified Parties") against any and all liabilities, claims, judgments, arbitration awards, settlements, costs, demands, orders and penalties (collectively "Claims"), including but not limited to Claims arising from injuries or death of persons (Consultant's employees included) and damage to property, which Claims arise out of, pertain to, or are related to the negligence, recklessness or willful misconduct of Consultant, its agents, employees, or subcontractors, or arise from Consultant's performance of or failure to perform any term, provision, covenant or condition of this Agreement ("Indemnified Claims"), except where such Claims arise from the sole negligence, recklessness, or willful misconduct of the City, its officers, council members, officials, employees, or agents.

Consultant shall reimburse the Indemnified Parties for any reasonable expenditures, including reasonable attorneys' fees, expert fees, litigation costs and expenses that each Indemnified Party may incur by reason of Indemnified Claims. Upon request by an Indemnified Party, Consultant will defend with legal counsel [reasonably acceptable to the Indemnified Party] all Claims against the Indemnified Party that may arise out of, pertain to, or relate to Indemnified Claims, whether or not Consultant is named as a party to the Claim proceeding. The determination whether a Claim "may arise out of, pertain to, or relate to Indemnified Claims" shall be based on the allegations made in the Claim and the facts known or subsequently discovered by the parties. In the event a final judgment, arbitration award, order, settlement, or other final resolution expressly determines that Claims did not arise out of, pertain to, nor relate to the negligence, recklessness or willful misconduct of Consultant to any extent, then City will reimburse Consultant for the reasonable costs of defending the Indemnified Parties against such Claims, except City shall not reimburse Consultant for attorneys' fees, expert fees, litigation costs and expenses as were incurred defending Consultant or any parties other than Indemnified Parties against such Claims.

Consultant's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified hereunder are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not

otherwise a party to this Agreement.

13. Licenses, Permits, Qualifications, and Approvals.

Consultant represents and warrants to City that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession and perform the Services required by this Agreement. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, qualification or approval, which is legally required for Consultant to perform Services under this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the Services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

14. Reports and Records.

A. Accounting Records.

Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement.

B. Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services, including the receipt of any fees, assessments, charges, fines, or funds of any kind, required by this Agreement or as the Contract Officer shall require.

C. Ownership of Documents.

All drawings, specifications, reports, records, documents, memoranda, correspondence, computations and other materials prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership of the documents and materials hereunder. Any use of such completed documents for other projects and/or use of incomplete documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and the City shall indemnify the Consultant for all damages resulting therefrom. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. Consultant shall ensure that all its subcontractors shall provide for assignment to City of

any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

D. Release of Documents.

All information gained by Consultant in the performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or subcontractors shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the Services performed under this Agreement or relating to the Project. Response to a subpoena or court order shall not be considered "voluntary" for the purposes of this Section, provided Consultant gives City timely notice, in advance, of the response to such subpoena or court order. Consultant shall notify City of any summons, complaints, subpoenas, notice of deposition, request for documents, interrogatories, requests for admissions or other discovery requests received by Consultant, its officers, employees, agents or subcontractors, related to Services performed pursuant to this Agreement. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding, the cost of which shall be borne by Consultant. Consultant agrees to cooperate fully with City and to provide City with an opportunity, in advance, to review and respond to discovery requests provided by Consultant, arising out of Services performed pursuant to this Agreement. However, City's right to review any such request or response does not imply or mean City has the right to control, direct, write or rewrite such response.

E. Audit and Inspection of Records.

After receipt of reasonable notice and during the regular business hours of City, Consultant shall provide City, or other agents of City, such access to Consultant's books, records, payroll documents and facilities as City deems necessary to examine, copy, audit and inspect all accounting books, records, work data, documents and activities directly related hereto. Consultant shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during Consultant's performance hereunder and for a period of three (3) years from the date of final payment by City hereunder.

15. Federal, State and Local Laws.

Consultant warrants that in the performance of this Agreement, it shall comply with all applicable federal, State and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder.

16. Equal Employment Opportunity.

In connection with its performance under this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry or national origin. Consultant shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, marital status, ancestry or national origin. Such actions 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.

17. Prohibited Interests.

Consultant covenants that, for the term of this Agreement, no Council Member, member, officer, or employee of City during his/her tenure in office/employment, or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof or in Consultant. Consultant warrants that it has not given or paid and will not give or pay any third party money or other consideration for obtaining this Agreement.

18. Patent and Copyright Infringement.

A. To the fullest extent permissible under law, and in lieu of any other warranty by City or Consultant against patent or copyright infringement, statutory or otherwise, it is agreed that Consultant shall defend at its expense any claim or suit against City on account of any allegation that any item furnished under this Agreement, or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently existing U.S. letters patent or copyright and Consultant shall pay all costs and damages finally awarded in any such suit or claim, provided that Consultant is promptly notified in writing of the suit or claim and given authority, information and assistance at Consultant's expense for the defense of same, and provided such suit or claim arises out of, pertains to, or is related to the negligence, recklessness or willfull misconduct of Consultant. However, Consultant will not indemnify City if the suit or claim results from: (1) City's alteration of a deliverable, such that City's alteration of such deliverable created the infringement upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by Consultant when it is such use in combination which infringes upon an existing U.S. letters patent or copyright.

B. Consultant shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof, Consultant shall not be obligated to indemnify City under any settlement made without Consultant's consent or in the event City fails to cooperate in the defense of any suit or claim, provided, however, that such defense shall be at Consultant's expense. If the use or sale of such item is enjoined as

a result of the suit or claim, Consultant, at no expense to City, shall obtain for City the right to use and sell the item, or shall substitute an equivalent item acceptable to City and extend this patent and copyright indemnity thereto.

19. Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

20. Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement.

21. Termination.

A. City may terminate this Agreement for its convenience at any time, without cause, in whole or in part, upon giving Consultant thirty (30) days written notice. Upon such notice, City shall pay Consultant for Services performed through the date of termination including any amounts retained pursuant to Section 4 that the City determines are no longer required for purposes of Dispute Retention, City Loss Retention, or Third Party Claims Retention. Upon receipt of such notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. Thereafter, Consultant shall have no further claims against City under this Agreement. Upon termination of the Agreement pursuant to this Section, Consultant shall submit to City an invoice for work performed prior to the date of termination. In addition, the Consultant reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days written notice to City, except that where termination is due to of the material default by the City, the period of notice may be such shorter time as Consultant may determine.

22. Default of Consultant.

A. Consultant's failure to comply with any provision of this Agreement shall constitute a default.

B. If the City Manager, or his/her designee, determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall notify Consultant in writing of such default. Consultant shall have ten (10) days, or such longer period as City may designate, to cure the default by

rendering satisfactory performance. In the event Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity or under this Agreement. Consultant shall be liable for any and all reasonable costs incurred by City as a result of such default. Compliance with the provisions of this Section shall not constitute a waiver of any City right to take legal action in the event that the dispute is not cured, provided that nothing herein shall limit City's right to terminate this Agreement without cause pursuant to Section 21.

C. If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 22.B, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the Maximum Contract Sum herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated. The withholding or failure to withhold payments to Consultant shall not limit Consultant's liability for completion of the Services as provided herein.

23. Attorney Fees.

In the event any dispute between the Parties with respect to this Agreement results in litigation or any non-judicial proceeding, the prevailing Party shall be entitled, in addition to such other relief as may be granted, to recover from the non-prevailing Party all reasonable costs and expenses, including but not limited to reasonable attorney fees, expert consultant fees, court costs and all fees, costs and expenses incurred in any appeal or in collection of any judgment entered in such proceeding. The amount of such fees, costs and expenses may be determined in such proceeding or in a separate action brought for that purpose. To the extent authorized by law, in the event of a dismissal by the plaintiff or petitioner of the litigation or non-judicial proceeding within thirty (30) days of the date set for trial or hearing, the other Party shall be deemed to be the prevailing Party in such litigation or proceeding.

24. Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise

by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

25. Legal Action.

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

26. Interpretation; Venue.

This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto. The terms of this Agreement are contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. Venue for any litigation concerning this Agreement shall be in the Superior Court for the County of Riverside, California.

27. Waiver.

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

28. Notices.

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by facsimile with attached evidence of completed transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier, (ii) five (5) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by facsimile. Any notice, request, demand, direction, or other communication sent by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered. Other forms of electronic transmission such as e-mails, text messages, instant

messages are not acceptable manners of notice required hereunder. Notices or other communications shall be addressed as follows:

To City: City of Cathedral City
68700 Avenida Lalo Guerrero
Cathedral City, CA 92234
Attention: City Clerk

To Consultant: CitySupport, LLC
100 W. Haning St.
Box 868
Howe, TX 75459-0868
Attention: Eric Popp

Either Party may, by written notice to the other, designate a different address or contact person, which shall be substituted for that specified above.

29. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both Parties hereto, or their respective successors, assigns, or grantees.

30. Severability.

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be determined to be invalid by a final judgment or decree of a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

31. Legal Relationship between the Parties.

A. The legal relationship between the Parties hereto is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers or employees. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over

the conduct of Consultant or any of its officers, employees, or agents, except as set forth in this Agreement. Consultant, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers compensation and other similar matters. City shall not in any way or for any purpose be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

B. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Consultant, its officers, employees, or agents in connection with any performance under this Agreement. Except for fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for the performance of Services under this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, or agents for injury or sickness arising out of performing Services hereunder. If for any reason, any court or governmental agency determines that City has financial obligations, other than pursuant to Section 3 and 6 herein, of any nature relating to salary, taxes, or benefits of Consultant's officers, employees, servants, representatives, subcontractors or agents, Consultant shall indemnify City for all such financial obligations.

32. Successors in Interest.

This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

33. Third Party Beneficiary.

Except as may be expressly provided for herein, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party hereto.

34. Recitals.

The Recitals above are hereby incorporated into this Section as though fully set forth herein and each Party acknowledges and agrees that such Party is bound, for

purposes of this Agreement, by the same.

36. Non-Liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or its successor, or for breach of any obligation of the terms of this Agreement.

37. Corporate Authority.

Each of the undersigned represents and warrants that (i) the Party for which he or she is executing this Agreement is duly authorized and existing, (ii) he or she is duly authorized to execute and deliver this Agreement on behalf of the Party for which he or she is signing, (iii) by so executing this Agreement, the Party for which he or she is signing is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the Party for which he or she is signing is bound.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the date first written above.

CitySupport, LLC

CITY OF CATHEDRAL CITY

By: _____
Eric Popp, President

By: _____
Stan Henry, Mayor

By: _____
Kelly Popp, CEO

ATTEST:

By: _____
Gary F. Howell, City Clerk

APPROVED AS TO FORM:

By: _____
Eric S. Vail, City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

1. Consultant shall administer the City of Cathedral City false alarm program, the general provisions of which are provided in Cathedral City Municipal Code Chapter 5.02, including without limitation the issuance and maintenance of alarm permits, the collection of alarm permit fees, the logging, recordation, and tracking of false alarms in a manner that can be conveniently accessed and used for provision of police services and financial management, the collection of false alarm response fees, and the timely payment of all fees due the City. Consultant's services shall include without limitation the following specific responsibilities:

- (a) Consultant shall develop, maintain, modify, manage, and operate a website or websites as reasonably necessary to provide the services required under this Agreement.
- (b) Consultant shall Host the website(s) on its servers.
- (c) Consultant shall provide a secure website for permit holders to renew alarm permits, make payment toward false alarm fines, and enroll in the online false alarm diversion program.
- (d) Consultant shall manage in a secure and confidential manner all permit holder data.
- (e) Consultant shall provide technical and customer support to permit holders via telephone or email during City business hours or such other hours as the Contract Officer may require.
- (f) Consultant shall provide permit holders with a secure website for the processing of online credit card and check payment transactions.
- (g) Consultant shall securely accept and facilitate the processing of credit card and check payments for alarm permits and false alarm bills.
- (h) Consultant shall reconcile payments made to or on behalf of all alarm permit accounts.
- (i) Consultant shall receive and manage daily electronic data transmittal from the City's Police Department CAD system.
- (j) Consultant shall maintain all records of all false alarm permit accounts to include, but not limited to, all data supplied by the City's Police Department through the City's Police Department CAD system.
- (k) Consultant shall process payment to the City by the 5th business day of each month for the funds collected the previous month for alarm permits, false alarms, and the false alarm diversion program.
- (l) Consultant shall mail city permit renewal notices to each permit holder annually.
- (m) Consultant shall generate appropriate system data and mail false alarm bills to permit holders.
- (n) Consultant shall make available to the City various reports through the Consultant's secure website(s) as the Contract Officer deems necessary or appropriate.
- (o) Consultant shall integrate data from the false alarm diversion program with the permit holder's account.
- (p) Consultant shall electronically, or by other means approved by the Contract Officer, transfer payment delinquency notices to the City.
- (q) Consultant shall provide City personnel, as designated by the Contract Officer, access through its secure website to modify permit holder accounts as needed.
- (r) Consultant shall operate its systems prudently to ensure the security, safety, and confidentiality of all user transactions.

(s) Consultant shall cross-reference hard copy data with electronic data to ensure records are complete, accurate, and up-to-date.

2. The following protocols and administrative practices shall be implemented:

(a) Risk management plan

All user information is stored within a secure SQL server environment, which resides within a secure hosting data center. The dedicated web server, used to serve the web application, is behind a Cisco Pix firewall, which prevents hackers from compromising the web server. The only access to the web server is through HTTP and FTP protocols, which are used to view web pages and upload/download files. Windows 2000 is the platform used for the web and SQL servers. Strict Windows and SQL security measures are in place to prevent unauthorized persons from accessing the web server directory structure or any SQL data. A hacker would have to bypass the firewall, compromise Windows security and compromise SQL security to access any sensitive user data. Periodic security audits are performed on the server to ensure that the latest security patches are installed, that all users have appropriate permissions, and to identify any attempted attacks on the system. Additionally, there are many security measures taken into account within the application that prevent users from accessing any unauthorized data and to ensure the integrity of the data that is stored.

The servers used to host the website will provide at least 99.99% up-time, therefore minimizing inaccessibility to students and users. The website shall be maintained on a continuous, seven days a week and twenty-four hours per day, basis thereby providing permit holders the ability to pay their fines or fees at any hour of any day. Both telephone, email and live online chat support will be available to the City and alarm holders during City business hours. A multi-line state-of-the-art PBX system shall be installed to allow Consultant to handle multiple calls at once.

(b) User authentication and authorization procedures and technologies

Consultant shall employ several layers of authentication and authorization security to ensure that no unauthorized access is gained to any portion of the system. The system resides on two dedicated Windows servers in a secure data center. External access to the server, including access via FTP (File Transfer Protocol), Terminal Services (Remote Desktop) and SQL client tools (Query Analyzer, Enterprise Manager) is restricted to one static IP address. This IP address is the address of the our company technical team's office. The technical team members are the only authorized individuals who can access the dedicated server directly. By restricting access to one IP address, no individual or computer can connect from an external source to either of our servers. Such practice will prevent anyone from altering or accessing any files residing on the server. Once a technical team member connects to the server from the dedicated IP address, standard Windows securities apply. All Windows passwords used on the server are extremely strong in nature and are sent over the network encrypted to prevent a password compromise. Periodic reviews of the Windows security and IIS logs are performed to check for any suspicious activity. Due to the strong nature of our authentication and authorization, not a single system compromise has been experienced since we began using these techniques.

(c) Access control procedures and technologies

Consultant's administrative tools shall be web based and can only be accessed by the staff securely from both the central office and from remote locations if needed. Access to the administrative tools is limited to certain static IP addresses. The authorized IP addresses are those of the home office, as well as the remote locations. If any person tries to access these administrative tools from an unauthorized IP address, their IP address is logged and the user is

notified that their IP address has been logged. This IP address log is frequently reviewed for suspicious activity. If any suspicious IP address has been found attempting to access the administrative tools on more than one occasion, the suspect IP address is blocked permanently from accessing the server. Once the staff members have accessed the administrative tools from their authorized IP address, they must then login using a password to access the tool set. We implement role based security for the staff members, allowing each staff member to view only those features that their role permits. All passwords are sent securely to the web server using SSL technology. Physical access to the server is controlled by and limited to the technical team.

(d) Auditing capability

Consultant will perform periodic audits to review system security, server performance and course integrity. Windows security auditing is enabled for the dedicated servers. The security and IIS logs are reviewed weekly to detect any suspicious activity. Internal security logs are also reviewed on a weekly basis to detect any unauthorized IP address access attempts. If for any reason suspicious activity is detected, proper security actions are taken to address the issue. This involves working with network, security and server personnel to determine the best course of action to take and implementing any and all necessary security changes. Server performance is audited on a monthly basis. This involves initializing and running Counter and Trace windows logs. Once an adequate performance sample has been obtained, the logs are analyzed to review system performance. Should the performance be less than desirable, appropriate hardware/software adjustments are made. The SQL database also goes through a specific performance review. SQL server profiler traces are run and index analysis is performed to ensure that the database is running at the optimal service level. Any database adjustments are made as necessary to ensure peak performance. This typically includes tuning indexes and optimizing queries.

(e) Systems availability

Consultant will implement procedures and practices to ensure 99.999% uptime of the system and service and to ensure reliability and availability. The dedicated servers reside in a secure location that provides a redundant network to ensure network reliability, UPS battery backup and a diesel generator to ensure power reliability, and fire suppression, smoke detection, and climate control units to ensure stable environmental conditions. The dedicated servers utilize a RAID 1 hard drive configuration to ensure system redundancy in the event a disk failure. The source code, server system state, log files and all databases are backed up nightly to a NAS (network attached storage) server. The dedicated server and network are actively monitored to ensure network reliability and system up time. There is a network intrusion detection system in place to detect and deter malicious network activity.

(f) Course and systems integrity

Consultant utilizes an extensive set of securities to ensure that unauthorized access to any of the data or intellectual property cannot occur. The servers and administrative tools are secured using IP address limitations and role based security models which were described in sections A & B. Special code is in place to prevent URL tampering which could result in a data compromise if not taken into account. All user information is stored securely within the dedicated server database. All information sent by the permit holder is sent using secure SSL technology. Additionally, all data viewed and modified by our company personnel is transmitted using SSL technology. Permit holder data is not shared or transferred to anyone for any reason, with the exception of the City of Cathedral City or it's collection personnel. Any data transmitted to these institutions during an audit is sent over secure channels. Periodic monitoring of the access attempts is performed to ensure the integrity of the system security.

(g) Confidentiality and privacy

All user data is securely stored within the dedicated server database. This information includes permit holder names, permit numbers, addresses, phone number and credit card/bank information. Consultant's privacy policy is as follows: The user information obtained by the Consultant is for the governmental purposes of the City of Cathedral City consistent with the provisions of Chapter 5.02 of the Cathedral City Municipal Code. This information will not be sold or transferred, in any way, to any other parties. All necessary precautions have been taken to ensure unauthorized access is prohibited.

(h) Business continuity and disaster recovery

Company shall ensure business continuity and implement effective measures for disaster recovery. This includes network, power, and hardware redundancy. All data, security settings, system state information, source code, and log files are backed up nightly to a NAS (network attached storage) server. Consultant shall utilize a RAID 1 hard drive configuration to mitigate the risk of hardware failure. In event of a natural disaster or an unrecoverable hardware failure, Consultant shall have all data and settings restored and the new server configured and functioning within four hours. This would restore all database data, system state information, security settings, log files, and application source code for the server. Consultant shall have the ability to relocate the server as needed in the event of a severe natural disaster.

(i) Systems monitoring and incident response

Consultant servers are actively monitored to ensure system up-time and site availability. If a server is unexpectedly taken offline, the Consultant shall immediately work to bring the server back online. If the system is unavailable or is not performing at an optimal level, system services, processes, memory usage, and network activity are immediately analyzed by the Consultant to determine the cause of the problem. If a problem is detected, all necessary steps are taken to mitigate the problem. This could include restarting services or restarting the server. If the problem still persists, further action is taken which includes a more in-depth analysis of application behavior and database performance. Once the root of the problem is identified, the Consultant will resolve the issue as quickly as possible. This could include code "hot fixes", database adjustments or hardware changes. There is also a network intrusion detection system in place to detect suspicious network activity and to deter malicious network activity from occurring.

(j) Change control

Consultant is responsible for identifying, testing, and implementing any new technologies that will increase the overall system integrity. This includes 3rd party software and hardware, as well as upgrades to the existing system source code, which was developed in-house. The technical team is also responsible for all source code development and maintenance. Once the new technologies have been developed or acquired, the technical team must document the implementation steps, develop a test plan and perform the necessary testing of the new system in the staging environment. The staging environment is an identical configuration to that of the live environment, with the exception of the new technology being implemented. Once the complete system has been tested and validated against the test case, the technical team begins to facilitate the live system migration. Once the migration date and time have arrived, the system is shut down, and the technical team performs the necessary upgrades and migration. Testing of the new live environment release ensues using the test cases developed prior. Once all test cases have been validated, the system is turned back on and service is restored. In the event of a server migration, all data is backed up and all user access rights are documented from the soon to be decommissioned server. Once the new server is available, all data is

restored from the back ups, all users are manually recreated and all necessary security rights are applied.

EXHIBIT "B"

SCHEDULE OF COMPENSATION

- (a) Consultant will retain \$11.00 for each alarm permit;
- (b) Consultant will retain \$15 for each false alarm fee received;
- (c) Consultant will retain 10% of false alarm fees received
- (d) Consultant will provide the City with 45% gross revenue of the false alarm diversion program. Based on the current cost of the course (\$25.00), the City will receive \$11.00 for each completed Cathedral City alarm diversion program.