

**CITY CLERK
ORIGINAL**

**C-8805-7
02/24/2014**

CITY OF GLENDALE, ARIZONA

CONTRACT AMENDMENT NO. 7

(Agreement C-8805-7)

(PLEASE DO NOT REMOVE ~ THIS IS PART OF THE OFFICIAL DOCUMENT)

at 4600 W. Glendale Glendale, AZ Arizona, hereinafter referred to as "Subscriber"

1 **INSTALLATION** Company agrees to install or cause to be installed and to service without liability and not as an insurer, during the term of this Agreement, an alarm system (system) as described in the Schedule of Protection attached hereto and made a part hereof at the premises of Subscriber

(a) Upon completion of the installation of the system by the Company, Company will instruct the Subscriber in proper use of the same

2 **TERM, PAYMENT, RENEWAL.** Subscriber hereby agrees to pay to Company its agents or assigns

(a) For Purchase, Lease installation fee, the sum of _____ Dollars, as specified by the proposal

(b) For Monitoring, Lease of Alarm System, Maintenance the sum of Twenty Five Dollars per month payable quarterly in advance on the first day of the quarter, commencing upon completion of the installation, for a period of three (3) year(s) from the date of completion of installation of the system; in addition together with the first quarterly payment Subscriber shall pay the pro rata share of the service charge for the month in which installation was completed

(c) At the expiration of the initial three (3) year period, this Agreement shall be automatically renewable for periods of one (1) year each, the first of such renewal periods to commence upon date of the expiration of this Agreement, unless either party shall notify the other in writing, not less than thirty (30) days prior to the expiration of the original agreement or the expiration of any renewal periods, of the desire to terminate this agreement. Upon renewal, the Subscriber shall pay the same amount according to the terms and conditions as set forth in this Agreement

3 RESPONSE TO ALARMS; POLICE/FIRE DEPARTMENT ALARMS

(a) **LOCAL ALARM** Company, upon receipt of information that an audible device is sounding on the premises of Subscriber, will make reasonable efforts to notify Subscriber or his designated representative by telephone at the phone number and address supplied to Company in writing by Subscriber. If Subscriber cannot be reached or does not appear at the above described premises within thirty (30) minutes from the time Company receives information that the audible device is sounding, or if Company is called upon to turn off any audible alarm at the above address, Subscriber hereby authorizes and appoints Company, as its agent, to turn off the said audible device and agrees to hold Company harmless and to indemnify Company from any damage, loss or liability which may result from the turning off of the alarm by Company

(b) **CENTRAL OFFICE ALARM** Company or its designee, except where the system terminates at a police or fire department, shall without warranty, make every reasonable effort to do the following:

(1) Upon receipt of a burglar alarm signal, transmit the alarm to headquarters of the public police department and notify the Subscriber or his designated representative by calling the telephone number supplied to Company in writing by Subscriber

(2) Upon receipt of a hold-up alarm signal, transmit the alarm to the public police department

(3) Upon receipt of a sprinkler signal, waterflow signal, manual or automatic fire alarm signal, transmit the alarm to the public fire department and notify Subscriber or his designated representative by calling the telephone number supplied to Company in writing by Subscriber

(4) Upon receipt of a monitor signal, notify Subscriber or his designated representative by calling the telephone number supplied to Company in writing by Subscriber

(c) **POLICE/FIRE DEPARTMENT CONNECTED ALARMS** Subscriber acknowledges that if the signal transmitted from Subscriber's premises will be monitored in municipal police and/or fire department or other locations, that the personnel of such municipal police and/or fire department or other location are not the agents of Company, nor does the Company assume any responsibility for the manner in which such signals are monitored or the response, if any, to such signals

(d) **TELEPHONE LINES** Subscriber shall pay all charges made by any telephone company or other utility for installation, leasing and service charges of telephone lines connecting Subscriber's protected premises to Company's Central Station when a digital communicator, voice communicator or direct line is installed or when the signals are transmitted to any municipal police or fire department. Subscriber acknowledges that if Company utilizes a digital or voice communicator for the purposes of transmitting alarm signals from Subscriber's premises to Company's Central Station, that the signals from Subscriber's alarm system are transmitted over Subscriber's regular telephone service to Company's Central Station, and in the event Subscriber's telephone service is out of order, disconnected, placed on vacation or otherwise interrupted, signals from Subscriber's alarm system will not be received in Company's Central Station during any such interruption on telephone service and the interruption will not be known to Company. Subscriber further acknowledges and agrees that signals are transmitted over telephone company lines which are wholly beyond the control and jurisdiction of Company and are maintained and serviced by the applicable telephone company or utility

4 **COMPANY IS NOT AN INSURER, LIMITATION OF LIABILITY; LIQUIDATED DAMAGES** It is understood and agreed that the Company is not an insurer; that insurance, if any, shall be obtained by Subscriber, that the payments provided for herein are based solely on the value of the service as set forth herein and are unrelated to the value of the Subscriber's property of others located on Subscriber's premises. Subscriber acknowledges that it is impractical and extremely difficult to fix the actual damages, if any, which may proximately result from a failure to perform any of the obligations herein, or the failure of the system to properly operate, with resulting loss to Subscriber because of, among other things:

(a) The uncertain amount or value of Subscriber's property or the property of others kept on the premises which may be lost, stolen, destroyed, damaged or otherwise affected by occurrences which the system or service is designed to detect or avert,

(b) The uncertainty of the response time of any police or fire department, should the police or fire department be dispatched as a result of a signal being sent and/or received or an audible device sounding,

(c) The inability to ascertain what portion, if any, of any loss would be proximately caused by Company's failure to perform or its equipment to operate

(d) The nature of the service to be performed by Company

Subscriber understands and agrees that if Company should be found liable for loss or damage due from failure of company to perform any of the obligations herein, including but not limited to installation, maintenance, monitoring or service, or the failure of the system or equipment in any respect whatsoever, Company's liability shall be limited to a sum equal to the total of ten (10) per cent of the total sale price, six (6) monthly payments, leased systems or Three Hundred Dollars (\$300.00), whichever is the lesser, as liquidated damages and not as a penalty, and this liability shall be exclusive, and that the provisions of this Section shall apply if loss or damages, irrespective of cause or origin, results directly or indirectly to persons or property, from performance or non-performance of the obligations imposed by this contract, or from negligence, active or otherwise, of Company, its agents, assigns, or employees

If Subscriber wishes Company to assume a limited liability in lieu of the liquidated damages as hereinabove set forth, Subscriber may obtain from Company a limitation of liability by paying an additional monthly service charge to Company. If Subscriber elects to exercise this option, a rider shall be attached to this Agreement setting forth the terms, conditions and the amount of the limited liability, and the additional monthly charge. Such rider and additional obligation shall in no way be interpreted to hold Company as an insurer.

"By placing his initials besides this clause, subscriber acknowledges that he has discussed this provision regarding liquidated damages and limitation of liability with company's agent and has agreed to the amount set forth herein"

INITIAL
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5. **THIRD PARTY INDEMNIFICATION** In the event any person, not a party to this agreement, shall make any claim or file any lawsuit against Company for any reason relating to Company's duties and obligations pursuant to this Agreement, including but not limited to the design, installation, maintenance, operation or none operation of the alarm system, Subscriber agrees to indemnify, defend and hold Company harmless from and all claims and lawsuits, including the payment of all damages, expenses, costs, and attorneys' fees, whether these claims be based upon active or passive negligence, or strict or product liability on the part of the Company, its agents, assigns or employees

This agreement by Subscriber to indemnify Company against third party claims as hereinabove set forth shall not apply to losses, damages, expenses and liability are solely and directly caused by the acts of said employee

6 **RECEIPT OF COPY** Subscriber acknowledges receipt of a copy of this agreement.

7 **COMPANY'S LIABILITY/DISCLAIMER OF WARRANTIES.** Company does not represent or warrant that the alarm system may not be comprised or circumvented, or that the system will prevent any loss by burglary, hold-up, fire, or otherwise; or that the system will in all cases provide the protection for which it is installed or intended. Subscriber acknowledges and agrees that Company has made no representations or warranties, express or implied, as to any matter whatsoever, including without limitation the condition of the equipment, its merchantability or its fitness for any particular purpose, nor has Subscriber relied on any representations or warranties, express or implied; that any affirmation of fact or promise shall not be deemed to create an express warranty, and that there are no warranties which extend beyond the face of the agreement hereof; that Company is not an insurer, that Subscriber assumes all risk of loss or damage to Subscriber's premises or to the contents thereof, and that Subscriber has read and understands all of this agreement, particularly paragraphs 4 and 5 which set forth Company's maximum liability in the event of any loss or damage to subscriber or anyone else.

8 **FALSE ALARMS:** In the event an excessive number of false alarms are caused by Subscriber's carelessness, malicious action, or accidental use of the alarm system, or in the event Subscriber in any manner misuses or abuses of the system, Company may in its sole discretion deem same to be a material breach of contract on the part of Subscriber and, at its option, in addition to all other legal remedies set forth below, be excused from performance, upon giving ten (10) days written notice to Subscriber. Company's excuse from performance shall not effect its right to recovery damage from Subscriber. In the event a fine, penalty or fee is assessed against company by any governmental or municipal agency as a result of any alarm originating from Subscriber's premises, Subscriber agrees to forthwith reimburse Company for same. In the event Company dispatches an agent to respond to an alarm originating from Subscriber's premises, where Subscriber intentionally, accidentally or negligently has activated the alarm signal, when no alarm condition exists, or if Company makes any service call caused by the inadvertence or negligence of Subscriber, Subscriber shall pay to Company the then current rate of service calls.

Subscriber represents that he fully understands that the equipment, because of its sensitivity and nature, is subject to the influence of external events which are not within the control of Company and which may cause the alarm to activate. Any and all such alarms which may occur, shall not be construed as improper operation of the equipment nor as malfunction thereof, nor shall any or all of such alarms excuse any of the obligations of Subscriber as set forth in this Agreement.

9 **INSTALLATION OF SYSTEM; DELAY OF INSTALLATION; INTERRUPTION OF SERVICE** Subscriber authorizes Company, its agents or assigns, to install or cause to be installed the protective system set forth herein, and make any preparations such as drilling holes, driving nails, making attachments or doing things necessary or pertinent to the installation and maintenance of the system. Subscriber authorizes use of electrical outlets required and use necessary current through his meter at his expense. Any error or omission in the construction or installation of the system must be called to the attention of Company in writing, within five (5) days after completion of the installation. Otherwise, the installation shall be deemed totally satisfactory to and accepted by Subscriber. Company assumes no liability for delay in installation of the equipment, or for interruption of service due to strikes, riots, floods, storms, earthquakes, fires, power failure, insurrection, interruption of unavailability of telephone service, acts of God, or for any other cause beyond the control of Company and will not be required to supply service to Subscriber while interruption of service due to such cause may continue. For those premises where Closed Circuit Television Camera is provided, Subscriber shall provide adequate illumination under all operational conditions for the proper operation of the Closed Circuit Television Camera and will provide the 110 AC power supply where required as well as shelf or desk space for monitors.

NOTICE OF CANCELLATION (RESIDENTIAL ONLY) YOU MAY CANCEL THIS TRANSACTION WITHOUT PENALTY OR OBLIGATION WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE IF YOU CANCEL ANY PAYMENT MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN (10) DAYS FOLLOWING RECEIPT BY THE COMPANY OF YOUR CANCELLATION NOTICE. ALL CANCELLATION NOTICES MUST BE IN WRITING.

any damage to material or equipment caused by accident, misuse, attempted unauthorized repair service, modification, or improper installation by anyone other than Company. Subscriber acknowledges that Company shall not be liable to Subscriber for any consequential damages whatsoever. Subscriber acknowledges that he has read and understands terms of this Agreement which set forth Company's maximum liability in the event of any loss or damage to Subscriber or anyone else. This limited warranty may not be transferred or assigned to any other person or entity other than the Subscriber whose name is set forth hereinabove.

THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE ON THE FACE OF THIS AGREEMENT.

11 SERVICE; INSPECTIONS, COST OF REPAIRS. Subscriber authorizes and empowers Company to maintain and service the system and to make any necessary inspections, tests and repairs as required. In the case of fire alarm protection, Subscriber will notify Company in writing of any change in its fire rating bureau or agency. Repairs necessitated by ordinary wear and tear shall be at Company's expense. All necessary inspections and tests which may be required on the part of Company shall be performed between the hours of 8:00 a.m. and 6:00 p.m. on normal business days. Subscriber acknowledges that Company's obligation hereunder relates solely to the maintenance of the specified alarm system and that Company is in no way obligated to insure the operation of the system or to maintain or service Subscriber's property or property of others to which Company's system is connected.

12 AUDIBLE ALARM SHUT-OFF. Subscriber acknowledges and understands that if the audible alarm has an automatic shut-off device and the alarm sounds for any reason, it is to automatically shut off after sounding for a period of time not to exceed thirty (30) minutes. Subscriber further acknowledges that unless an attempted entry is apparent or unless Subscriber is notified that the system was activated, Subscriber will have no way of knowing that the system was activated and automatically shut off; that the system will not reset after the audible device has been activated and automatically shut off and that it therefore must be manually restored. Subscriber agrees to check the system each day upon opening the premises in order to determine whether or not the system was activated during the previous period.

13 INCREASE IN TAXES, UTILITY CHARGES OR MONTHLY SERVICE:

(a) Subscriber acknowledges that all charges set forth herein are based upon existing federal, state and local taxes and utility charges, including telephone company line charges, the monthly charges provided herein to reflect any additional taxes, fees or charges which hereafter may be imposed on Company by any utility or governmental agency relating to the service provided under the terms of this agreement, and Subscriber agrees to pay the same.

(b) So that the Company may properly adjust its rates to meet changing service and maintenance costs, and notwithstanding the terms and conditions set forth herein, after the expiration of one (1) year from the date of completion of installation, Company may at any time, increase the monthly service charge upon giving the Subscriber notice in writing. If Subscriber is unwilling to pay the increased monthly charge, Subscriber may terminate this Agreement upon giving notice in writing to Company within thirty (30) days from the effective date of the increase. Subscriber's failure to notify Company within said thirty (30) days, shall constitute Subscriber's consent to the increase.

(c) Company agrees that any increase in Subscriber's monthly/quarterly service charge shall not exceed 10% per year for the term of this agreement.

14 SUBSCRIBER'S DUTIES AS TO USE OF SYSTEM/AUTHORIZED PERSONNEL. The Subscriber shall carefully and properly test and set the alarm system immediately prior to the securing of the premises. If any defect in operation of the system develops, or in the event of any interruption at Subscriber's premises, Subscriber shall notify Company immediately. Company shall repair any defective equipment within a reasonable time after receipt of such notice. If space protection is part of said system, Subscriber shall walk test the system each day or at such other time as Subscriber shall close his premises in the manner recommended by Company.

When any device or protection is used including but not limited to space protection, which is affected by turbulence of air or other disturbing conditions, Subscriber shall turn off or remove all things, animate or inanimate, including but not limited to all forced air heaters, air conditioners, animated signs, animals, covering or chemical vats, and any other sources of air turbulence or movement which may interfere with the effectiveness of the system during closed periods while the alarm system is on.

If the system is a fire alarm system, Subscriber acknowledges that Subscriber may be required, in order to obtain approval of the system by any fire rating bureau having jurisdiction or other authorities having jurisdiction, to modify or replace all or part of its wet or dry sprinkler valves. Subscriber further acknowledges that to obtain maximum utilization of the system, Subscriber shall place hoods over all open fires and forges, pipe out all blow-off valves, and properly vent all chemical vats.

Subscriber agrees to furnish Company forthwith a written list of the names, titles, residences, residence phone numbers and signatures of all persons authorized to enter the premises of Subscriber and/or be notified in the event of an alarm, and/or with a written daily and holiday opening and closing schedule, including janitor's schedules. All changes, revisions and modifications to the above shall be supplied to Company in writing.

15 CHANGE TO THE SYSTEM; COST OF REPAIRS, ADDITIONAL PROTECTION, RISK OF LOSS: The cost of any changes and variances in the system, as herein contracted for or as originally installed, make at the request of or made necessary or required by Subscriber's action or which may be demanded by any governmental agency or insurance interest or inspection and rating bureaus, are to be borne by Subscriber. Subscriber acknowledges that Subscriber has chosen the system and the additional protection is available and may be obtained from Company over and above that provided herein, at an additional cost to Subscriber. All risk of loss or damage to the system shall be borne exclusively by Subscriber whose obligations hereunder shall not be diminished by any such loss or damage.

16 TITLE TO EQUIPMENT; REMOVAL OF SYSTEM. (LEASED SYSTEMS ONLY). Subscriber acknowledges and agrees that this agreement is for the providing of service only and that except as hereinabove provided, the major components installed herein, including but not limited to transmitters, detection devices, bell boxes and controls shall at all times remain the sole property of Company. Upon the expiration of this agreement or upon any default as herein set forth, Company is authorized to enter upon the premises of Subscriber and to remove all of the Company owned equipment. Removal of Company owned equipment shall be without prejudice to the collection of any and all sums due under the entire contract or extensions or renewals thereof. Subscriber shall, in such event, return the said Company owned equipment to Company in good condition, reasonable wear and tear excepted.

Upon completion of the installation, title to all of the nonrecoverable equipment, material, supplies, including but not limited to, wire, cable, foil, conduit, screens and labor for the installation of the system shall vest in the Subscriber. Notwithstanding the foregoing during the term of this agreement, Subscriber will not damage, encumber, tamper with or dispose of any portion of this system or permit the system to be damaged, encumbered, taken from the premises, tampered with or repaired by anyone who is not an authorized agent of Company. In the event of loss or damage to any portion of this systems, whether owned by Company or Subscriber, Subscriber agrees to pay to Company the reasonable value for the replacement or the installation of the Company owned equipment does not create a fixture to Subscriber's premises as to that equipment.

17. SUSPENSION OR CANCELLATION OF THIS SYSTEM. This Agreement may be suspended or cancelled without notice at the option of Company, if Company's or Subscriber's premises or equipment is destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service, or in the event Company is unable to render service as a result of any action by any governmental authority.

18 CHANGE IN OWNERSHIP OF SUBSCRIBER'S PREMISES. Subscriber acknowledges that the sale or transfer of subscriber's premises shall not relieve Subscriber or his duties and obligations under this agreement. Subscriber may not assign or otherwise transfer this Agreement without the written consent of Company.

19. ASSIGNMENT: Company shall have the right to assign this agreement to any other person, firm or corporation without notice to Subscriber, and shall have the further right to subcontract any installation and/or services which it may perform. Subscriber acknowledges this agreement, and particularly those paragraphs relating to Company's maximum liability, liquidated damages, disclaimer of warranties, and third party indemnification insure to the benefit of and are applicable to any assignees and/or subcontractors of Company's and that they bind Subscriber with respect to such assignees and/or subcontractors with the same force and effect as they bind Subscriber to Company, whether or not Subscriber has actual or constructive knowledge of same.

20. DEFAULT BY SUBSCRIBER. If Subscriber fails to pay any amount provided herein within ten (10) days after the same is due and payable, or if Subscriber fails to perform any other provisions within ten (10) days after Company shall have requested it in writing performance thereof, or if Subscriber makes any assignment for the benefit of creditors, Company shall have the right, but shall not be obligated to exercise any one or more of the following remedies:

(a) Recover the existing amount due from Subscriber and continue to service the system in which case, Company shall be entitled to recover, in addition, the monthly payments due under the Agreement for said services, or

(b) LEASED SYSTEMS ONLY: Remove the alarm system upon five (5) days written notice to Subscriber at Subscriber's address listed above, and recover from Subscriber all sums Company may be entitled to under law.

In the event of termination of this Agreement or upon expiration of this Agreement, Company shall have the immediate right to remove the equipment which shall not be considered to constitute a breach by Company of this Agreement or a waiver by Company of any of its rights. Company shall not be responsible for damage caused to Subscriber's premises by reason of the removal of the alarm from Subscriber's premises.

21 RIGHT OF SUBCONTRACTORS. Subscriber acknowledges that this Agreement, and particularly those paragraphs relating to disclaimer of warranties, liquidated damages and third party indemnification, insure to the benefit of and are applicable to any subcontractors employed by Company to provide monitoring, maintenance, installation or service of the alarm system(s) provided herein, and that they bind Subscriber with respect to said subcontractors with the same force and effect as they bind Subscriber to Company.

22 SUBSCRIBER'S PURCHASE ORDER: Subscriber acknowledges that if there is any conflict between this Agreement and Subscriber's purchase order or any other document, this Agreement will govern, whether said purchase order or other document is prior or subsequent to this Agreement.

23 ATTORNEYS' FEES: In the event it shall become necessary for Company to institute legal proceedings to collect the cost of installation or the monthly service as set forth herein, then and in such proceeding the unsuccessful party shall pay to the successful party reasonable attorney's fees.

24. INVALID PROVISIONS: In the event any of the terms or provision of this Agreement shall be declared to be invalid or inoperative, all of the remaining terms and provisions shall remain in full force and effect.

25 ENTIRE INTEGRATED AGREEMENT; MODIFICATION; ALTERATIONS; WAIVER. This writing is intended by the parties as final expression of their agreement and as a complete and exclusive statement of the terms thereof, and in particular paragraph 4 which set forth Company's maximum liability in the event of loss or damage to Subscriber or others. This agreement supercedes all prior representations, understandings or agreements of the parties, and the parties rely only upon the contents of this Agreement in executing it. This Agreement can only be modified by a writing signed by the parties or their duly authorized agent. No waiver or breach of any term or condition of this Agreement shall be construed to be a waiver of any succeeding breach.

26 NOTICES: All notices to be given hereunder shall be in writing and may be served either personally or by mail, postage prepaid to the addresses set forth in the Agreement or to any other address provided by one to the other from time to time in writing.

27 GENDER. Wherever the context refers in this Agreement, the masculine gender herein used shall include the feminine or neuter and the singular shall include the plural.

28 CONDITIONS AND COVENANTS. Each and all of the provisions of this Agreement are conditions to be faithfully and fully performed.

29 ARREST BY COMPANY: Subscriber authorizes and directs Company to cause the arrest of any person or persons on or around the premises, who are unauthorized by Subscriber to enter the premises of Subscriber during closed periods and to hold such person or persons until released by Subscriber, his known representative, or police authority.

30 PARAGRAPH HEADINGS: The paragraph titles used herein are for the convenience of the parties only and shall not be considered in construing the provisions of this Agreement.

31 DELINQUENCY, RECONNECT CHARGES; INTEREST. In the event any payment due hereunder is more than ten (10) days delinquent, Company may impose and collect a delinquency charge of one and one-half (1 1/2%) percent per month (18% per annum) of the amount of the delinquency. If the alarm system is deactivated because of Subscriber's past due balance, and if Subscriber desires to have the system reactivated, Subscriber agrees to pay in advance to Company a reconnect charge to be fixed by Company in a reasonable amount.