CONTRACT FOR FALSE ALARM BILLING AND TRACKING SERVICES

THIS CONTRACT FOR FALSE ALARM TRACKING AND BILLING SERVICES ("Contract") made and entered into this *18TH* day of _DEC._ , 2017, by and between the **City of Merced**, a municipal corporation of the State of California, 678 West 18th Street, Merced, California, 95340, ("Merced" or "CITY") and **PM AM Corporation,** ("CONTRACTOR"), a corporation of the State of Texas with its principal administrative offices located at 5430 LBJ Freeway, Suite 370, Dallas, Texas 75240.

W I T N E S S E T H:

Whereas, the Merced City Council enacted ordinances related to alarm systems and false alarms titled Chapter 8.28 Burglar Alarm Systems and False Alarms as of this date ("Alarm Ordinance"), as amended; and

Whereas, the goal of Merced is to encourage more responsible use of alarm systems and to reduce the number of false alarms to which public safety officers must respond by accurately tracking false alarm instances and assessing fees and penalties as required by the Alarm Ordinance; and

Whereas, in its implementation of the Alarm Ordinance, Merced is authorized to engage a third-party CONTRACTOR to assist the CITY in the enforcement of the Alarm Ordinance so that persons and organizations that use alarm systems can be held accountable for false alarms through a system of fees and penalties; and

Whereas, the CONTRACTOR created and markets the proprietary software system ("Software"), an integrated suite of software applications operating in a web-based environment, designed to assist false alarm reduction managers and planners in government agencies and industry in accessing information relevant to false alarms, and which has been developed at CONTRACTOR's private expense for the commercial marketplace and is not in the public domain; and

Whereas, Merced desires to engage the CONTRACTOR to provide the full service false alarm solution ("Services") described in Attachment A; and

Whereas, the CONTRACTOR desires to accept such engagement.

Now, Therefore, the parties agree as follows:

1. **Term**.

   The term of this Contract shall commence upon the date it is signed by both parties (the "Effective Date") and shall continue for a period of five (5) years with the option to extend for two (2) 1-year terms following the date the CONTRACTOR begins tracking and billing for false alarms ("Contract Implementation Date"). This Contract shall automatically renew for additional one-year periods unless either Merced notifies the CONTRACTOR or the CONTRACTOR notifies Merced in writing no later than ninety (90) days prior to the expiration of the initial or any annual renewal term that the CITY or CONTRACTOR wishes to terminate this Agreement as of the expiration of such initial or renewal term.

2. Contract Documents and Order of Precedence.

The contract documents consist of the following Attachments which are incorporated into the Contract by this reference:

A.   **Attachment A**, describes the Scope of Services to be provided by the CONTRACTOR and the CITY's operational responsibilities, and Attachment B, Payment Terms.

B.   The Order of Precedence shall be as follows: (1) this Contract; (2) Attachment A; and (3) Attachment B.

C.   At any time during the term of this Contract the CITY may request that CONTRACTOR perform Special Services for additional compensation to be agreed upon by the CITY and CONTRACTOR prior to the performance of any Special Services by CONTRACTOR. As used herein, Special Services means any work which is determined by the CITY to be necessary for this Contract, but which the parties did not reasonably anticipate would be necessary at the execution of this Contract and which CONTRACTOR agrees to perform. If the CITY and CONTRACTOR reach an agreement on the performance of Special Services, CONTRACTOR shall undertake such Special Services after receiving the authorization from the CITY.

3. Alarm Management Scope of Services.

A.   The CONTRACTOR shall provide the Alarm Management Services described in **Attachment A - Alarm Management Services.**

B.   The Alarm Management Services shall assist Merced in enforcing its Alarm Ordinance to include tracking of responsible persons (including individuals, businesses who use alarm systems, registering of alarm systems, billing and notification of permit and false alarm fees in accordance with the Alarm Ordinance and at the direction and under the supervision of Merced's Alarm Administrator, maintenance of a database of persons who use alarm systems, tracking of false alarm occurrences, collection of fees, the collection and enforcement of penalties for violations, generating performance and outcome reports and assuring the availability to Merced of timely false alarm information, all as more specifically described in **Attachment A - Alarm Management Services**.

4. Software license.

Merced shall be licensed and authorized to use the Software and any additional specific customization and development provided as part of the Alarm Management Services described in **Attachment A**. The license shall cover all Software, including, without limitation, software interfaces and software modifications. The scope of the license is revocable, non-transferable and non-exclusive and is authorized by CONTRACTOR for use by Merced to access its false alarm information. Notwithstanding the preceding, CONTRACTOR retains all right and title to the Application software, including but not limited to, all publication rights, all development rights, all reproductions rights, and all rights that may follow from the commercial development of the software. Merced does not acquire any ownership rights to the Application software. The Software is protected in favor of PMAM, as well as any future registered trademarks, are trademarks of PMAM.

5. Duration of the Software License.

Merced shall have the right to use the Software in accordance with **Attachment A** for so long as the CONTRACTOR provides Alarm Management Services to Merced and/or licenses the Software in accordance with the Termination provisions in this Contract. This license shall apply for the duration of the Contract and any extensions provided for herein or agreed to in writing by the parties. In the event the business relationship with CONTRACTOR is terminated or ended for any reason, Merced's license rights to use the Software shall likewise terminate except as provided for in this Contract, including **Attachment B.**

6. **Modification of the Software**.

A. Modifications or adaptations of the Software shall be limited to creating or providing interfaces between the Software and Merced 's computer systems required to import or export data in order to implement the Software or for such other purposes that CONTRACTOR deems appropriate.

B. Merced shall retain a nonexclusive License to use the modified and/or "customized" interfaces with the Software during the term of this Contract, provided, however, the use of the original Software with such adaptations in any projects other than the management of the Alarm Ordinance shall be subject to additional compensation to CONTRACTOR in an amount and subject to terms to be determined by the parties in writing prior to any such additional use.

7. **Protecting Confidential and Proprietary Information**.

The proprietary information of both parties, CONTRACTOR and Merced is and shall remain the valuable intellectual property of each respective party. Except as required by law, neither party shall disclose any such information to any third party for any reason without the express written consent of the other party and shall only use proprietary information for internal purposes to facilitate and assist CONTRACTOR and CITY staff in the administration of the Alarm Ordinance. In addition, the parties shall provide reasonable safeguards to protect their respective software, hardware systems and data from unauthorized intrusion by third parties. Notwithstanding, the parties recognize that the CITY is a government body subject to compliance with California Public Records laws.

Names, addresses, type of alarm, identification information of any alarm monitoring company, or identification information of any person cited under the Alarm Ordinance shall not be released, exhibited or sold to any third party by CONTRACTOR, except as required by law.

All data received hereunder shall be made a part of Merced's permanent records and files and preserved therein for a period in accordance with the requirements of California law. Merced will inform CONTRACTOR of the required retention time in writing at the beginning of the Contract term and, in the event these requirements change, as soon as those changes are approved by the appropriate California State or CITY agency.

Each party further agrees that in the event that any documents containing confidential information of the other party should be improperly used or removed in any way from the possession or control of the other party by a party, the breaching party shall immediately notify the other party orally and in writing, and shall join with the other party at their request in taking such reasonable steps as the owner of the confidential information may deem advisable to enjoin the misuse and regain possession of such confidential information, or steps otherwise necessary for the protection of the owner's rights and the confidentiality of the information.

All alarm related data maintained by the CONTRACTOR shall remain the property of the CITY. If the Contract is terminated for any reason, the CONTRACTOR shall provide such data to Merced on a timely basis in a mutually acceptable, electronic file format. Notwithstanding any other provision in this Contract, all obligations relating to disclosure of Proprietary Information remain subject to the Freedom of Information Act or California Public Records Act, Cal. Gov't Code §§ 6250 et seq. (collectively, the "PRA"). The Parties intend that if CITY is served with a request for disclosure under the PRA, or any similar statute, the CITY in good faith will make the determination as to whether the material is discloseable or exempt under the statute, and shall resist the disclosure of Proprietary Information which is exempt from disclosure to the extent allowable under the law. CITY shall advise CONTRACTOR in writing at least ten (10) days prior to the intended disclosure of any decision to disclose Proprietary Information, and the reasons therefore, and if CONTRACTOR then timely advises CITY in writing that it objects to the disclosure, CITY shall not disclose the information. In such case, CONTRACTOR shall then be solely liable for defending the non-disclosure and shall indemnify and hold CITY harmless for such nondisclosure.

8. **Reproduction and Copyright.**

A.   The Software is protected under the Copyright and Patent laws of the United States, and as extended by treaty, with Canada. Merced may not copy, or allow anyone else to copy or otherwise reproduce, any part of the Software without the prior written consent of CONTRACTOR, except to store and/or install a copy of the Software on a storage device, such as a network server, used only to run the Software on other computers over an internal network and for back-up or archive purposes.

B.   During the term of this Contract, Merced may copy any CONTRACTOR provided Software as necessary to its hard disks or other such storage medium to efficiently operate the Software on Merced single-user system, multiple-user system, or network. The Software shall be copied as a whole, and the use of the copies shall be governed by this Contract. All other copying is prohibited.

C.   Upon termination of this Contract, Merced shall immediately deinstall or otherwise permanently remove CONTRACTOR'S proprietary Software from Merced's system or network and provide a written affidavit to CONTRACTOR signed by an authorized official of CITY that it has done so.

9. **Limitations on the Use of the Software.**

Merced may not reverse engineer, decompile, or disassemble the Software. The Software is licensed as a single product. Its component parts may not be separated.

10. **Notices of Intellectual Property Rights.**

Merced shall assure that CONTRACTOR's notices of intellectual property (e.g., patent, trademark, and copyright notices) provided by CONTRACTOR, if any, shall remain visible on the Software when displayed electronically, or when output created by it is printed for distribution to persons or organizations outside the normal scope of the Alarm Ordinance.

11. Payment.

Merced shall pay the CONTRACTOR for the Services described, in accordance with **Attachment B** ("Payment Terms").

12. Collection of Fines.

The CITY shall support the collection of false alarm fees, fines and penalties in accordance with the Alarm Ordinances and at the direction of the Alarm Administrator. If the CITY directs CONTRACTOR to engage a third-party collection organization for delinquent amounts, the CITY shall cause the necessary legislative and administrative procedures to be enacted and/or adopted in order to delegate to the CONTRACTOR the authority to collect the delinquent fees on behalf of the CITY.

13. Confidentiality of Merced False Alarm Data.

Any false alarm collection data provided to the CONTRACTOR during the performance of the Alarm Management Services shall be used only in a manner consistent with this Contract, and no false alarm collection data shall be disclosed without the prior written consent of Merced. If such disclosure is compelled or required in any judicial or administrative proceeding, the CONTRACTOR shall, before disclosing such information, first notify Merced and give Merced an opportunity to object to the disclosure.

In the event Merced objects to such disclosure, it shall notify the CONTRACTOR that it will indemnify it, to the extent provided by law, for any costs and expense incurred, including, without limitation, the cost of attorney fees expended in the defense of any action or proceeding, or relating to the refusal to disclose such information.

14. Merced Responsibilities.

A.   Merced shall cooperate with and assist the CONTRACTOR by providing management decisions affecting startup or provision of the Alarm Management Services within ten business days of receipt of CONTRACTOR's request for a decision, as well as providing personnel, information, approvals, and acceptances in accordance with a mutually-agreed Implementation Plan to be developed by CONTRACTOR and Merced at the start of the Services. This Implementation Plan will define the detailed tasks and schedule necessary to achieve the following program target milestones:

1) Commence Services implementation activities on the Effective Date;
2) Begin collecting and processing alarm location information within sixty (60) days of the Effective Date; and
3) Begin processing false alarm activations within ninety (90) days of the Effective Date.

B.   Merced shall provide the CONTRACTOR with CAD alarm incident Records, appeal records, and necessary historical, non-financial alarm registration and alarm incident information in accordance with the terms of a mutually-agreed implementation plan and in a mutually-agreed electronic format, as necessary and proper, to allow the CONTRACTOR to effectively provide the Services and enforce the Alarm Ordinance.

15. **Merced Alarm Administrator**.

To facilitate effective communication between Merced and the CONTRACTOR, and in accordance with the Alarm Ordinance, Merced shall designate an Alarm Administrator for the false alarm program and a Financial Adminstrator for fudicary responsilbities. The Alarm Administrators shall have the power and authority to make decisions relating to the Services. A secondary Alarm Administrator will also be designated to act on behalf of the Alarm Administrators when the primary Alarm Administrators are unavailable. The primary and secondary Alarm Administrators shall be designated by Merced. The Alarm Administrator has the authority to waive, void, or modify violation notices and the resulting fine amounts. Any such waiver, modification, or voiding will be communicated to the CONTRACTOR in a written format The Financial Administator shall have the power and authority to make decisions relating to financial transactions for the administion of the program. The Financial Adminstrator will be designated by the CITY.

16. **Resolution of Disputes**.

A.   *Mediation.* In the event of a dispute between the parties concerning any matter arising under this Contract, the parties shall proceed to good-faith mediation of the dispute. The mediation venue shall be Merced, California. The cost of mediation shall be shared equally.

17. **Termination.**

A.   *For Convenience. Either party* may terminate this Contract for any reason and at any time by giving at least ninety (90) days written notice to the other party of such termination and specifying the effective date thereof. If the Contract is terminated by the CITY, the CONTRACTOR shall be paid for any services already performed by sharing in the collections of all amounts billed by the CONTRACTOR through the date of termination. If the Contract is terminated by the CONTRACTOR, the CONTRACTOR shall provide .

B.   *For Cause.* Either party may terminate this Contract for cause if the other party does not perform its duties or exercise its responsibilities in accordance with this Contract including the maintenance of the system of fees and fines in effect at the beginning of the Contract period. Upon an event of cause by either party (Non-performing party), the other (Claimant) party shall provide thirty (30) days prior written notice to the non-performing party that the Contract terms have not been carried out in accordance with this Contract. If the event of cause is not corrected by the Non-performing party to the reasonable satisfaction of the Claimant, the Claimant may terminate this Contract after a thirty (30) day written cure notice to the Non-performing party.

C.   Termination Within Initial five (5) year period. If this Contract is terminated by the CITY or its implementation is terminated or postponed by the CITY during the initial five (5) year period, for any reason other than breach by the CONTRACTOR, the CONTRACTOR shall be entitled to receive a prorated share of its initial startup costs as specified in **Attachment B**, in addition to any Service fees owed the CONTRACTOR as described in Paragraph 18 – Rights upon Termination.

D.   *Termination Upon Change in Alarm Oridnance.* CONTRACTOR'S Fee Schedule and pricing for any and all Services to be provided by CONTRACTOR to the CITY under this Contract have been set, established and agreed to be based upon the current provisions of applicable CITY ordinances relating to alarms. Should said ordinances change at any time during the term of this Contract to reduce the applicable fee, fines and charges, then the CONTRACTOR reserves the express right to enter into good faith negotiations with the CITY to modify the Fee

Schedule and pricing accordingly. If, within thirty (30) days of notice from CONTRACTOR to the CITY of its desire to so renegotiate, the parties are unable to reach an agreement mutually acceptable to both parties, then CONTRACTOR reserves the right to terminate this Contract upon written notice to CITY. Said termination shall not be deemed to be a default by CONTRACTOR under this Contract, CONTRACTOR shall be paid all fees and costs due and owing CONTRACTOR as of the date of said termination.

       E.   *Termination Upon Misuse of Proprietary Software*. CONTRACTOR may terminate this Contract upon 15 days prior written notice to CITY if CITY misuses or attempts to appropriate the proprietary software of CONTRACTOR, unless CITY cures such breach within 15 days of receipt of such notice.

18. Rights upon Termination.

       A.   If the CONTRACTOR is entitled to terminate this Contract or the CITY chooses not to continue the Contract for its convenience, the CONTRACTOR shall provide CITY with a Closeout and Termination Plan and Serices in accordance with the provisions of Paragraph 18A hereof.

       B.   If Merced terminates this Contract or if the CONTRACTOR terminates for cause, Merced, in addition to payment of false alarm collections owed to the CONTRACTOR based on the CONTRACTOR's billings through the date of termination, shall undertake good faith efforts to collect any Alarm Management Services fees and civil penalties for Ordinance violations billed, but not yet collected, as of the date of termination, in order to pay the CONTRACTOR, all amounts due the CONTRACTOR as a result of efforts engaged in by the CONTRACTOR on Merced's behalf.

       C. In the event that either party terminates this agreement, the CONTRACTOR agrees that all data collected under this agreement is part of Merced's permanent record and that all data, including historical records under the required retention time will be provided to Merced in MS-SQL format within 30 days of the termination date.

18A Closeout and Termiantion Plan.

       A. In the event either Party terminates this Contract or if the Contract is allowed to expire, CONTRACTOR and the CITY agree to the following:

       1.   CONTRACTOR shall diligently support the CITY and the incoming contractor to ensure a smooth transition for the Contract close-out/transition, at no additional cost to the CITY. At a minimum, CONTRACTOR shall:

       (a) Develop a Closeout Plan and submit it to Merced Alarm administrators within fifteen (15) Business Days of receiving the CITY'S request to initiate the transition plan or notice that this Contract will be terminated. At a minimum, the Closeout Plan must include proposals related to the following:

       (i)   A transition plan;

       (ii)   A cut-over date, on which, the new contractor is responsible for all claims from the cut-over date forward and CONTRACTOR is responsible for all claims prior to the cut-over date;

(iii)   A description of the tasks, timelines, milestones, and deliverables for transferring CONTRACTOR'S duties under the Agreement to a new vendor; and

(iv)   Transition procedures for the duties of data collection and transmission, reporting, invoicing, payment receipts, and deposits.

(b) Attend meetings with the CITY and the incoming contractor, upon the Merced Alarm Administrotor's request, to facilitate the transition, which meetings may occur telephonically or in person as the situation or the Merced Alarm Administrator requires;

(c) Coordinate with the CITY and the incoming contractor to facilitate the transition and establish a timeline for the transition;

(d) Coordinate CONTRACTOR'S resources to match the timeline and Closeout Plan approved by the Merced Alarm Administrator;

(e) Support all reasonable requests for information, coordination, and the provision of items and services to facilitate the transition plan.

B.   After the expiration or termination of this Contract, CONTRACTOR shall be responsible for continuing to process collections that occurred prior to the termination or expiration date of this Contract for a period of up to ninety (90) days after the date of expiration or termination ("Closeout Period") of the Contract. The City shall compensate Contractor pursuant to the terms and conditions of this Contract, except that CONTRACTOR shall be entitled to receive payment for Net Cash Collections received by CONTRACTOR during the Closeout Period and which are posted to the CITY'S designated bank account within thirty (30) Business Days after the Closeout Period ends.

C.   Within thirty (30) Business Days of the termination or expiration of this Contract and prior to the CITY'S payment to CONTRACTOR of any outstanding invoices or amounts to which CONTRACTOR is entitled, CONTRACTOR shall, at no charge, return all CITY documents; provided, however, CONTRACTOR may retain that which is necessary to perform the appropriate services and claims subject to the Closeout Period.

19. **Indemnification.**

A.   Subject to the limitations hereinafter set forth in Pargraph 21 hereof, the CONTRACTOR shall indemnify, hold harmless, and defend Merced, its elected and appointed officials, and any employee or agent CITY is required to indemnify relating to the actions or inactions of CONTRACTOR hereunder, and successors in interest from all claims, damages, losses and expenses including attorney's fees, arising out of or resulting, directly or indirectly, from the CONTRACTOR's (or CONTRACTOR's subcontractors, if any) performance or breach of the Contract provided that such claim, damage, loss, or expense is not caused by the negligent act or omission or willful misconduct of Merced or its elected and appointed officials and employees acting within the scope of their employment. Execpt as otherwise set forth in Paragraph 21 hereof, this Hold Harmless and Indemnification provision shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.

B. In the event that a claim is made against the CONTRACTOR, which arises out of the negligence or willful misconduct of Merced or any of Merced's employees, Merced shall indemnify the CONTRACTOR to the extent Merced is liable and authorized to do so under the law.

C. Any party seeking indemnification shall promptly notify the other party of its discovery of any matter-giving rise to a claim of indemnity. For each individual claim, the indemnifying party shall have no obligation to the other or to any third party with respect to any expenses incurred by or on behalf of the other or its assumption of control of the defense of the claim, or with respect to any compromise or settlement made, without the prior written consent of both parties.

D. If CONTRACTOR is required to indemnify CITY hereunder, CONTRACTOR may assume the defense of CITY with counsel reasonably acceptable to CITY at the expense of CONTRACTOR. In addition, CITY may engage its own counsel to participate in any defense in any such proceeding at the CITY'S expense.

20. **Patent infringement.**

The CONTRACTOR shall indemnify Merced, its elected and appointed officials, officers, employees, agents, and successors in interest from and against all damages and expenses resulting from any infringement action brought against the CONTRACTOR, or against Merced to the extent that any such action is predicated on the use of CONTRACTOR's software, during the term of this Contract. This Hold Harmless and Indemnification provision shall in no way be limited by any financial responsibility or insurance and shall survive termination of this contract

21. **Limitation of Liability.**

A. In no event shall either Party be liable to the other for consequential, special, incidental or punitive damages arising out of or relating to performance and nonperformance. This limitation shall apply regardless of the form of action, whether in contract or in tort, including negligence or misrepresentation, including loss of fees, profits or income, arising directly or indirectly out of the provision or non-provision of Services or Additional Services hereunder, whether or not such party had any knowledge that such damages might be incurred.

B. Notwithstanding any other provision of this Agreement to the contrary, except Paragraph 20 hereof, in no event whatsoever shall CONTRACTOR be liable for damages attributable to its actions or inactions, or its subcontractor's actions or inactions, with respect to the Services or Additional Services provided hereunder, whether for indemnification or otherwise, in excess of the sum of: (i) any insurance proceeds actually received by CONTRACTOR, or paid by CONTRACTOR's insurance carrier to the CITY, with respect to the claim for indemnification by the CITY hereunder, and (ii) the amount of fees actually retained by CONTRACTOR under this Agreement as its fee during the six (6) months immediately preceding the act or omission that generated CONTRACTOR's indemnification obligation hereunder; provided, however, the limitations on the indemnification obligations of CONTRACTOR set forth in this Section shall not apply to the obligation of CONTRACTOR to pay the CITY its share of the collected revenues as set forth in this Agreement.

22. **Insurance.**

The CONTRACTOR shall provide and maintain in full force and effect at no additional cost to Merced for the duration of the Contract commercial general liability insurance or comprehensive general liability insurance with a minimum limit of $1,000,000 per occurrence for bodily injury and damage to property including contractual liability, premises/operations, products/completed operations, independent CONTRACTORs, broad form property damage, and personal injury coverage and a minimum aggregate amount of $1,000,000 or commercial/comprehensive general liability insurance plus additional excess umbrella liability insurance to meet these limits.

The CONTRACTOR agrees that it shall add Merced, its elected and appointed officials, officers, and successors in interest to the CONTRACTOR's liability insurance policies as additional insureds. The CONTRACTOR shall require its insurance carrier or agent to certify that this requirement has been satisfied on all Insurance Certificates issued under this Contract.

Before any work is initiated and before any invoices are paid for work performed under this Contract, the CONTRACTOR shall provide written proof of compliance with the above insurance requirements by delivering to:

> City of Merced
> Attn: City Clerk's Office
> 678 W 18th Street
> Merced, California 95340

a copy of a certificate or certificates of insurance completed by its insurance carrier or agent certifying that minimum insurance coverages as required above are in effect and that the coverage will not be canceled or changed until thirty (30) days after written notice is given to the CITY. The CONTRACTOR shall maintain, update, and renew the Certificate(s) for the term of this Contract.

23. Assignment.

This Contract shall not be assigned to any third party without prior written consent, which may be withheld in the sole and absolute discretion of either party. A change in ownership of the CONTRACTOR or a purchase of the majority of assets or stock of the CONTRACTOR by another company shall not be considered an assignment of this Contract.

24. Attorney's Fees.

Should the parties or either of them employ an attorney to enforce by litigation in a court of competent jurisdiction, any of the contract provisions because of a disputed matter arising under this Contract, to assert damages for the breach of the Contract, or in order to obtain injunctive relief, then the prevailing party shall be entitled to recover reasonable attorney's fees, costs, charges, and any expenses expended or incurred.

25. Notices.

Wherever under this Contract one party is required or permitted to give notice to the other, such notice shall be deemed given when delivered in hand or when mailed, by United States mail, certified, return receipt requested, postage prepaid, and addressed as follows:

> In the case of the CONTRACTOR:

PM AM Corporation
5430 LBJ Freeway, Suite 370
Dallas, TX 75240
Attention: Mr. Pankaj Kumar, CEO

In the case of Merced:

City of Merced
678 West 18th Street
Merced, California 95340
Attention: City Clerk's Office

26. Governing Law.

The substantive laws of the State of California shall govern this Contract without regard to the law of conflicts. Venue shall be in the appropriate court of Merced, California. Such actions shall neither be commenced in nor removed to federal court.

27. Severability.

If any provision of this Contract is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired.

28. No Waiver.

The failure by any party to exercise any right stated in this Contract shall not be deemed a waiver of the right.

29. Complete Agreement.

This Contract when signed by both parties sets forth the entire understanding of the parties as to its subject matter, conditions and obligations and may not be modified except by further written agreement.

30. Independent Contractors.

In performing the work under this Contract, the CONTRACTOR acts as an independent CONTRACTOR and is solely responsible for necessary and adequate worker's compensation insurance, personal injury and property damage insurance, as well as errors and omissions insurance. The CONTRACTOR, as an independent CONTRACTOR, is obligated to pay federal and state income tax on moneys earned. The personnel employed by the CONTRACTOR are not and shall not become employees, agents or servants of Merced because of the performance of any work by or under the performance of this Contract.

31. Cooperative Purchases.

This Contract may be used by other government agencies. The CONTRACTOR has agreed to offer similar services to other agencies under the same terms and conditions as stated herein except that the revenue share percentage (Compensation) may be negotiated between

the CONTRACTOR and other agencies based on the specific revenue expectations, agency reimbursed costs, and other agency requirements. The CITY will in no way whatsoever incur any liability in relation to specifications, delivery, payment, or any other aspect of purchases by such agencies.

WHEREAS, the individuals representing the parties are both authorized and have executed this Contract effective as of on the date first written above.

City of Merced, California

By: _____

_12/28/17_
_City Manager_

Contractor:

PM AM CORPORATION

By: _____
          PANKAJ KUMAR,
          Chief Executive Officer

STATE OF TEXAS
COUNTY OF DALLAS

Sworn and subscribed before me this __11th__ day of ~~December, 2017~~ _January 2018_ by PANKAJ KUMAR as the Chief Executive Officer of Contractor and who is personally known to me.

NOTARY SEAL:

GAIL RUSHING
Notary Public, State of Texas
Comm. Expires 03-30-2020
Notary ID 11922743
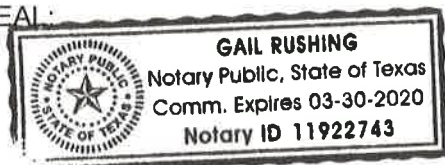
Gail Rushing
Notary Public, State of Texas

ATTEST:
CITY CLERK

BY_____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

KELLY C. FINCHER
Chief Deputy City Attorney
300519   PO #: 129106
FUNDS/ACCOUNTS VERIFIED

FINANCE OFFICE   V-17915   DATE

Funds Available. _uue_ 12/19/17
                           r 12/21/17
001-1050-522·17·00 $ 10,000.00

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ATTACHMENT A

Scope of Services

Purpose

The purpose of this Scope of Services is to describe the duties and responsibilities of Contractor (), and the Merced, California ("Merced " or "CITY") required for a comprehensive alarm management strategy that includes the coordination of permit registration, generation and collection of alarm fees, issuance of fines, false alarm education, on-line services, and coordination with alarm companies.

CONTRACTOR Responsibilities

CONTRACTOR Responsibilities

Project Manager will deliver a series of documents to the City Project Manager, which may include one or more of the following: Implementation Task Checklist, Issue Tracking Tools, Project Status Tracking spreadsheets, and Implementation Plan and Timeline. Prior to starting the project, CONTRACTOR and City will agree on the final project kick off agenda, that will be used to formalize points of contact, establish project expectations, review deliverable due dates, review previous lessons learned, and establish upcoming tasks.

1. At the beginning of the project, electronic conversion/import to CONTRACTOR computer server(s) of any CITY alarm program records required to support the proposed CONTRACTOR services. These records may contain historical CITY alarm business, alarm system location, responsible party and other alarm data previously developed by or for Merced. CONTRACTOR shall obtain this data directly from Merced and relies on the CITY for the accuracy and completeness of any such historical data;

    A. Assist the City in the roll-out of the updated City Ordinance and false alarm requirements through educational efforts and community outreach.

    B. Publish notification of the updated City Ordinance and alarm permit requirements for all residential and business addresses, and for alarm service providers.

2. Update alarm business, alarm system location and responsible party information and renew permits and alarm registrations in accordance with the CITY Alarm Ordinance ("Ordinance"). Updated information may be processed by mail, electronically and / or online;

    A. Register, renew and bill the registration of alarm systems in accordance with the Ordinance. Registrations and renewals may be processed by mail, telephone, electronically and / or online. Notices related to registration may be sent by email or mail based on the alarm user contact information maintained;

    B. Provide exceptional customer service to community members and businesses. PMAM CSR's will be available from 6:30 am to 5 pm PST for the city's citizens. While ultimately there may be a disagreement over responsibility for a false alarm, communications with community members and businesses should be prompt,

responsive, and courteous and provide a clear explanation of the situation and routes of appeal.

C. Follow up quickly and effectively with delinquent alarm users that have not paid their fees or penalties by the due date in a friendly, professional, and customer service-oriented manner. Inform delinquent alarm users of the credit impact if fines are not paid including reporting of their delinquency to credit bureau reporting agencies.

D. PMAM will also accept permit applications over the phone.

4. Import daily or as soon as CITY data is available into the CONTRACTOR's alarm billing system, alarm incident data (in formats prescribed by CONTRACTOR) extracted by the CITY from the CITY's New World CAD/911 System;

5. Create and host a dedicated, secure (SSL encrypted) Merced Alarm Program website for CITY citizens and businesses to obtain false alarm reduction educational information, review alarm ordinance and appeal requirements, access and update alarm account information, and pay alarm fees online if preferred. This website may be linked by the CITY to the CITY website if desired. Ensure the Service Provider processing, storing and transmitting cardholder data for online payments made to the City is Payment Card Industry (PCI) compliant as detailed in Appendix D of this Agreement. ;

6. Initialize, maintain, secure and back-up Program databases including alarm business, alarm system location and incident data; alarm-related financial transactions and accounts receivable information. CONTRACTOR will comply with the provisions of the Alarm Ordinance, and update Program business rules to comply with Alarm Ordinance changes as supported by the CONTRACTOR software;

7. Process false alarm incident data, including the matching of false alarm incidents with the alarm system location database maintained by CONTRACTOR;

8. Bill and correspond with alarm businesses and alarm users in accordance with the Alarm Ordinance provisions. This will include but may not be limited to invoices and delinquent payment notices. A warning notice will be sent to each alarm user on the occasion of the alarm user's first false alarm immediately preceding the first chargeable alarm incident. Warning notices may be sent by mail, email or other electronic method based on the alarm user's accepted contact method(s). Allow City to create and modify letter template and language. Changes to templates shall be permitted with the understanding that each template should be changed no more than once a year after implementation is complete. Emergency changes due to errors or changes in ordinance provisions shall be permitted at any time.;

9. Provide CITY alarm users access to online information on false alarm reduction and Ordinance requirements to include an Online Alarm School or mail-in false alrm prevention training program.

10. Answer telephone inquiries from CITY alarm users that are placed to a false alarm program toll-free customer service number established for the CITY;

11. Process fee / penalty payments mailed to and deposited in a nearby CITY-approved bank lockbox and account, and received from other payment channels, e.g. online, as agreed on by CONTRACTOR and the CITY, and apply these payments to alarm accounts;

12. Support alarm hearings and appeals by notifying the CITY of any such appeals, providing a CITY Alarm Program representative with documentation supporting noticing / billing decisions; and updating the system with the disposition of any hearing results;

13. Provide and maintain computer equipment, software, mailing equipment and furniture at CONTRACTOR's Program processing facilities;

14. Provide the CITY secure (SSL encrypted), online, on-demand access to alarm management information and reports including, but not limited to, alarm account transaction history, alarm system information, and financial transactions/balances with format and content specified by the Alarm Management System and the designated Bank, and agreed on between the CITY and CONTRACTOR; and,

15. Perform special collection functions as directed and authorized by the CITY such as retaining a third party collection agency or providing delinquent account information to other CITY agencies. To the extent permitted by local law, third-party collection fees will be added to the delinquent amounts.

CONTRACTOR will use commercially reasonable efforts to make the online false alarm management system available with an uptime percentage of at least 95%. CONTRACTOR will notify the City's designated Systems Administrators and designated backups of any system outage, and take steps to remedy any issues to make the system accessible as quickly as possible. In the event of a scheduled outage, the CONTRACTOR will notify the City's designated Systems Administrators and backups at a reasonable period prior to the outage. Notices will be sent via e- mail.

City and CONTRACTOR agree that because the sole means of City and CONTRACTOR compensation under the Contract is revenue sharing it is in the mutual best interest of both parties to minimize system downtime. Multiple failures to meet the 95% will allow the City to terminate the contract for cause under section 17b.

Regular hours of service (Pacific time) 630 to 1700 hours, Monday – Friday excluding holidays observed by the U.S. Federal Government.

CONTRACTOR agrees to preserve the confidentiality and integrity of City of Merced data with administrative, technical and physical measures that conform to generally recognized industry standards and best practices that CONTRACTOR then applies to its own processing environment. Maintenance of a secure processing environment includes but is not limited to the timely application of patches, fixes and updates to operating systems, network equipment and applications, as provided by vendor.

CONTRACTOR shall provide up to three (3) hour web-based "train-the-trainer" training covering all necessary topics based on user roles of end-user, systems administrator, alarm administrator, and any other roles necessary for the successful operation of the system.

CONTRACTOR is responsible for all costs of carrying out these responsibilities including, but not limited to, the cost of staff, facilities, equipment, consumable supplies, bank account, lockbox, credit card fees, and first-class postage. Only third-party collection costs (if any), e.g.

collection agency fee, and citizen overpayments, if any, will be shared by the parties through payment from gross collections before revenue sharing.

Assist the City's representative or Alarm Administrator by scheduling appeal hearings and providing notification of appeal decisions for any false alarm hearings.

Vendor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of (PII) Personally Identifiable Information or other event requiring notification. In the event of a breach of any of CONTRACTOR's security obligations, or other event requiring notification under applicable law, CONTRACTOR agrees to:

    a. Notify City of Merced by telephone and e-mail of such an event within 24 hours of discovery, and

    b. Assume responsibility for informing all such individuals in accordance with applicable law, and

    c. Indemnify, hold harmless and defend City of Merced from and against any claims, damages, or other harm related to such Notification Event.

CONTRACTOR is responsible for all costs of carrying out these responsibilities including, but not limited to, the costs of staff, facilities, equipment, consumable supplies. Only third-party bank and credit card fees, mailing supply costs (paper and envelopes), first class postage, third party collection costs (if any), e.g. collection agency fee, and citizen overpayments, if any, will be shared by the parties through payment from gross collections before revenue sharing.

Merced Responsibilities

1. Appointing a CITY Alarm Administrator ("Administrator") and backup administrator who will be the primary points of contact between CONTRACTOR and the CITY. The Administrator(s) is responsible for overseeing CONTRACTOR's operation of the False Alarm Management Services Program ("Program") and accessing Program information, as needed, via CONTRACTOR provided online access;

2. Requesting or supporting CONTRACTOR's requests of Alarm Companies, as needed, to provide alarm system information;

3. Making any and all decisions about alarm call response, determining whether calls are false alarms, providing any on-scene communication of alarm related information to alarm users, and for entering any alarm related information within the CITY New World CAD/911 system;

4. Extracting false alarm call incident data from the New World CAD/911 System and transferring this data electronically to CONTRACTOR (via CONTRACTOR's FTP site over a VPN tunnel). The data extraction format will be provided by CONTRACTOR and CONTRACTOR will provide the CITY additional software for automating the daily transfer of alarm incident files to CONTRACTOR CONTRACTOR will assist the City of Merced in identifying the database tables required in the CAD system for the false alarm call incident data. ;

6. Assist with conducting any general public education programs on false alarms; and,

7. Transferring any and all financial information from the Program generated alarm reports to other Merced financial systems, as needed.

The CITY is responsible for all costs of carrying out the CITY's responsibilities, including, but not limited to the costs of staff, facilities, computer equipment and consumable supplies.

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ATTACHMENT B
PAYMENT TERMS

1. Revenue Sharing Percentage

The revenue-sharing approach requires no out-of-pocket or startup expenditures by the City. All proposed CONTRACTOR service fees will be based on a percentage of alarm program fees and fines collected. CONTRACTOR's alarm program collections will cover all software development, licensing, website hosting, historical data conversion, equipment, postage, supplies, credit card and bank fees, lockbox and other costs incurred by the CONTRACTOR to provide the False Alarm Billing and Tracking Services described herein.

The CONTRACTOR's Revenue Share is 20%.

CONTRACTOR agrees to pay all bank lockbox and credit card fees and all correspondence mailing costs (at first class postal rates) from CONTRACTOR's share after revenue sharing calculations.

Any certified mail requirements will be billed separately on a monthly basis and is not subject to the revenue share division.

The revenue share percentages are based on several assumptions over which the CONTRACTOR has little or no control:

- The Ordinance fee and fine schedules remain at levels equal to or greater than at the Contract effective date;
- The CITY adopts a fair, but firm approach to granting appeals. Appeals and CITY waived charges are expected to reduce collections by no more than 5% annually; and
- The CITY actively supports enforcement of the Alarm Ordinance, including support of reasonable measures to collect all amounts due for violations of the Alarm Ordinance.

Revenue Share Payment Process

CITY and CONTRACTOR agree as follows:

1. All false alarm related fee collections from any payment method, including but not limited to bank lockbox and online credit card, shall be deposited, as soon as practical, in a False Alarm Bank Account ("False Alarm Account") to be established at a mutually agreeable Commercial Bank;
2. CITY and CONTRACTOR agree to maintain a positive balance of available funds ("Minimum Balance") at all times in the False Alarm Account;
3. At the beginning of each month, CONTRACTOR will reconcile the alarm related deposits for the most recent completed month and report the same to CITY. Upon CITY's approval, CITY and CONTRACTOR shall authorize and cause the issuance of electronic (ACH) transfers to CITY and to CONTRACTOR as follows:

    a. With regard to the transfer to CONTRACTOR, the amount will be calculated for

CONTRACTOR based on the Revenue Share described above. That amount, not to exceed 20 % of the revenue collected during the preceding month, shall be transferred to a bank and account authorized by CONTRACTOR; and,

b. The remaining balance of the revenue collected during the preceding month of no less than 80% (less any pre-determined fees; i.e. postage), shall be transferred to a bank and CITY account specified by CITY .

4. At the termination of this Contract, any remaining balance shall be transferred to CONTRACTOR and to CITY on the same prorata basis, e.g. 20% and 80% respectively.

5. CITY is a California public entity and all financial obligations extending beyond the current fiscal year are subject to funds being budgeted and appropriated therefore.

Delinquent Account Terms

The parties shall define a mutually agreeable process and methods for collecting amounts due from delinquent accounts. If organizations other than the CITY and CONTRACTOR are retained to collect overdue amounts, the parties agree that the collection costs shall to the extent permitted by State of California law be added to the delinquent amounts owed by alarm system users or be borne by the parties on a pro-rata basis by deducting the third party collection fees from the gross third party collections before the revenue shares are calculated.

The CITY Payment Upon Early Termination (Per Paragraph 17C)

If, within the initial five (5) years of the effective date, this Contract is terminated by the CITY for convenience under 17A, or is terminated by CONTRACTOR for cause as defined in Paragraph 17B, CONTRACTOR shall be due a one-time Program Termination fee, not to exceed $24,000.00, to reimburse CONTRACTOR for startup costs. This fee shall be in addition to any other amounts due CONTRACTOR under the Contract. The $24,000.00 shall be amortized (reduced) on a straight-line basis ($1,000 per month) over the first two (2) years.

ATTACHMENT C
SYSTEM FUNCTIONAL OVERVIEW

- The **FAMS™** system· is a comprehensive alarm management solution that includes the coordination of permit registration, generation and collection of . alarm fees, issuance of fines; false alarm education, on.;line services, and,· coordination with alarm companies

- The solution shall include technology to automatically, and at a frequency as determined by the City, export and process alarm incident data from the City's NewWorld Systems records managment system and import it into the CONTRACTOR'S FAMS™ alarm billing system.

- System shall provide fully automated RECORDS incident data export and file transfer to CONTRACTORS system without the need for manual intervention. If there becomes an error in the automated process both parties will work together to correct the problem as quickly as possible.

- The system shall process false alarm incident data, including the matching of false alarm· incidents with the.alarm system location database maintained. by the CONTRACTOR.

- CONTRACTOR shall bill and correspond with alarm businesses and alarm users, both permitted and non-permitted in accordance with the City Ordinance provisions. This will include; but may not be limited to; invoices and delinquent payment notices.

- System shall send a warning notice to each alarm user on the occasion of the · alarm user's first false alarm. Warning notices may be sent by mail;. e-mail or other electronic method; based on the alarm user's accepted contact method(s).

- Systems shall provide a hosted dedicated, secure (SSL encrypted) City Alarm Program website for community members and businesses to obtain false alarm reduction educational information, review alarm: ordinance and appeal requirements, access and update alarm account information, register and renew their accounts and pay alarm fees online if preferred.

- System shall allow City to securely search the alarm database online and to access alarm account history and alarm ordinance enforcement actions.

- System shall provide multiple search criteria such as name, address, and phone number, including partial and wildcard searches. Also provide the ability to search alarm database by alarm CONTRACTOR name.

- System shall provide alarm permit applications for renewal and allow interactive, online application and application by mail using a local mailing address.

- System and CONTRACTOR shall register, renew and bill the registration of alarm systems in accordance with the City Ordinance. Registrations and renewals may be

processed by mail, electronically and / or online. Notices related to registration may be sent by e-mail or mail based on the alarm user contact information maintained. Mail submission shall be to a local mailing address.

- System shall track new permits and allow City-defined permit statuses, e.g. active, expired, and suspended or other statuses as defined in the alarm Ordinance.

- System shall provide detailed invoices with the history of all false alarm dates and locations.

- System shall provide the. City the ability to view payments online.

- System shall maintain secure back-up program databases including alarm business, alarm system location and incident data; alarm-related financial transactions and accounts receivable information.

ATTACHMENT D
PCI COMPLIANCE FOR THIRD-PARTY SERVICE CONTRACTOR (TPSP) ADDENDUM

CONTRACTOR acknowledges it does not process, store, or transmit the City's customer cardholder data for online payments. Online payers are redirected from CONTRACTOR's website to a web portal of a "Service Provider" engaged by CONTRACTOR. This Service Provider processes, stores, and transmits cardholder data for online payments made to the City, CONTRACTOR only receives payment authorizations. **Contractor · is responsible for ensuring Service Provider is PCI cornpliant in accordance with and consistent with guidelines established in the "Third-Party Security · Assurance" issued by the PCI Security Standard Council currently available at:**
https://www.pcisecuritystandards.org/documents/ PCI_DSS_V3.2_Third_Party_Security_Assurance.pdf
On an on-going basis, Contractor is responsible for implementing new or updated guidelines related to third party security assurance issued by the PCI Security Standard Councit .

Within 30 days of execution of this addendum, Contractor shall provide an Attestation of Compliance (AOC) of the Service Provider with scope verification that matches the type of service provided for online payments or other PCI compliance document as acceptable to the City. During the contract term, Contractor shall annually provide the AOC or other PCI compliance document related
to the Service Provider acceptable to the City on the anniversary date of this addendum or the AOC renewal date whichever occurs earlier. ·