



CITY OF ELMHURST  
WIRELESS RADIO ALARM LEASE

This agreement is made this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the City of Elmhurst, 209 N. York Street, Elmhurst, Illinois, 60126, (the "City") and \_\_\_\_\_ (the "Subscriber").

Name of Occupancy where wireless equipment is installed: \_\_\_\_\_  
Address: \_\_\_\_\_ City: Elmhurst State: IL Zip Code: 60126

Property Owner (if different than subscriber): \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

1. **SYSTEM SERVICE:** The Subscriber agrees to lease wireless radio equipment from the City to transmit alarm signals to the City Police Department during the term of this agreement.

2. **TERM, PAYMENT, RENEWAL:** Subscriber hereby agrees to pay the City the following:

Lease and Monitoring Fee of \$85.00 dollars per month, payable in advance, and due within 10 days of invoice date. The monthly Lease and Monitoring Fee is subject to increase as set forth in Paragraph 9. In addition, together with the first payment as set forth above, Subscriber shall pay the pro-rated share of the charges for the period in which service commenced.

This agreement shall be in effect beginning \_\_\_\_\_ and remain in force unless terminated by either party in writing by registered mail, with not less than thirty (30) days notice.

3. **CITY DISCLAIMER OF WARRANTIES:** CITY DOES NOT REPRESENT OR WARRANT THAT THE ALARM SYSTEM, LEASED RADIO OR THE MONITORING THEREOF WILL PREVENT ANY LOSS BY 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 CITY HAS MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION THE CONDITION OF THE EQUIPMENT, IT'S MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, NOR HAS THE SUBSCRIBER RELIED ON ANY

RESPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED. SUBSCRIBER FUTHER ACKNOWLEDGES AND AGREES 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 DESCRIPTION ON THE FACE HEREOF. SUBSCRIBER FUTHER ACKNOWLEDGES AND AGREES: (A) THAT CITY IS NOT AN INSURER; (B) THAT SUBSCRIBER ASSUMES ALL RISK OF LOSS OR DAMAGE TO SUBSCRIBER'S PREMISES OR TO THE CONTENT THEREOF; (C) AND THAT SUBSCRIBER HAS READ AND UNDERSTANDS ALL OF THIS AGREEMENT, PARTICULARLY PARAGRAPHS (4) AND (5) WHICH SET FORTH LIMITATION OF LIABILITY AND INDEMNIFICATION PROVISIONS IN THE EVENT OF ANY LOSS OR DAMAGE TO SUBSCRIBER OR ANYONE ELSE.

**4. CITY IS NOT AN INSURER; LIMIT OF LIABILITY:** It is understood and agreed that since City is not an insurer, insurance if desired, will be the sole responsibility of Subscriber. Subscriber further acknowledges the payments provided 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 or the property of others located on Subscriber's premises. City makes no guarantee or warranty, including any implied warranty of merchantability or fitness that the equipment or services supplied will avert or prevent occurrences or the consequences therefrom which the system is designated to detect or avert. 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, including, but not limited to installation, service maintenance or monitoring, or failure of the system to properly operate with resulting loss to Subscriber because of, among other things:

(a) The uncertain amount of value of the Subscriber's property or the property of others kept on the premises which may be 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 fire or police department, should the fire or police department be dispatched as a result of a signal being received or an audible device sounding;

(c) The inability to ascertain what portion, if any, of any loss would be proximately caused by City's failure to perform or by, the equipment to properly operate; and

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

Subscriber understands and agrees that if, notwithstanding the above provisions, City should be found liable for personal injury or property loss or damage due from failure of the City's obligations herein, including but not limited to, installation, maintenance, monitoring, service or the failure or malfunction of the system or equipment in any respect whatsoever, City's liability shall be limited to a sum equal to the

total of two (2) monthly charges or Two Hundred Fifty (\$250.00) Dollars, whichever is the lesser, and this liability shall be exclusive and shall be paid and received as liquidated damages and not as a penalty. The provisions of this section shall apply if loss or damage, irrespective of cause or origin, results directly or indirectly to persons or property from performance or nonperformance of any obligations imposed by this agreement or from negligence, active or otherwise, of City or ADT its agents, servants, assigns or employees.

If subscriber wishes City to assume greater liability, Subscriber has the right to obtain from City, if available, a higher limit by paying an additional amount for the increase in liability, and a rider shall be attached hereto setting forth such higher limit and additional cost, but such additional obligation shall in no way be interpreted to hold City as an insurer.

**5. THIRD PARTY INDEMNIFICATION:** In the event any person, not a party to this agreement shall make any claim or file any lawsuit against City for any reason relating to City's the design, installation, maintenance, monitoring, operation or nonoperation of the alarm system, Subscriber agrees to indemnify, defend and hold City harmless from any and all claims and lawsuits, including the payment of all damages, expenses, costs and attorney's fees, whether these claims are based on alleged intentional conduct, active or passive, negligence, express or implied contract or warranty, contribution or indemnification or strict or product liability on the part of City or its agents, servants, assigns, or employees.

This agreement by Subscriber to indemnify City against third party claims as herein set forth shall not apply to losses, damages, expenses and liability, resulting in injury or death to third persons or injury to property of third persons to the extent such losses, damages and liability are caused by the acts or omissions of an employee or agent of the City.

Subscriber represents and warrants that to the best of Subscriber's knowledge the premises are free of any hazardous materials. The term "hazardous materials" shall include but shall not be limited to asbestos, asbestos-containing material, polychlorinated biphenyl ("PCB"), formaldehyde or other potentially toxic or otherwise hazardous material. If any such substance is discovered at the premises, the City will not be required to install or service any equipment or systems at the premises unless and until Subscriber certifies the removal or safe containment of such hazardous materials.

**6. PRIOR AGREEMENTS:** Subscriber warrants and represents that it is not under any enforceable agreement with any other party concerning alarm systems of any kind and description installed at the premises, or, if Subscriber is under an enforceable agreement with any other party concerning alarm systems of any kind and description installed at the premises, that Subscriber will negotiate any required cancellation, reimbursement or refunds with such other party; and furthermore, Subscriber agrees to indemnify and save harmless City and ADT against all claims, demands, suits, expenses and damages by judgment or otherwise, which may be now or hereafter incurred as a result of or arising

out of any agreement that Subscriber may have entered into with any party concerning any such alarm system of every kind and description. Subscriber will pay all said sums, including reasonable attorney's fees incurred in the enforcement of this indemnity provision.

**7. SETTING OF THE SYSTEM:** Subscriber acknowledges that the service provided herein requires the setting of the alarm system which shall be the sole and exclusive responsibility of the Subscriber.

**8. ADDITIONAL CHARGES:** In addition to the Lease and Monitoring Fee above, the Subscriber agrees to pay all municipal, state or federal taxes and sales taxes.

**9. INCREASE IN MONTHLY CHARGES:** City shall have the right, at any time, to increase monthly charges provided herein solely to reflect increases in federal, state and local taxes, utility charges, and municipal fees and charges, which hereinafter are imposed on City and which relate to the services provided under this agreement, and Subscriber agrees to pay such increased monthly charges. City agrees to notify Subscriber ninety (90) days in advance of any fee increases.

**10. CHANGE IN OWNERSHIP OF SUBSCRIBERS PREMISES:** Subscriber may not assign or permit anyone to take subject to this agreement without the written consent of City which will not be unreasonably withheld.

**11. ASSIGNEES/SUBCONTRACTORS OF CITY:** City shall have the right to assign this agreement to any other person, firm or corporation upon written notice to Subscriber, which shall not be unreasonably withheld. Subscriber acknowledges that this agreement, and particularly those provisions relating to City's disclaimer of warranties, maximum liability, and third party indemnification, inure to the benefit of and are applicable to any assignees and/or subcontractors of City, and that they bind Subscriber with respect to said and/or subcontractors with the same force and effect as they bind Subscriber to City.

**12. SELECTION OF SYSTEM COMPONENTS:** The Subscriber agrees that City shall have no liability for the failure to install any equipment or systems not designated to be installed in this agreement.

**13. MAINTENANCE:** Maintenance and/or replacement of any wireless equipment components shall be the sole responsibility of the City and its agents. The Subscriber or his Fire/Burglar Alarm service company is not authorized to work on any of the wireless equipment. The City and its agents shall take proper safeguards for the prevention of accidents or injury to persons or property. Property as defined in this agreement includes money. Money includes, but is not limited to, currency, coin, checks, and/or securities and any other documents or items of value or documents which represent value. The City shall maintain its current levels of insurance, and the City shall provide proof of coverage upon request.

14. **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 such purchase order or other document is prior or subsequent to this agreement.

15. **REGULATORY COMPLIANCE:** The City agrees to comply with all local, state and federal laws, rules and regulations regarding worker's compensation, social security, unemployment compensation and payroll withholdings. The City also agrees to comply with all federal laws, including Federal Deposit Insurance Act § 19 (12 USC §1829), which prohibits the unauthorized participation in depository institutions by convicted individuals, state labor laws, and federal and state regulations and orders, including labor laws and those which relate to the payment of minimum wage and overtime. The City also agrees to comply with all applicable Federal immigration and EEO laws including, but not limited to, the discrimination provisions of the Immigration Reform and Control Act of 1986, the American with Disabilities Act, the Age Discrimination in Employment Act, and Title VII of the Civil Rights Act of 1964.

16. **ADDITIONS OR AMENDMENTS:** Any additions or amendments must be signed by all parties. No verbal understanding shall alter the terms of this agreement.

17. **ATTORNEY'S FEES:** In the event it shall become necessary for either party to institute legal proceedings to pursue its rights or remedies hereunder, then, and in such proceedings, the other party shall pay the party bringing suit's reasonable attorney's fees should judgment go to the party bringing suit.

18. **INVALID PROVISIONS:** If any provision, condition, covenant or other clause, sentence or phrase of this agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised and the invalidity thereof shall not affect any other provision, condition, covenant or other clause, sentence or phrase contained herein. Notwithstanding the foregoing, if any such invalid provision goes to the essence of this agreement so that the purposes of the agreement cannot be fulfilled, then this agreement shall terminate as of the date of such judgment.

19. **ENTIRE INTEGRATED AGREEMENT; MODIFICATION; ALTERATIONS; WAIVER:** Except as otherwise expressly provided herein, this agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement between the City and Subscriber. Any party to this agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this agreement.

20. **NOTICES:** All notices to be given hereunder shall be in writing and may be served, either personally or by regular mail, postage prepaid at the address shown herein.

21. **TESTING:** It is the responsibility of the Subscriber, for proper operation, to periodically but not less than annually test the system. Testing of the system shall include transmission of alarm signals to the City's Police Department.
22. **INSPECTION AND TEST SERVICE:** If Subscriber so requests, City can provide information on the requirements for inspection and test of Subscriber's system(s) on an annual, semi-annual, quarterly, or monthly basis.
23. **ALARM SYSTEM STATUS:** In the event the alarm system at the monitored premise remains out-of-service for a period greater than 24 hours, and Subscriber has not initiated or made a reasonable effort to repair the system, City may utilize the services provided by ADT to repair the system and invoice the subscriber accordingly for any fees charged by ADT, as a "pass-through" expense, without additional mark-up.
24. The City desires to connect wireless radios into the system with little or no impact to the customer. Before the City approves a wireless connection, the subscriber shall ensure the following connection requirements are in place:
- A. The Subscriber's alarm system must be in good working order before the radio transmitter can be installed.
  - B. The subscriber's alarm company must supply one of the following activation devices:
    - (a) A reverse polarity output (12v to 24vdc) wired to an approved terminal strip type junction box located outside the alarm control panel to provide for alarm trouble and supervisory alarm conditions, or two (2) or three (3) dry contact outputs as required; one for alarm activation, one for trouble activation, and one for supervisory alarm activation if necessary. Dry contacts must be wired to an approved terminal strip type junction box located outside the alarm control panel; and
    - (b); The point of connection wires or terminals must be clearly tagged.
  - C. If the subscriber's alarm company wishes to be present at the time of connection, they must schedule an appointment through ADT.
  - D. In the event the City is unable to perform the installation as requested, due to circumstances beyond City's control and a return visit is necessary, an additional return trip charge will be invoiced to the Subscriber.
25. **RECEIPT OF COPY:** Subscriber acknowledges receipt of a copy of this agreement.
26. **GOVERNING LAW:** This agreement shall be governed by the laws of the State of Illinois.

27. **CAPTIONS AND PARAGRAPH HEADINGS:** Captions and paragraph headings are for convenience only and are not a part of this agreement and shall not be used in construing it.

28. **AUTHORITY:** Each signatory to this agreement represents that he or she has the authority to enter into this agreement. This agreement shall not be binding upon City unless approved in writing by an authorized representative of the City. In the event of non-approval, the only liability of the City shall be to return to Subscriber the amount, if any, paid to the City by Subscriber upon the signing of this agreement.

**IN WITNESS WHEREOF,** the parties hereto have caused this agreement to be executed.

**City of Elmhurst, an Illinois municipal corporation**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**Subscriber**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**Property Owner (if different than Subscriber)**

By: \_\_\_\_\_

Print: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_