



**Dynamark Monitoring, Inc.**  
 525 Northern Avenue  
 PO Box 2070  
 Hagerstown, Maryland 21742

**Monitoring Agreement**

This AGREEMENT is made this \_\_\_\_\_ Day of \_\_\_\_\_, \_\_\_\_\_ by and

Between **DYNAMARK MONITORING, INC.** henceforth referred to as  
**DYNAMARK** in this agreement, and

Dealer Town of Paradise Valley (also identified as "Town")  
 Contact: Peter Wingert, Chief of Police  
 Physical Address 6433 East Lincoln Drive  
 City Paradise Valley State AZ ZIP 85253  
 Mailing Address 6433 East Lincoln Drive  
 City Paradise Valley State AZ ZIP 85253  
 Telephone 480-948-7418 FAX 480-348-3623  
 e-mail address: pwingert@paradisevalleyaz.gov Web site: N/A

I have read, I understand, and I will comply with the policies, terms, and conditions as contained within the Monitoring Agreement.

**DYNAMARK**

**DEALER**

\_\_\_\_\_  
 Print or Type Name

Town of Paradise Valley  
 \_\_\_\_\_

Print or Type Name

\_\_\_\_\_  
 Title

By: Kevin Burke, Town Manager  
 \_\_\_\_\_

Title

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Date



1. DESCRIPTION OF SERVICES PROVIDED: **Dynamark** agrees to provide monitoring services as hereinafter set forth for the alarm system(s) installed by 3<sup>rd</sup> party "Installers ("Installers") at the premises of Town's customers, hereinafter collectively and singularly referred to as "Customer".
2. TERM, PAYMENT, RENEWAL, TERMINATION:
  - (a) In consideration of the monitoring services provided, Town shall pay to **Dynamark** monthly, in advance, a monitoring service charge for each of Customer's systems connected to **Dynamark's** monitoring equipment in accordance with the terms, rates and charges set forth on Schedule "1" attached hereto for a period of 5 years from the date the first Customer account is activated under this Agreement. Except as permitted by the provisions of Section 6, **Dynamark** agrees that it will not change the rates and charges set forth in Schedule "1" during the first (5) years.
  - (b) Renewal options are addressed in the Addendum to this agreement.
  - (c) Town shall be solely responsible for the installation of any telephone company service or equipment necessary to transmit signals from Customer to **Dynamark** and in addition, shall pay to **Dynamark** all charges made by any telephone company or other utility to **Dynamark** for telephone lines or equipment transmitting signals between Customer's protected premises and **Dynamark's** Central Station. Town acknowledges that signals are transmitted over telephone company signal channels and Internet Service Provider networks, which are wholly beyond the control and jurisdiction of **Dynamark** and are maintained and serviced by the applicable telephone company or provider.
  - (d) In the event either party shall terminate this Agreement, then and in that event, Town shall disconnect all of its alarms from **Dynamark's** signal receiving equipment within thirty (30) days from the date of notice of termination. During this thirty (30) day period, Town shall continue to pay to **Dynamark** the monitoring service charge for each alarm system monitored by **Dynamark**. At the end of this thirty (30) day period, **Dynamark** may, at its option, continue to monitor those systems still connected to its signal receiving equipment or terminate the monitoring services after giving ten (10) days written notice to Town and the Customers still connected. **Dynamark** will continue billing Town, and Town shall be obligated to pay, for any cancelled account still transmitting signals to the central station.
  - (e) If Town fails to disconnect all Customers from **Dynamark's** monitoring facilities within the time limits set forth in this Agreement, Town authorizes **Dynamark** to take such action as may be necessary to disconnect Customer's systems from **Dynamark's** monitoring facilities.
3. SERVICES PROVIDED: **Dynamark** agrees to monitor without liability, and not as an insurer, the signals of alarm system(s) installed by Installers. If, in the opinion of **Dynamark**, use by the Town or Customer adversely affects the use of the monitoring equipment, this Agreement may be terminated thirty (30) days following written notice to Town. Town agrees that **Dynamark's** maintenance obligation hereunder relates solely to the maintenance and operation of the monitoring equipment in **Dynamark's** central office, and that **Dynamark** is in no way obligated to maintain, repair, service, replace, operate or assure the operation of the property, system, or any device or devices of Town or Customer.
4. ALARM NOTIFICATION: **Dynamark**, upon receipt of a signal from Customer's premises, shall make every reasonable effort to respond in the manner set forth in the Town's Alarm System Monitoring Agreement with Customer. **Dynamark** may discontinue any particular type of response, if required to do so by any governmental authority,
5. EXCESSIVE SIGNALS: In the event an excessive number of signals are caused by Customer's and/or Town's carelessness, malicious action or accidental use of the alarm system, **Dynamark** and Town will work together to identify and resolve any Customer account sending an excessive number of signals (Runaway Account). Excessive shall mean any Customer account sending more than 10 signals in a 30 minute period. Town will notify Customer and provide 24 hours for resolution. **Dynamark** and Town may place Customer on inactive status until Customer or Customer's Installer provides proof of resolution.



6. TAXES; UTILITY CHARGES: Town agrees to pay any and all sales, use, business taxes or personal property taxes imposed by any Municipal, State and/or Federal authorities in connection with the services to be performed by **Dynamark**, and Town agrees to hold **Dynamark** harmless from and to indemnify **Dynamark** against, any claim for the foregoing. Town acknowledges that all charges set forth herein are based upon existing federal, state and local taxes and utility charges, including telephone company line charges, if any.
7. PERMITS/LICENSES: Town represents that it has secured whatever permission, permits or licenses that may be necessary from local, governmental or insurance authorities for the monitoring of the alarm system(s).
8. PARTIES' DUTIES:
- (a) Town shall provide to Dynamark a complete copy of Town's Alarm System Monitoring Agreement which is attached hereto as Schedule "2". Dynamark shall approve the contract prior to providing any monitoring service. Dynamark shall have no obligation to provide monitoring service until (i) Dynamark has received and approved said fully executed Agreement and all necessary Customer notification information; and (ii) test signals have been received and accepted by Dynamark. Town shall not alter, amend, cancel, or otherwise change the terms of Town's Alarm System Monitoring Agreement without prior written consent and without delivering to Dynamark a copy of the amendment or change.
- (b) Town warrants and represents that it has contracts with its Customers containing language suitable and in accordance with industry standards. Town further warrants that Town's Contract does not violate any State or Federal Law.
- (c) Town agrees to furnish to Dynamark all changes, revisions, and modifications to the Customer notification information either:
- (i) In writing to Dynamark;
  - (ii) Town updates information via Dynalink
- (d) All equipment installed by Town to transmit signals to the monitoring equipment of Dynamark shall be compatible with Dynamark's monitoring equipment.
- (e) Town shall keep in full force and effect, general liability and errors and omissions insurance covering the operations of Town in the minimum amount of \$1,000,000. Town shall provide Dynamark with certificates of insurance evidencing such coverage if requested by Dynamark, and shall further arrange with the insurance carrier that **the insurance carrier will notify Dynamark of any cancellation or change in coverage.**
9. INTERRUPTION OF SERVICE: Dynamark assumes no liability for interruption of monitoring service due to strikes, riots, floods, storms, earthquakes, fires, power failures, insurrection, interruption or unavailability of phone service or internet, acts of God, or for any other cause beyond the control of Dynamark and Dynamark will not be required to supply monitoring service to Town and Customer while such cause may continue.
10. SUSPENSION OR CANCELLATION OF SYSTEM: This Agreement may be suspended or cancelled, without notice at the option of Dynamark, if Dynamark's or Customer's premises or equipment are destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service, or in the event Dynamark is unable to render service as a result of any action by any governmental authority.
11. DELINQUENCY; RECONNECT CHARGES: In the event any payment due hereunder is more than thirty (30) days delinquent, Dynamark may impose and collect from Town a delinquency charge at the rate of 1.5% per month but not in excess of the maximum rate permitted by Maryland law as of the date of this Agreement. If the monitoring service is discontinued because of Town's past due balance, and if Town desires to reestablish monitoring service, Town shall pay in advance to Dynamark all past due amounts
12. DEFAULT BY TOWN: If Town fails to pay the monthly monitoring fee within thirty (30) days from the billing date or fails to pay any other amount herein provided within thirty (30) days after the same is due and payable, or if Town fails to perform any other provisions hereof within ten (10) days after **Dynamark** has



requested in writing performance thereof, Dynamark shall have the right but shall not be obligated to exercise any one or more of the following remedies:

- (a) Recover the existing amounts due from Town or Customer and continue to provide monitoring service, in which case Dynamark shall be entitled to recover, in addition, the periodic amounts due under the contract for said services from Town or directly from Customer;
- (b) Discontinue monitoring service upon giving ten (10) days written notice to Customers and Town;
- (c) Recover from Town all sums Dynamark may be entitled to under the law;
- (d) Exercise any and all other remedies available at law or equity including, but not limited to, seeking actual damages it has incurred. Dynamark shall also be entitled to recover all reasonable collection expenses, court costs and attorney fees.

Discontinuance of monitoring services due to Town's default shall not be considered to constitute a breach by **Dynamark** of this Agreement or a waiver by **Dynamark** of any of its rights or ability to recover damages.

**13. DYNAMARK MONITORING IS NOT AN INSURER; DISCLAIMER OF WARRANTIES; LIMITATION OF**

**LIABILITY:** It is understood and agreed: that **Dynamark** is not an insurer, that insurance shall be obtained by the Town; that the payments provided for herein are based solely on the value of the monitoring service as set forth herein and are unrelated to the value of Town's or Customer's property, Dynamark makes no guarantee, representation or warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose; The services provided by Dynamark are designed to reduce, but not eliminate certain risks of loss and Dynamark does not represent or warrant, expressly or implied, that the services provided will avert or prevent occurrences or the consequences thereof which the System or service is designed to detect or avert. Town acknowledges that it is impractical and extremely difficult to fix the actual damages, including property loss, personal injury or death, if any, which may be proximately the result of Dynamark negligence, a failure to perform any of the obligations herein, or the failure of the monitoring service or equipment to properly operate, with resulting loss to Customer and/or Town because of among other things:

- (a) The uncertain amount of value of Customer's property or the property of others kept on the premises which may be lost, 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, paramedic unit or others, should they be dispatched as a result of a signal being received;
- (c) The inability to ascertain what portion, if any, of any property loss, personal injury or death would be proximately caused by Dynamark's failure to perform or by its equipment to operate;
- (d) The uncertainty of any claim that might be made by Customer against Town or Dynamark;
- (e) The nature of the service to be performed by Dynamark.

Town understands and agrees that if DYNAMARK should be found liable to Town for loss or damage to property or persons due to Dynamark's negligence or failure of Dynamark's monitoring service or monitoring equipment in any respect whatsoever, Dynamark's liability shall be limited to an amount not to exceed Five Hundred Dollars (500.00), and this liability shall be exclusive; and that 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 non-performance of the obligations imposed by this contract, or from negligence, active or otherwise, of Dynamark, its agents, assigns or employees.

- 14. THIRD PARTY INDEMNIFICATION:** In the event any person, not a party to this Agreement, including but not limited to Customer, shall make any claim or file any lawsuit against Dynamark for any reason related to Town's obligations pursuant to this Agreement, or for any reason relating to Town's provisioning of alarm service, including but not limited to the operation or non-operation of the alarm system, or any failure of Town's service, or relating to Town's negligence, Town agrees to indemnify, defend, and hold Dynamark harmless from any and all claims and lawsuits, including the payment of all damages, expenses, cost, and attorney's fees, whether these claims be based upon alleged intentional



conduct, negligence, contribution, indemnification, or strict product liability.

15. TRANSFER OF DATA: Town agrees to provide Dynamark with a full and complete inventory of Customer's data that Town desires to be monitored. Town may provide this information via hard copy, or in electronic format. Town recognizes the substantial effort put forth by Dynamark in good faith to commence monitoring Town's Customers. Town hereby agrees to commence actively monitoring accounts not later than ninety (90) days from the date of the Agreement. If Town provides data and allows Dynamark to convert such data and for any reason chooses not to actively monitor with Dynamark Town agrees to reimburse Dynamark at an amount of three (\$3.00) dollars per account converted.
16. ENTIRE INTEGRATED AGREEMENT; MODIFICATION; ALTERATIONS; WAIVER; ATTORNEY'S FEES: with the inclusion of the addendum, the parties intend this writing as a final expression of their agreement and as a complete and exclusive statement of the terms thereof. This Agreement supersedes all prior representations, understandings or agreement of the parties, and the parties rely only upon the contents of this Agreement in executing it. Only a writing signed by the parties or their duly authorized agent can modify this Agreement. No waiver of a breach of any term or condition of this Agreement shall be construed to be a waiver of any succeeding breach. In the event Dynamark shall file suit or maintain any legal proceedings to enforce the provisions of the Agreement, Town shall pay Dynamark's actual attorney's fees and court costs.
17. GOVERNING LAW AND JURISDAICTION: This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Maryland, without regard to its conflict of laws rules.
18. RECEIPT OF COPY: TOWN ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT.
19. DISCLAIMER OF WARRANTIES: DYNAMARK MAKES NO EXPRESS OR IMPLIED WARRANTIES AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE MONITORING EQUIPMENT, ITS MERCHANTABILITY, OR ITS FITNESS FOR ANY PARTICULAR USE. TOWN ACKNOWLEDGES: THAT ANY AFFIRMATION OF FACT OR PROMISE MADE BY DYNAMARK SHALL NOT BE DEEMED TO CREATE EXPRESS WARRANTY; THAT THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE ON THE FACE OF THE AGREEMENT HEREOF. TOWN ACKNOWLEDGES THAT HE HAS READ THIS AGREEMENT AND PARTICULARLY PARAGRAPHS 13 AND 14 REGARDING DYNAMARK'S LIMITATION OF LIABILITY. TOWN ACKNOWLEDGES THAT HE HAS DISCUSSED THE FIVE HUNDRED DOLLAR (\$500.00) LIMITATION AS SET FORTH IN PARAGRAPH 13. TOWN ACKNOWLEDGES THAT HE MAY OBTAIN A HIGHER LIMITATION OF DYNAMARK'S LIABILITY BY PAYING AN ADDITIONAL CHARGE.

**TOWN INFORMATION**

Town Name \_\_\_\_\_  
Town Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
Telephone \_\_\_\_\_ FAX \_\_\_\_\_  
State Alarm Town License # \_\_\_\_\_  
State Tax ID# \_\_\_\_\_ Federal Tax ID# \_\_\_\_\_  
Organization Type Corporation \_\_\_ Partnership \_\_\_ Individual \_\_\_ Other \_\_\_

**TOWN CONTACTS**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
Telephone \_\_\_\_\_ FAX \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
Telephone \_\_\_\_\_ FAX \_\_\_\_\_

**GENERAL INFORMATION**

Please indicate the best method for contacting you after business hours

\_\_\_ Cell Phone: \_\_\_\_\_  
\_\_\_ Home Phone: \_\_\_\_\_  
\_\_\_ Pager: \_\_\_\_\_  
\_\_\_ Answering Service: \_\_\_\_\_  
\_\_\_ Other Phone #: \_\_\_\_\_

Brand name of panel most commonly used by your company \_\_\_\_\_  
Type of receiver format you prefer \_\_\_\_\_



# DEFAULT INSTRUCTIONS

## 1. Signal Type Instructions

The instructions below indicate the default instructions on how DYNAMARK handles various signals. If you wish to have us handle them differently, please indicate in the space provided below.

	<u>COMMERCIAL</u>	<u>RESIDENTIAL</u>
<b>Fire</b>	Dispatch/Premise/Call List/Town	Dispatch/Premise/Call List
<b>Fire Supervisory</b>	Premise/Call List	Premise/Call List
<b>Fire Trouble</b>	Premise/Call List	Premise/Call List
<b>Telco Trouble</b>	Premise/Call List	Premise/Call List
<b>Tamper</b>	Premise/Dispatch/Call List	Premise/Call List
<b>Burglary</b>	Premise/Dispatch/Call List	Premise/Dispatch/Call List
<b>Hold-Up/Panic</b>	Dispatch/Call List	Dispatch/Call List
<b>Medical</b>	Premise/Dispatch/Call List	Premise/Dispatch/Call List
<b>Cancel</b>	Log Preceding Alarm	Log Preceding Alarm
<b>Supervisory</b>	Premise/Call List	Premise/Call List
<b>Trouble</b>	Premise/Call List	Premise/Call List
<b>No Test</b>	Notify Town	Notify Town
<b>AC Fail</b>	Premise/Call List	Premise/Call List
<b>Low Battery</b>	Premise/Call List	Premise/Call List

**2. Runaway account contact list:** Please include home phone, cell phone, and pager numbers

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_
- 3) \_\_\_\_\_

**REPRESENTATIVE PASSWORDS**

List all owners, officers, and employees who will be in contact with the Central Station for any reason pertaining to your company's accounts. Each password should contain at least 4 characters, but not more than 13 characters.

Name _____	Password _____
Name _____	Password _____
Name _____	Password _____
Name _____	Password _____
Name _____	Password _____



## Schedule 1.

	Item	Unit	Fee	Notes
1.	System and Data Setup, Installation, Testing and Full Readiness (Includes system design, engineering, installation parts and labor, optimization, acceptance testing, customer and system data set-up and conversion, and one-year parts and labor warranty on system components, software, training and installation.)	Bold software one time instillation and Licenses \$4250.00  One Time Data Entry \$3.00 per account (\$1140.00 based on 380 accounts  VPN and your PC's	\$ 5390	enables remote location of signals  Entry of all accounts into our data base  not provided, needs to be provided by PV
2.	Monthly net cost to the Town per account	2017 price per account per month	\$ 2.50	minimum charge of \$250.00
		2018 price per account per month	\$ 2.50	minimum charge of \$250.00
		2019 price per account per month	\$ 2.50	minimum charge of \$250.00
		2020 price per account per month	\$ 2.50	minimum charge of \$250.00
		2021 price per account per month	\$ 2.50	minimum charge of \$250.00
	<i>Uplink Pd by PV</i>		0	
	<i>Use this section to add additional features and their costs. Items must be mentioned in Technical Narrative.</i>	Bold group License and PC client License (we believe you will need two)	\$60.00 per month \$30.00 per month each \$60.00 total pro monthly	



**Schedule 2**

**[Copy of Town's Alarm System Monitoring Agreement  
To Be Attached]**





**TOWN OF PARADISE VALLEY**  
**RESIDENTIAL ALARM MONITORING AGREEMENT**



This is an agreement between \_\_\_\_\_ (hereinafter referred to as "Subscriber") and the Town of Paradise Valley, Arizona (hereinafter referred to as "Town") for the purpose of monitoring an residential y alarm system installed by an installing alarm company (hereinafter referred to as ("Alarm System") at the Subscriber's premises at:

\_\_\_\_\_  
 (ADDRESS) (CITY, STATE, ZIP)

**IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:**

- MONITORING SERVICES:** In consideration of a monthly service charge (to be determined based on type and zones in accordance with Town's fee schedule) the Town will provide monitoring of the Alarm System installed at the above premises owned or occupied by Subscriber. Subscriber represents they operate and maintain the Alarm System at the premises, which has been installed by an independent third party installer company ("Installer"), and have requested alarm monitoring services. **The monitoring service provided by Town does NOT include: flood or water flow signals, air conditioning/heating sensors, wine cooler alarms, or maintenance trouble signals.**

Subscriber acknowledges and agrees that the Town is authorized and permitted to utilize a subcontracted monitoring service provider ("Subcontractor Provider") to host receivers and other equipment to receive the signal from Subscriber's Alarm System and electronically transmit the signal to Town equipment and to perform data entry of Customer data and information. Upon receipt of the signal, the Town shall make every reasonable effort to alert necessary police, fire or emergency medical personnel (hereinafter collectively referred to as "First Responders") to respond depending upon the type of signal received. If, based on the professional opinion of the responding First Responders there is no emergency or no action is needed, the Town will make reasonable efforts to notify Subscriber by phone or by other reasonable means. Subscriber agrees that not all signals require alerting First Responders, and agrees that no response shall be required for, among other signals, loss or trouble of communication pathway, trouble or low battery signals, and \_\_\_\_\_.

Subscriber acknowledges that signals which are transmitted over telephone lines, wire, air waves, internet, VOIP, radio or cellular, or other modes of communication pass through communication networks wholly beyond the control of the Town and/or Subcontractor Provider and are not maintained by the Town or Subcontractor Provider and therefore the Town and Subcontractor Provider shall not be responsible for any failure which prevents transmission signals from reaching the Town or Subcontractor Provider or damages arising therefrom, or for data corruption, theft or viruses to Subscriber's computers if connected to the Alarm System communication equipment.

Subscriber agrees to furnish the Town with a written Call List of names and telephone numbers of those persons Subscriber wishes to receive notification of alarm signals and/or are authorized to enter the premises. The Town will make a reasonable effort to contact the first person reached or notified on the list either via telephone call. No more than one call to the list shall be required and any form of notification, including leaving a message on an answering machine or text message, shall be deemed reasonable compliance with Town's notification obligation. All changes and revisions to the Call List shall be supplied to Town in writing.

Town may, without prior notice, suspend or terminate its services to any or all Subscribers, in Town's sole discretion, including in the event of Subscriber's default in performance of this agreement or in event Town's or Subcontractor Provider's facility or communication network is nonoperational or Subscriber's alarm system is sending excessive false alarms. Town is authorized to record and maintain audio and video transmissions, data and communications, and shall be the exclusive owner of such property. All Subscriber information and data shall be maintained confidentially by Town. Electronic data may not be encrypted and wireless components of the security system may not meet Advanced Encryption Standard specifications for encryption of electronic data established by the US National Institute of Standards and Technology and Town shall have no liability for access to the security system by others.

- COMMENCEMENT:** This agreement shall commence upon Subscriber providing Town with: i) this agreement executed by Subscriber, ii) Subscriber's completed Call List; iii) Subscriber's data being received and input in Town's and/or Subcontractor Provider's electronic records, iv) alarm system details including and identifying all zones and types of signals programmed by Installer, and v) confirmed test signals for every zone and type of signal communicating with Town.
- TERM OF AGREEMENT / TERMINATION:** Subscriber and Town agree the alarm monitoring service is contracted for on a **monthly basis**, and automatically renews itself from month to month unless either party gives written notice to the other of their intention not to renew the agreement at least thirty (30) days before the desired termination date.

If Subscriber is in default for a period of thirty (30) or more days from the due date of any payment of the monitoring, or fails to abide to Subscriber's obligations and responsibilities in this agreement, Town may, at its option and in its sole discretion, terminate all monitoring services provided under this agreement without further notice.

- PAYMENT:** Each dwelling located on the premises will be charged separately and requires a separate agreement. Billing will be on a monthly basis and Subscriber will be billed for each monitoring fee in arrears. Payment is due by the 20<sup>th</sup> day of the succeeding month, and any payment made after the 20th day will be increased by the sum of \$5.00 as a late payment charge to cover Town's administrative costs resulting from such delinquency. Town may increase the monthly monitoring fees upon thirty (30) days' written notice to Subscriber stating the new monthly fee. **Subscriber acknowledges and agrees the monitoring fee is strictly for the monitoring service provided by Town.** Additional fees and charges, including any charges assessed by the telephone company to Town, Subcontractor Provider or Subscriber are the responsibility of the Subscriber.



5. **WIRELESS AND INTERNET ACCESS CAPABILITIES:** The Town does not provide internet service, maintain internet connection, wireless access or communication pathways, computer, smart phone, electric current connection or supply, or in all cases the remote video server. Subscriber is responsible for supplying high speed internet access and/or wireless services at Subscriber's premises or to Subscriber's mobile device, as necessary or desire. The Town is not responsible for Subscriber's access to the internet or any interruption of service or down time of remote access caused by loss of internet service, radio or cellular or any other mode of communication used by Subscriber. The Town is not responsible for data changes made by Installer or Subscriber or inaccurate data entry relied upon by Town when responding to alarm signals.

6. **ADDITIONAL TERMS AND CONDITIONS:**  
**False Alarms.** Subscriber acknowledges receipt of a copy of this agreement and a copy of Article 9-3 of the Code of Ordinances of the Town of Paradise Valley, relating to alarm systems. Subscriber will assume all financial responsibility for assessments by Town for excessive false alarms, assessed under Article 9-3, as may be amended from time to time

**Independent Installer.** Subscriber acknowledges that Town is not related to or part of the Installer company and has not participated in the installation of the Alarm System. None of the equipment installed at Subscriber's premises is the property of the Town and the Town has made no representation, warranties or agreements regarding the equipment/Alarm System. The Subscriber acknowledges that the Alarm System is in the exclusive possession and control of the Subscriber and it is Subscriber's sole responsibility to test the operation of the Alarm System. The Town is not contracting to perform any repair service and it is the Subscriber's responsibility to repair the Alarm System and maintain same operational.

**Securing Premises.** Town is not responsible for securing the listed premises. In the event the Subscriber or their designee(s) cannot be reached or is unable to respond within thirty (30) minutes to the premises and forced entry or an unsecured entry way is found, Town at its option may take reasonable steps to secure the premises. However, in no event is Town obligated to secure any premises as part of this agreement. If any steps are taken to secure the premises, Subscriber will reimburse Town for any costs incurred. Town has the right to subcontract any services which it is required to perform under this agreement.

**Call List.** The individual names and contact information of persons to be contacted in the case of alarm activation and/or authorized to enter premises ("Call List") must be given to Town, by the Subscriber in writing, and the Subscriber must notify Town in writing of any changes of these persons. It is the obligation of the Subscriber to keep this information current with Town.

7. **EXCULPATORY CLAUSE:** Subscriber and Town agree that the Town is not an insurer and no insurance coverage is offered herein. The Town's monitoring services are designed to detect and reduce certain risks of loss, through the Town does not guarantee that no loss or damage will occur. The monitoring fees collected are based solely on the value of the monitoring service. The Town is not assuming liability, and, therefore, shall not be liable to Subscriber or any other third party for any loss, economic or non-economic, in contract or tort, data corruption or inability to retrieve data, personal injury or property damage sustained by Subscriber as a result of equipment failure, human error, burglary, theft, hold-up, fire, smoke, water or any other cause whatsoever, regardless of whether or not such loss or damage was caused by or contributed to by the Town's breach of contract, negligent performance to any degree in furtherance of this agreement, any extra contractual or legal duty, strict products liability, or negligent failure to perform any obligation pursuant to this agreement or any other legal duty. Town will not compensate Subscriber or anyone else for damages caused by any other source whatsoever, or by Acts of God, and Subscriber is strongly encouraged to independently purchase insurance to protect Subscriber, Subscriber's family, Subscriber's invitees, licensees, and/or guests, and all personal property on the monitored premises.

8. **INDEMNITY / WAIVER OF SUBROGATION RIGHTS / ASSIGNMENTS:** Subscriber agrees to defend, advance expenses for litigation and arbitration, including investigation, legal and expert witness fees, indemnify and hold harmless the Town, its employees, agents and subcontractors, from and against all claims, lawsuits, including those brought by third-parties or by Subscriber, including reasonable attorneys' fees and losses, asserted against and alleged to be caused by the Town's performance, negligence or failure to perform any obligation under or in furtherance of this agreement. Parties agree that there are no third-party beneficiaries of this agreement. Subscriber on its behalf and any insurance carrier waives any right of subrogation Subscriber's insurance carrier may otherwise have against the Town or the Town's subcontractors arising out of this agreement or the relation of the parties hereto. Subscriber shall not be permitted to assign this agreement without written consent of the Town. The Town shall have the right to assign this agreement and shall be relieved of any obligations herein upon such assignment.

9. **LIMITATION OF LIABILITY: SUBSCRIBER AGREES THAT SHOULD THERE ARISE ANY LIABILITY ON THE PART OF THE TOWN AS A RESULT OF THE TOWN'S BREACH OF THIS CONTRACT, NEGLIGENT PERFORMANCE TO ANY DEGREE OR NEGLIGENT FAILURE TO PERFORM ANY OF TOWN'S OBLIGATIONS PURSUANT TO THIS AGREEMENT OR ANY OTHER LEGAL DUTY, EQUIPMENT FAILURE, HUMAN ERROR, OR STRICT PRODUCTS LIABILITY, WHETHER ECONOMIC OR NON-ECONOMIC, IN CONTRACT OR IN TORT, THAT TOWN'S LIABILITY SHALL BE LIMITED TO THE SUM OF \$250.00 OR 6 TIMES THE MONTHLY PAYMENT FOR SERVICES BEING PROVIDED AT TIME OF LOSS, WHICHEVER IS GREATER. IF SUBSCRIBER WISHES TO INCREASE TOWN'S AMOUNT OF LIMITATION OF LIABILITY, SUBSCRIBER MAY, AS A MATTER OF RIGHT, AT ANY TIME, BY ENTERING INTO A SUPPLEMENTAL AGREEMENT, OBTAIN A HIGHER LIMIT BY PAYING AN ANNUAL PAYMENT CONSONANT WITH TOWN'S INCREASED LIABILITY. THIS SHALL NOT BE CONSTRUED AS INSURANCE COVERAGE.**

**SUBSCRIBER ACKNOWLEDGES THAT THIS AGREEMENT CONTAINS EXCULPATORY CLAUSE, INDEMNITY/WAIVER OF SUBROGATION RIGHTS, AND LIMITATION OF LIABILITY PROVISIONS.**

**Subscriber to Initial:** \_\_\_\_\_

10. **LEGAL ACTION / AGREEMENT TO BINDING ARBITRATION:** The prevailing party in any litigation or arbitration shall pay the other's legal fees. In any action commenced by the Town against Subscriber, SUBSCRIBER AGREES THAT SUBSCRIBER MAY BRING CLAIMS AGAINST THE TOWN ONLY IN SUBSCRIBER'S INDIVIDUAL CAPACITY, AND NOT AS A CLASS ACTION PLAINTIFF OR CLASS ACTION MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. ANY DISPUTE BETWEEN THE PARTIES OR ARISING OUT OF THIS AGREEMENT, INCLUDING ISSUES OF ARBITRABILITY, SHALL, AT THE OPTION OF ANY PARTY, BE DETERMINED BY BINDING AND FINAL ARBITRATION IN ACCORDANCE WITH APPLICABLE RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"), AS AMENDED HEREIN, EXCEPT THAT NO PUNITIVE OR CONSEQUENTIAL DAMAGES MAY BE AWARDED. Although the arbitration will be conducted in accordance with the AAA Rules, it will not be administered by the AA, but will be heard independently. The Parties will exercise best efforts to select an arbitrator within five business days after agreement for arbitration. If the Parties have not agreed upon an arbitrator within this

period, the Parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott, Skelly & Muchmore, LLC, (or other law firm amenable to the Parties) who will then select the arbitrator. The Parties will equally share the fees and costs incurred in the selection of the arbitrator. The arbitrator shall be bound by the terms of this agreement and is authorized to conduct proceedings by telephone, video or by submission of papers. By agreeing to this arbitration provision you are waiving your right to a jury trial, waiving your right to appeal the arbitration award and waiving your right to participate in a class action. This agreement to arbitrate shall survive the termination of this agreement. Service of process or papers in any legal proceeding or arbitration between the parties may be made by First-Class Mail delivered by the U.S. Postal Service addressed to the party's address in this agreement or another address provided by the party in writing to the party making service. The parties submit to the jurisdiction and laws of Arizona and agree that any litigation or arbitration between the parties may be commenced and maintained in Maricopa County, Arizona. The parties waive trial by jury in any action between them unless prohibited by law. Any action between the parties must be commenced within one year of the accrual of the cause of action or shall be barred. All actions or proceedings by either party must be based on the provisions of this agreement. Any other action that Subscriber may have or bring against the Town in respect to other services rendered in connection with this agreement shall be deemed to have merged in and be restricted to the terms and conditions of this agreement.

**SUBSCRIBER ACKNOWLEDGES THAT THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE DISPUTES AND THAT ARBITRATION IS BINDING AND FINAL AND THAT SUBSCRIBER IS WAIVING SUBSCRIBER'S RIGHT TO TRIAL IN A COURT OF LAW AND OTHER RIGHTS.**

Subscriber to Initial: \_\_\_\_\_

- 11. **ENTIRE INTERGRATED AGREEMENT and MODIFICATIONS:** This writing is intended by the parties as a final expression of their agreement and is a complete and exclusive statement of the terms and supersedes all prior representations or agreements. This agreement may not be amended or modified except in writing signed by both parties or their duly authorized agents. Subscriber acknowledges and represents that Subscriber has not relied on any representation, assertion, guarantee, warranty, collateral agreement or other assurance, except those set forth in this Agreement. Subscriber hereby waives all rights and remedies at law or in equity, arising, or which may arise, as the result of Subscriber's reliance on such representation, assertion, guarantee, warranty, collateral agreement or other assurance. To the extent this agreement is inconsistent with any other document or agreement, whether executed prior to or concurrently with this agreement, the terms of this agreement shall govern.

No course or prior dealings between the parties or usage of trade is relevant or admissible to supplement, explain or vary any of the terms contained in this agreement. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement is not relevant or admissible to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection.

- 12. **GOVERNING LAW:** Subscriber consents to settle all claims that may arise under this agreement in accordance with the laws of the State of Arizona. The parties to this agreement consent to venue for such action to be Maricopa County.
- 13. **HEIRS and ASSIGNS:** This agreement is binding upon and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.
- 14. **PARAGRAPH HEADINGS:** The headings of particular paragraphs and subparagraphs are inserted only for convenience and are not part of this agreement and are not to act as a limitation on the scope of the particular paragraph to which the heading refers.
- 15. **FORCE MAJEURE:** Any delay or failure in the performance by Town, including interruption of service, is excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this agreement, Force Majeure means a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of Town, including, but not limited to, acts of God, strikes fires, floods, explosions, riots, wars, inclement weather, sabotage terrorism, vandalism, accident, injunctions, interruption or unavailability of phone service or internet, and other like events.
- 16. **SEVERABILITY:** The provisions of this agreement are severable and in the event any provision, clause, sentence, section or part is held to be invalid, illegal, unconstitutional, inapplicable or unenforceable to any person or circumstances, such invalidity, illegality, unconstitutionality, inapplicability or unenforceability will not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of the agreement or their application to Subscriber or other persons or circumstances.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**SUBSCRIBER**

By \_\_\_\_\_  
Subscriber's Signature

\_\_\_\_\_  
Subscriber's Printed Name

**TOWN OF PARADISE VALLEY**

By: \_\_\_\_\_  
Kevin Burke, Town Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Andrew Miller, Town Attorney

ATTEST:

\_\_\_\_\_  
Duncan Miller, Town Clerk



## ADDENDUM TO AGREEMENT BETWEEN DYNAMARK AND TOWN OF PARADISE VALLEY

**Term and Option to Renew.** The Initial contract shall be for a term of five (5) years with the opportunity for three (3), one-year extensions. Dynamark's pricing for each optional yearly renewal period shall be the same as that shown for Year 2021 in Schedule 1.

**Data Security.** Dynamark agrees that at all times it will keep confidential and not divulge, communicate or use any Customer information or data, except for Dynamark's own use during the Term (including any extensions) of the Agreement to the extent necessary to perform services under the Agreement. Dynamark will require any person or subcontractor performing services under the Agreement to be bound to the same requirements. Upon the termination of the Agreement, Dynamark shall return, purge or destroy all Town subscriber data and demonstrate or certify to the Town that such action has occurred.

**Transition Plan and Schedule.** Within 15 days after the execution of this Agreement Dynamark and the Town shall meet to set in place the transition plan to the proposed system, including testing, subscriber notification process and changeover. Completion of the transition to Dynamark service shall be completed within ninety (90) days of the execution of the Agreement.

**Non-Solicitation of Town Subscribers.** Dynamark shall not directly or indirectly solicit Town subscribers for any alarm or home monitoring services offered by Dynamark to alarm service subscribers. This includes solicitation of Town subscribers that may not have a selected alarm technician or maintenance company. However, Dynamark is not barred from including Town subscribers in common solicitations, such as general mailers or advertising, provided that no solicitations may be sent to a Town subscriber using any data obtained from the Town or as a result of services performed under this Agreement.

**Conflict of Interest.** This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligation by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

**E-verify Requirements.** To the extent applicable under ARIZ. REV. STAT. § 41- 4401, Dynamark and its subcontractors warrant compliance with all Federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Dynamark's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

**Israel Boycott.** Dynamark acknowledges this Agreement is subject to A.R.S. § 35-393.01, which prohibits the Town from contracting with any person who is currently, or during the Term or any renewal Term, participating in a boycott of Israel. Dynamark warrants that it is not and will not participate in such prohibited activity in contravention of A.R.S. § 35-393.01 and has executed the affidavit attached as Exhibit 1 to this Addendum as assurance to the Town.

EXHIBIT 1 TO ADDENDUM

AFFIDAVIT OF ISRAEL BOYCOTT

The Arizona legislature enacted legislation to prohibit public entities from contracting with companies currently engaged in a boycott of Israel. To ensure compliance with A.R.S. §35-393.01, this form must be completed and returned prior to the Town of Paradise Valley entering into any contract in order that the Town may determine compliance.

As defined by A.R.S. §35-393.01:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with Israel or with persons or entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
  - (a) In compliance with or adherence to calls for a boycott of Israel other than those boycotts to which 50 United States Code section 4607(c) applies.
  - (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, and includes a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate.
3. "Direct holdings" means all publicly traded securities of a company that are held directly by the state treasurer or a retirement system in an actively managed account or fund in which the retirement system owns all shares or interests.
4. "Indirect holdings" means all securities of a company that are held in an account or fund, including a mutual fund, that is managed by one or more persons who are not employed by the state treasurer or a retirement system, if the State treasurer or retirement system owns shares or interests either:
  - (a) together with other investors that are not subject to this section.
  - (b) that are held in an index fund.
5. "Public entity" means this State, a political subdivision of this STATE or an agency, board, commission or department of this state or a political subdivision of this state.
6. "Public fund" means the state treasurer or a retirement system.
7. "Restricted companies" means companies that boycott Israel.
8. "Retirement system" means a retirement plan or system that is established by or pursuant to title 38.

**You must select one of the following:**

\_\_\_\_\_ My company **does not** participate in, and agrees not to participate in during the term of the contract a boycott of Israel in accordance with A.R.S. §35-393.01. I understand that my response will become public record.

\_\_\_\_\_ My company **does** participate in a boycott of Israel as defined by A.R.S. §35-393.01.

By submitting this affidavit, the undersigned person or entity with whom the Town of Paradise Valley is contracting agrees to indemnify and hold the Town of Paradise Valley, its officials, officers, directors, employees, volunteers and agents, harmless from any claims or causes of action relating to the Town of



Paradise Valley's action based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the Town of Paradise Valley in defending such an action.

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Company Name

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Signature of Person Authorized to Sign

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Address

---

Printed Name

---

City

State

Zip

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Title