US DIGITAL DESIGNS
stationalerting.com

SERVICE AGREEMENT

This Service Agreement ("Agreement") is made by and between US Digital Designs, Inc. ("USDD"), with its principal place of business at 1835 East Sixth Street, Suite 27, Tempe, Arizona 85281, and the following entity ("Customer"):

City of Stockton
Attn: Deputy Chief Paul Salvestrin
400 E. Main Street, 4th Floor
Stockton, CA 95202
Telephone: (209) 937-8801
Email: Paul.Salvestrin@stocktonca.gov

1.   **Recitals**. The Customer requires USDD to provide software maintenance and hardware repair services for its USDD fire station alerting system. USDD has agreed to service the Customer's System (as defined below) pursuant to the terms, conditions, and limitations of this Agreement. In consideration of the forgoing, and for other good and valuable consideration, the parties hereby agree to the terms set forth in this Agreement.

2.   **Definitions**. For purposes of this Agreement, the following terms shall have the following meanings:

    a.   "Additional Services" shall have the meaning set forth in Section 7, below;

    b.   "Application or App" shall mean the *Phoenix G2 FSA Mobile Application* for iOS and Android mobile devices.

    c.   "Commencement Date" shall be **May 16, 2022**;

d. "Hardware" means a physically tangible electro-mechanical system or sub-system and associated documentation provided to Customer by USDD, <u>provided however,</u> Hardware shall not include any televisions or monitors manufactured by third parties;

e. "Emergency Support" means telephone access for Customer's "System Administrator" (as defined below) to USDD's senior staff and engineers in the event of a Mission Critical Failure.

f. "Mission Critical Failure" means a failure in the materials, workmanship or design of the System that causes any fire station served by the System to be incapable of receiving dispatches through all communications paths, provided however, that any such failure caused by operator error, internet or telephony service outages, misuse or neglect of the System or any cause outside of USDD's direct control <u>does not</u> constitute a Mission Critical Failure.

g. "Services" shall have the meaning set forth in Section 3, below;

h. "Software" means software programs, including embedded software, firmware, executable code, linkable object code, and source code, including any updates, modifications, revisions, customization requested by Customer, copies, documentation, and design data that are licensed to Customer by USDD;

i. "System" means all Hardware and Software purchased by Customer either directly from USDD or authorized USDD Reseller under any contract, purchase order, or arrangement that is used exclusively by Customer as part of its fire station alerting system, <u>provided however,</u> that the term "System" specifically excludes any components, hardware, or software provided by third parties, including without limitation Customer's computers, lap tops, computer peripherals, monitors, televisions, routers, switches, operating systems, computer programs, applications, internet and network connections, and any other parts or items not provided to Customer directly by USDD;

j. "Term" means the period of time during which this Agreement is in effect, including the Initial Term and all Additional Terms, as defined in Section 9, below.

3. **USDD Scope of Services**. During the Term of this Agreement, USDD agrees to provide Hardware repair service and Software updates and maintenance for the System (collectively the "Services"). Subject to all other terms and conditions contained in the Agreement, the Services shall include the following:

a. Technical phone support Monday through Friday from 08:00 to 17:30 MST, excluding USDD holidays;

b. Remote access support Monday through Friday from 08:00 to 17:30 MST, excluding USDD holidays;

c. Emergency Support, available 24 hours per day, for Customer's System Administrator in the event of a Mission Critical Failure;

d. Updates for all System Software, as and when released by USDD;

e. Twenty-four (24) App licenses per each ATX Station Controller that is part of the System and covered under this Agreement. Use of the App shall be strictly governed by the *Mobile Application End User's Agreement* that must be accepted by each user at the time the software is downloaded.

f. Repair of defective or malfunctioning Hardware (not otherwise covered under the USDD warranty applicable to the Hardware) at USDD's principal place of business; and

g. Ground shipping for the return of repaired Hardware.

4. **Hardware Repairs**. If a Hardware component requires repair and a valid claim is made during the Term, at its option, USDD will, at its principal place of business, either (1) repair the Hardware at no charge, using new parts or parts equivalent to new in performance and reliability or (2) exchange the Hardware with a product that is new or equivalent to new in performance and reliability and is at least functionally equivalent to the original Hardware. When a product or part is exchanged, any replacement item becomes the Customer's property and the replaced item becomes the property of USDD. Parts provided by USDD in fulfillment of the Services must be used in the System to which this Agreement applies. Customer shall be responsible for and bear all risks and costs of shipping any Hardware to USDD for repair. USDD shall be responsible for and bear all risks and costs of returning any Hardware to Customer after repair or replacement. Replacement Hardware will be returned to Customer configured as it was when the Hardware was originally purchased, subject to applicable updates.

5. **Claims**. Prior to requesting Services, Customer is encouraged to review USDD's online help resources. Thereafter, to make a valid claim hereunder, Customer must contact USDD technical support and describe the problem or defect with specificity. The first such contact must occur during the Term. USDD's technical support contact information can be found on USDD's web site: http://stationalerting.com/service-support/. Customer must use its best efforts to assist in diagnosing defects, follow USDD's technical instructions, and fully cooperate in the diagnostic process. Failure to do so shall relieve USDD of any further obligation hereunder.

6. **Limitations**. The Services specifically and expressly exclude any repair, software installation, update, or other service that is necessitated by the Customer's misuse or neglect of the System, damage arising from Customer's failure to follow instructions relating to the product's use, cosmetic damage, including but not limited to scratches, dents and broken plastic on ports, alterations or repairs to the System made by any person other than an authorized USDD

representative, failure of environmental controls or improper environmental conditions, modification to alter functionality or capability without the written permission of USDD, use with non-USDD products, any damage caused by fire, flood, vandalism, terrorism, riot, storm, lightning, or other acts of nature or civil unrest. The Services shall not include disassembly or re-installation of any Hardware at Customer's site. The Services shall not include the repair of any Hardware that is determined to be obsolete or irreparable in USDD's sole discretion. The Services shall not include repair or replacement of televisions or monitors manufactured by third parties. Repair or replacement of such components shall be subject exclusively to the manufacturer's warranty, if any. USDD shall not be liable to provide Services at any time when Customer is in breach of any obligation to USDD under this Agreement or any other contract.

7. **Additional Services by USDD**. Except for the Services, all other acts or performances requested or required of USDD by Customer ("Additional Services") will be charged at USDD's then current rates and will be in addition to all other fees and charges payable by Customer under this Agreement. Additional Services shall include (without limitation) Customer's use of Emergency Support in the absence of a Mission Critical Failure and any Services provided by USDD on a rush basis or during hours not included in the description of the Services set forth above. Customer shall pay all invoices for Additional Services within 30 days. Invoices remaining unpaid for more than 30 days shall bear interest at 18% per annum.

8. **Authorized Support Contacts**. In order to facilitate USDD's delivery of the Services, Customer shall appoint a minimum of one and a maximum of three contact people who are each authorized to make use of the support services ("Authorized Contacts"). The Customer must ensure that the Authorized Contacts have adequate expertise and experience to make an accurate description of malfunctions to make it possible for USDD to handle reports efficiently. Customer is responsible to select those personnel for this task who are suitable for it by means of training and function, and who have knowledge of Customer's network, hardware, and software systems. The Authorized Contacts must also have completed USDD product training.

At least one Authorized Contact should be available to assist USDD as needed during the support process. Authorized Contacts are responsible for coordinating any actions needed by Customer's personnel or contractors including obtaining additional information from field or dispatch personnel, data network or communications system troubleshooting, and physical inspection or actions on the System components.

9. **Customer Facilitation of Services**. Customer will be responsible for providing the following:

   a. The provision of remote access to the System, as more specifically described in Section 10 below;

   b. The procurement and/or provision of all computers, peripherals, and consumables (collectively "Customer Equipment"), including printer paper, toner and ink necessary for the operation, testing, troubleshooting, and functionality of the of the System;

c. Any configuration and regular maintenance that is normally undertaken by the user or operator as described in the operating manual for the Customer Equipment, including the replacement of UPS batteries as necessary;

d. Providing a stable means of data transmission between the System Gateway and each fire station serviced by the System necessary for the installation, testing and functionality of the of the System; such means of data transmission may include, but is not limited to, TCP/IP, data modems, leased lines, radios, etc;

e. The correct use of the System in accordance with USDD's operating instructions; and

f. The security and integrity of the System.

10. **Remote Access**. USDD requires remote network access to the Customer's System, including its Communications Gateways, Station Controllers, and other USDD-supplied equipment through Secure Shell (SSH) to perform implementation and support tasks under this Agreement. To enable this the Customer will provide USDD support personnel VPN or similar remote network access to the System for USDD support personnel ("Customer Support") to effectively troubleshoot critical or complex problems and to expedite resolution of such issues. Remote network access is also used to install core System software upgrades and customized software. USDD will only access Customer's System with the knowledge and consent of Customer.

a. Alternative to Network Access. If the Customer elects not to provide remote network access to the System, then USDD may not be able to perform some support functions. Customers that elect not to routinely provide network access may temporarily reinstate this access to allow USDD to perform the above services. The following services will not be performed without this access:

- System software upgrades

- System software customization

- Network troubleshooting assistance including packet capture and network monitoring on USDD devices

- Detailed log analysis

- Bulk updates to System database tables

- Troubleshooting that requires low-level system access or large file transfer

b. Timely Access. Customers much ensure that remote access is available prior to notifying USDD of a support request. In the event that the Customer is unable to provide remote access, USDD will not be required to provide support outside those tasks that do not require remote access, and any corresponding resolution response times will not apply.

    c.   <u>Physical Security Tokens.</u> USDD has multiple software engineers that provide after-hours support and these engineers do not typically take security tokens from the USDD office. If the customer requires the use of physical security tokens this may delay after hours service.

11. **Renewal and Termination**. The initial term of this Agreement shall begin on the Commencement Date and shall continue for one year ("Initial Term"). Unless previously terminated as set forth in this Section, Customer may renew this agreement for four (4) additional one-year terms (each an "Additional Term") by written amendment signed by both parties.

11.1 **Early Termination.** This Agreement may be terminated by either party by providing written notice of termination to the other party at least 30 days prior to the requested termination date within the Initial Term or any Additional Term. USDD may terminate this Agreement for any breach hereof upon 30 days written notice. The notice shall specify the nature of the breach. If Customer fails to cure the breach within 30 days, this Agreement shall be terminated. Notwithstanding the foregoing, USDD may terminate this Agreement immediately upon non-payment of any sum due from Customer under this Agreement or any other contract. Upon termination of this Agreement, all sums previously paid to USDD shall be nonrefundable.

12. **Annual Fees**. On or before the first day of the Initial Term and each Additional Term (each a "Due Date"), Customer shall pay USDD an Annual Fee in advance for the Services and to be delivered hereunder (the "Annual Fee"). The Annual Fee shall be the product of the total cumulative sales price of all Hardware, Software, and other tangible goods or equipment provided to Customer at any time under any circumstances ("Base Amount"), multiplied by **.09.** Customer acknowledges and agrees that the Base Amount is cumulative and will increase by the purchase price of all Software, Hardware and Services purchased in the future. USDD may calculate the Base Amount, determine the Annual Fee and invoice Customer therefore 45 days prior to the subject Due Date. Customer shall pay the Annual Fee on or before the Due Date or 30 days after the date of the invoice, whichever is later. Annual Fees are nonrefundable.

13. **Reinstatement**. If Customer elects not to renew this Agreement for any Additional Term or otherwise terminates this Agreement, Customer may reinstate this Agreement upon the following terms:

    a.   Reinstatement of this Agreement must occur within five (5) years from the Initial Term or the last Additional Term elected by Customer, whichever occurs later. USDD reserves the right to reinstate older Systems or not reinstate newer Systems in its sole discretion.

    b.   The multiplier for calculation of the Annual Fee shall increase by no more than 3 percentage points from the multiplier stated above. The multiplier for the new Annual Fee shall be at the sole discretion of USDD.

    c.   Customer shall pay a Reinstatement Fee along with the Annual Fee prior to the Commencement Date. The Reinstatement Fee and Annual Fee shall be calculated

using the new multiplier described above. The Reinstatement Fee shall be a sum equal to two times the new Annual Fee, provided, however, if the System has been out of service and support for one year or less, the Reinstatement Fee shall be the amount of the new Annual Fee. The Reinstatement Fee is non-refundable.

d. If Customer reinstates this Agreement and then declines to renew this Agreement for an Additional Term or otherwise terminate this Agreement, the System shall be deemed by USDD to have been abandoned by Customer. USDD will not provide further Services for the System, and Customer will not be allowed to reinstated service and support of the System through another Service Agreement.

14. **Limited Warranty**. USDD warrants that the Services performed hereunder will be carried out with due care and attention by qualified personnel. Defective Hardware subject to repair hereunder will be repaired to good working order. TO THE EXTENT PERMITTED BY LAW, THIS WARRANTY AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND CONDITIONS, WHETHER ORAL OR WRITTEN, STATUTORY, EXPRESS OR IMPLIED. AS PERMITTED BY APPLICABLE LAW, **USDD SPECIFICALLY DISCLAIMS ANY AND ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES AGAINST HIDDEN OR LATENT DEFECTS**. If USDD cannot lawfully disclaim statutory or implied warranties then to the extent permitted by law, all such warranties shall be limited in duration to the duration of this express warranty and to repair or replacement service as determined by USDD in its sole discretion. No reseller, agent, or employee is authorized to make any modification, extension, or addition to this warranty. If any term is held to be illegal or unenforceable, the legality or enforceability of the remaining terms shall not be affected or impaired. EXCEPT AS PROVIDED IN THIS WARRANTY AND TO THE EXTENT PERMITTED BY LAW, USDD IS NOT RESPONSIBLE FOR DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF WARRANTY OR CONDITION, OR UNDER ANY OTHER LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOSS OF USE; LOSS OF REVENUE; LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF GOODWILL; LOSS OF REPUTATION; and LOSS OF, DAMAGE TO OR CORRUPTION OF DATA. USDD IS NOT RESPONSIBLE FOR ANY INDIRECT LOSS OR DAMAGE HOWSOEVER CAUSED INCLUDING THE REPLACEMENT OF EQUIPMENT AND PROPERTY, ANY COSTS OF RECOVERING PROGRAMMING OR REPRODUCING ANY PROGRAM OR DATA STORED OR USED WITH USDD PRODUCTS, AND ANY FAILURE TO MAINTAIN THE CONFIDENTIALITY OF DATA STORED ON THE PRODUCT. USDD disclaims any representation that it will be able to repair any hardware under this warranty or make a product exchange without risk to or loss of the programs or data stored thereon.

15. **Force Majeure**. Except for Customer's duty to pay sums due hereunder, neither party will be liable for any act, omission, or failure to fulfill its obligations under this Agreement if such act, omission or failure arises from any cause beyond its control including acts of nature, strikes, lockouts, riots, acts of war, acts of terrorism, epidemics, governmental action after the

date of this Agreement, fire communication line failures, power failures, earthquakes or other disasters. The party unable to fulfill its obligations due to Force Majeure will immediately:

e. Notify the other in writing of the reasons for its failure to fulfill its obligations and the effect of such failure; and

f. Use all responsible endeavors to avoid or remove the cause and perform its obligations.

16. **Headings and Usage**. The headings, captions, and section numbers contained herein are provided for convenience only and are not part of the terms of this Agreement. When the context of the words used in this Agreement indicate that such is the intent, words in the singular shall include the plural, and vice versa, and the references to the masculine, feminine or neuter shall be construed as the gender of the person, persons, entity or entities actually referred to require.

17. **Waiver**. No failure or delay, in any one or more instances, to enforce or require strict compliance with any term of this Agreement shall be deemed to be a waiver of such term nor shall such failure or delay be deemed a waiver of any other breach of any other term contained in this Agreement.

18. **Governing Law; Parties in Interest**. California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the Federal District Court of California, Eastern District, Sacramento Division.

19. **Execution in Counterparts**. This Agreement may be executed in counterparts, all of which taken together shall be deemed one original. The date of this Agreement shall be the latest date on which any party executes this Agreement.

20. **Entire Agreement**. This Agreement contains the entire understanding between the parties, and supersedes any prior understandings and agreements between or among them with respect to the subject matter hereof. This Agreement may not be amended, altered, or changed except by the express written agreement of the parties.

21. **Joint Effort**. This Agreement has been drafted through the joint efforts of the parties and shall not be construed against any party on the basis that such party is the drafter of this Agreement or any term thereof.

22. **Savings Clause**. In the event any part, provision, or term of this Agreement is deemed to be illegal or unenforceable, this Agreement shall be construed as if such unenforceable part, provision, or term had not been included herein. Such illegal or unenforceable part, provision, or term shall be deemed revised to the extent necessary to cure its defect and such revision and the remainder of the Agreement shall be and remain in full force and effect.

23.   **Customer Representative**. The undersigned representative of Customer hereby represents and warrants that s/he has the authority to bind Customer and that the execution, delivery and performance by Customer under this Agreement will not violate the provisions of any law, rule, regulation or policy, and will not conflict with or result in the breach or termination or constitute a default under any agreement or instrument to which Customer is a party.

24.   **Indemnity and Hold Harmless**. To the fullest extent permitted by law, USDD shall hold harmless, defend at its own expense, and indemnify the City of Stockton, its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from the City of Stockton's sole negligence or willful acts. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.

25.   **No Personal Liability**. No official or employee of Customer shall be personally liable to USDD in the event of any default or breach by the Customer or for any amount due USDD.

City of Stockton:

By: _____
Name: _Harry Black_____
Its: _City Manager_____
Date: _11/17/22_____

ATTEST:
CLERK OF THE CITY OF STOCKTON
By: _____

US Digital Designs, Inc.:

By _____
   Asim Akram, General Manager

Date: _October 27, 2022_____