

Software Enhancement Services and MDS Extended Warranty Agreement

This Software Enhancements Services and MDS Extended Warranty Agreement (Agreement) is made as of July 1, 2019, by and between the City of Fresno, a municipal corporation (City), and Broadcast Microwave Services, LLC., a California corporation, dba Data911 (Contractor). City and Contractor are collectively referred to as the "Parties."

RECITALS

WHEREAS, City and Contractor entered into a contract on or about December 17, 1997, for the purchase by City of a turnkey Field Automation System (FAS) for the Fresno Police Department (the "project" or the "system"); and

WHEREAS, the Eighth Amendment to FAS contract, dated December 2, 2003, required the Parties to enter into a software enhancements services and MDS extended warranty agreement (all foregoing amendments and the FAS contract collectively referred to as "FAS Contract"); and

WHEREAS, as part of the Eighth Amendment to the FAS Contract, the Parties entered into a software enhancement services and MDS extended warranty agreement, which expired on September 2, 2009; and

WHEREAS, in fulfilling the requirements of the FAS Contract, the Parties desire to enter into this Agreement setting forth the terms and conditions for the providing of software enhancement services (excluding support and upgrades to any third party software including, but not limited to, Microsoft and Oracle) contained in the Eighth Amendment of the FAS Contract by Contractor to City.

AGREEMENT

NOW THEREFORE, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree to as follows:

1. Term of Agreement and Time for Performance. This Agreement shall be effective from July 1, 2019 and shall continue in full force and effect through December 31, 2020, subject to earlier termination in accordance with Section 7 of this Agreement.

The services of Contractor, as described in this Agreement and the attached exhibits, are to commence upon the date the Agreement is entered into (date first set forth above as the date the Parties made this Agreement) and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth within.

2. Software Enhancement Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide software identified in **Exhibit A** and those software enhancement and services described in **Exhibit B**, titled, "Software Enhancement Services Statement of Work."

(A) For the purposes of this Agreement, "software" shall mean any software products (including, without limitation, the Source Code) described, developed or provided under this Agreement and the software products to be provided as described in the Software and Mobile Data System Equipment List, attached hereto as **Exhibit A**.

(B) For the purposes of this Agreement, "enhancement" shall mean any addition of functionality to a software program that did not previously exist.

(C) For the Purpose of this Agreement, "upgrade" shall mean any software program that provides added enhancements, performance or stability improvements, and bug fixes over an earlier version. It is a routine for scheduled release(s) to be provided to all customers with maintenance or support contracts at no additional cost.

3. [extended warranty services section intentionally omitted.]

4. General Conditions for Services.

(A) Contractor shall, at its sole cost and expense, provide tools and equipment which may be required for furnishing services pursuant to this Agreement.

(B) Contractor services are for software enhancement services (excluding support and upgrades to any third party software including, but not limited to, Microsoft and Oracle) provided by Contractor.

(C) Prior to Contractor's access to any Fresno Police Department - Information Technology System including, without limitation, routers, switches, SANS, Servers, Workstations, or any computing device, for purposes of performing its obligations under this Agreement, Contractor shall provide the City notice via e-mail. This notice shall be to Captain Gross (donald.gross@fresno.gov), Errol Allard (errol.allard@fresno.gov) and Tom Harris (tom.harris@fresno.gov). Contractor shall not be responsible for the application software deployed on computers returned for service; however, Contractor will protect and support City's obligation to any third party software licensors when so advised of any obligations City may have in this regard including, without limitation, execution of any confidentiality agreements required by such third party software licensors.

(D) City shall be responsible for determining that all of its files are adequately duplicated for reloading on a current basis ("backed up" as used in the trade) in accordance with the highest and most up-to-date standards of the computer industry.

(E) Custom hardware development and programming for City or special program modifications are not included under this Agreement, but may be requested and quoted for City's consideration. Any additional services shall be subject to a prior written amendment to this Agreement in accordance with Section 6(D) herein.

5. Additional Conditions.

(A) Deliverables Not Satisfied. Contractor shall provide City with all agreed upon deliverables covered by the FAS Contract and this Agreement, which have been fully paid for by the City. This includes all deliverables the City has paid for in full and has not yet received under the FAS Contract. City and Contractor shall agree upon a reasonable timeline for Contractor's delivery of all additional conditions. Such deliverables include, but are not limited to, the following:

(i) **CAD/FSO Export Data Link** – Priority Zero Calls and Messaging (as described in attached **Exhibit D**). Communication Link to FSO for CAD to CAD messaging. The obligation to fulfill this requisite will be contingent on the Fresno Sheriff's Department willingness and availability to provide the necessary conduit between their CAD system and the Fresno PD CAD system. Further, Data911 proposes to develop an API interface for the CAD/FSO Export Data Link that the county can easily integrate with. An example could be a RESTful HTTP-based WEB API interface. Stakeholders from Data911, Fresno PD and if available, Fresno Sheriff's Office will collaborate on the specification. Data911 will demonstrate in a simulated test environment that the API Interface will work as specified, provided FSO stakeholders are available to implement. When FSO stakeholders are available, Data911 will support the county's integration of the API interface in the production environment.

(B) Deliverable Additions for Future.

(i) **Annual Upgrades:** Planned semi-annual upgrade in March and October. City choice to defer;

(ii) **HOH issues:** anything exceeding 6 months, the contractor will provide continuous action on prioritized HOH tickets and will mutually agree with City on the prioritization.

(iii) **Display of RMS Name Alerts:** (as described in attached **Exhibit E**) Currently, the Data911 system accommodates the tagging of a

street address with an alert. Such that, when the address is run, the alert surfaces in MX and ECOMM as an alert to an officer to be aware of what ever conditions that are placed into the alert. The challenge is that the system does not allow for any alert to be placed on a name. As such, if an officer in patrol runs a name and there is perhaps an alert that this individual is known to possess firearms and make threats of suicide by cop etc. the officer has no way of knowing this. Given this, there is an inherent officer safety issue that needs to be resolved, so that an alert can be placed on an individual. When an officer in patrol runs that name, the alert shall surface on the MX side. Since this alert already exists on address locations there is a need to extend this to names.

(iv) **Application Compatibility:** Need to ensure that the vendor released software will run on supported Microsoft based and City adopted operating system, hardware; as well as, ensure compatibility with other existing software in use. In response, Data911 assures that desktop and mobile software is designed to work on the standard Microsoft Windows Operating system client versions that are deployed on Desktop computers, laptops and workstations. Data911 will strive to maintain compatibility with other existing software in use but cannot guarantee compatibility.

(v) **Vendor Software Testing:** ensure that the software delivered by Contractor undergoes adequate internal testing by Contractor to minimize any testing and resource labor needs on the part of the City.

(vi) **Customer Software Testing:** Vendor shall allow City no less than 30 days to test newly implemented applications against the City's operational size to assure that Contractor's software will scale to the size and complexity of the City's use of technology without adverse performance impact by the Contractor's software.

(vii) **Unit/Event - Historical Time-Based Snap-Shot feature:** (as described in attached **Exhibit F**) Historically, in legacy systems there was a process that would create a snapshot "trash-print" every 15 minutes of Unit and Event activity. So that as requests were made as to what was going on at a specific time, it would be easy to say with a high degree of timeliness and accuracy what Units were doing, and what type of call those units were on. Unfortunately, the current system requires that a data-miner must research every possible unit to determine what they were doing each day and at specific times. This becomes a very time consuming process. As such, the proposed and simplified solution is to recreate a snapshot every 15 minutes as to what Units and Events have occurred at specific dates and times. Then, make such snapshots easily searchable.

- i. The goal is to derive:
 1. Who was on duty

2. What units were in-service
 3. What units were on calls
 4. What were the priority of those calls
- ii. The generation of a small text file is all that would be needed, exported with a date/time stamp along with a file name to include the respective information.

(viii) **Temporary Rights Modification** – (as described in attached **Exhibit G**) Expiration Time-Out: need a process where an individual can be granted temporary elevated rights; but, where an expiration notification will be made to an established system admin can be set to remind the system admin of the expiration. The system admin will then make a decision to extend or revert the rights to a previous level. It is not expected that Data911 will assume the programming challenge of detecting whether or not the user logs out after the expiration of their period of elevated rights or, if they have not logged out, force a log out. This process will need to be handled by Fresno staff. Fresno staff agrees that it will also need to exercise appropriate caution in providing elevated rights to users who might be able to modify other Staff Class privilege.

(C) Source Code. For purposes of this Agreement, "Source Code" shall mean the source code for all software covered by the FAS Contract and this Agreement.

(i) Contractor shall within 30 days of the date this Agreement is entered into (date first set forth above as the date the Parties made this Agreement) deliver the most complete and current version of the Source Code to City ("Initial Delivery"). The initial delivery will also include any third party controls in an installable and useable format which, the Contractor has deemed necessary and properly licensed to rely on and add to the code to ensure proper operability.

(ii) Contractor shall provide to customer a copy of all applicable development software needed to compile Source Code up to the level of the latest version provided and/or installed at the customer's location. The premise being that without provisions of having access to the development software, the source code cannot be deemed operational.

(iii) Contractor shall provide proof or rights to utilize third party controls when Source Code is released. After the Initial Delivery, Contractor shall deliver a complete and current version of the Source Code for any software covered by the FAS Contract and this Agreement to City with each released build of any software immediately upon such release. The Source Code shall accompany the new software. Deliveries will include any third party controls which the Contractor has deemed necessary and properly licensed to rely on and add to the Source Code to

ensure proper operability. Contractor warrants that Source Code delivery shall contain all code and components that would enable the City to compile the code to a working executable and install package.

(iv) City shall have the right to permanently retain and use each current version of the Source Code delivered by Contractor. The City will use all reasonable precautions and take all necessary steps to prevent the software from being acquired by unauthorized persons and City will take appropriate action by instruction, agreement or otherwise, with any persons permitted access to the software so as to enable City to satisfy its obligation hereunder.

(v) City shall have the right to permanently retain, use and compile all Source Codes delivered by Contractor.

(vi) Contractor warrants that Contractor either (1) owns the software, including all trademark, copyright and other proprietary rights, or (2) is authorized to grant the rights to City to permanently retain, use and compile all Source Code delivered by Contractor.

(vii) Contractor warrants that the software covered under the FAS Contract and this Agreement is free from trademark, copyright and patent infringements that may prevent the City from legally and permanently retaining, using and compiling all Source Codes delivered by Contractor to City.

(viii) Contractor shall provide City with a "Site License," of all Contractor software purchased by City for its sole use, which affords the City permanent, unlimited use of the software including, without limitation, an unlimited number of concurrent users of the software.

(ix) Portions of this section pertaining to the City's right to permanently retain, use and compile all Source Codes delivered by Contractor shall survive expiration or termination of the FAS Contract and this Agreement.

6. Compensation.

(A) Contractor's sole compensation for satisfactory performance of all services and licensing required or rendered pursuant to this Agreement shall be as follows:

(i) a total fee not to exceed \$264,638 for the period of July 1, 2019 through June 30, 2020; and

(ii) a total fee not to exceed \$113,587 for the period of July 1, 2020 through December 31, 2020.

(B) The first payment shall be payable 10 days after City and Contractor's entering into this Agreement (date first set forth above as the date

the Parties made this Agreement), with each annual payment thereafter payable 30 days after July 1. All payments under this Agreement will be subject to City's receipt of an invoice. Contractor shall submit an invoice for services to City at address listed below:

City of Fresno Police Department
c/o Fiscal Affairs Bureau
Post Office Box 1271
Fresno, CA 93715

(C) Any and all applicable tax payments associated with goods or services provided pursuant to this Agreement are not included in the fees and will be charged at the prevailing rate upon payment becoming due and contained within Contractor's invoice.

(D) The Parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modifications shall include an agreed upon adjustment in Contractors compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. Contractor shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

(E) Any failure by Contractor in providing services as required by this Agreement and its Exhibits will result in the City withholding payment(s) until such services or deliverables are received.

(F) Fees hereunder do not include support, license renewals and upgrades to any third party software or hardware including, but not limited to, Microsoft and Oracle. Any additional services for support, license renewal or upgrade to third party software or hardware shall require an amendment to the Agreement in accordance with Section 6(D) above.

7. Termination, Remedies, and Force Majeure.

(A) This Agreement may be terminated by City without any liability of City or breach of contract, default, detrimental reliance or any other basis in law or equity upon the earlier of: (i) Contractor's filing for protection under the federal bankruptcy laws, or any bankruptcy petition for receiver commenced by a third party against Contractor; (ii) 30 calendar days prior written notice with or without cause by City to Contractor; (iii) City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(B) This Agreement may be terminated immediately by either party upon 30 calendar days prior written notice should the other party substantially fail

to observe, fulfill or perform any obligation, covenant, term or condition in accordance with this Agreement. The party will have substantially failed to observe, fulfill or perform any obligation, covenant, term or condition of this Agreement, if such failure is not cured within such 30 calendar day's prior written notice or substantial steps are not taken toward diligently accomplishing such correction and continuing such diligence to fully correct this material breach after the other party's notification of same.

(C) In the event this Agreement terminates pursuant to this Section 7, Contractor shall immediately reimburse City on a prorated basis (i.e., based upon 365 calendar days) for any previous payment made for services that were to be performed following the date of termination. In the event of Contractor's material breach of the Agreement, City may terminate this Agreement and will not be obligated to pay Contractor's invoice for the particular service which is the immediate subject of the breach. Contractor shall immediately reimburse City for any payment for such services prior to termination. This paragraph shall survive termination of this Agreement.

(D) Upon any breach of this Agreement by Contractor, City may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(E) Contractor shall provide City with adequate written assurances of future performance, upon City's request, in the event Contractor fails to comply with any terms or conditions of this Agreement.

(F) Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of City in the contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Contractor shall notify the City in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the City of the cessation of such occurrence.

8. Non Infringement Warranty and Indemnification.

(A) Contractor warrants that the software and equipment are free from trademark, copyright and patent infringements.

(B) Contractor shall indemnify, hold harmless and defend City, its officials, officers, agents, employees and volunteers from and against all losses, liabilities, judgments, costs, expenses, damages (including damages to the system), attorney's fees, and other costs, including all costs of defense, arising from all suits of law or action of every nature for or on account of the infringement of any patents, trademarks, or copyrights by reason of City's use of any proprietary materials, equipment, software, or processes, support services, enhancements, or upgrades to any of same.

(C) This Section shall survive termination or expiration of this Agreement.

9. Indemnification. Contractor shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and authorized volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Contractor's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or authorized volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If Contractor should subcontract all or any portion of the work to be performed under this Agreement, Contractor shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

10. Insurance.

(A) Throughout the life of this Agreement, Contractor shall pay for and maintain in full force and effect all insurance as required in **Exhibit H** or as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion.

(B) If at any time during the life of the Agreement or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Contractor shall be withheld until notice is received by City that the required

insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Contractor of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(C) The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its principals, officers, agents, employees, persons under the supervision of Contractor, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(D) Upon request of City, Contractor shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(E) If Contractor should subcontract all or any portion of the services to be performed under this Agreement, Contractor shall require each subcontractor to provide insurance protection in favor of City and each of its officers, officials, employees, agents and authorized volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with Contractor and City prior to the commencement of any services by the subcontractor.

11. Nondiscrimination. Contractor shall not employ discriminatory practices in the provisions of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. During the performance of this Agreement, Contractor agrees as follows:

(A) Contractor will comply with all laws and regulations, as applicable providing that no person in the United States shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity,

status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(B) Contractor will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Contractor shall take affirmative action to ensure that the applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of in non-discrimination clause.

(C) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(D) Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union of workers' representatives of Contractors commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

12. Independent Contractor

(A) In the furnishing of the services provided for herein, Contractor is acting solely as an independent contractor. Neither Contractor, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which Contractor shall perform its work and functions. However, City shall retain the right to administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions thereof.

(B) This Agreement does not evidence a partnership or joint venture between Contractor and City. Contractor shall have no authority to bind City

absent City's express written consent. Except to the extent otherwise provided in this Agreement, Contractor shall bear its own costs and expenses in pursuant thereof.

(C) Because of its status as an independent contractor, Contractor and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. Contractor shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Contractor shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Contractor's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, Contractor may be providing services to others unrelated to City or to this Agreement.

13. Maintenance of Records. Records of Contractor pertaining to the services hereunder shall be kept in accordance with generally recognized accounting principles and shall be available to City or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for the period of time required by law. In addition, all books, documents, papers, and records of Contractor pertaining to this Agreement shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This section shall survive expiration or termination of this Agreement.

14. Conflict of Interest and Non Solicitation.

(A) Prior to City's execution of this Agreement, Contractor shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit I**. During the term of this Agreement, Contractor shall have the obligation and duty to immediately notify City in writing of any change to the information provided by Contractor in such statement.

(B) Contractor shall comply, and require any of its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code 1090 et. seq., the California Political Reform Act (Government Code section 87100 et. seq.), and the regulations of the Fair Political Practices

Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). At any time, upon written request of City, Contractor shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, Contractor and the respective subcontractor(s) are in full compliance with all laws and regulations. Contractor shall take, and require any subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, Contractor shall immediately notify City of these facts in writing.

(C) In performing the services to be provided hereunder, Contractor shall not employ or retain the services of any person while such person is either employed by the City or is a member of any City Council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(D) Contractor represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(E) Neither Contractor, nor any of Contractor's subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Agreement for the FAS Contract. Contractor and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Agreement or FAS Contract unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing.

(F) If Contractor should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, Contractor shall include the provisions of this Section 14 in each subcontract and require its subcontractors to comply therewith.

(G) This Section 14 shall survive expiration or termination of this Agreement.

15. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be dually given if delivered personally, transmitted by facsimile followed by a telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

16. Binding. Subject to Section 17, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties respective heirs, successors, assigns, transferee, agents, servants, employees and representatives.

17. Assignment. This Agreement is personal to Contractor and there shall be no assignment by the Contractor of its rights or obligation under this Agreement without the prior written approval of the City. Any attempted assignment by Contractor, its successors or assigns, shall be null and void unless approved in writing by the City.

18. Compliance with Law. In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by Federal, State, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

This section includes, but is not limited to, the Contractor's responsibility to comply with all requirements imposed by the California Department of Justice. These requirements include, but are not limited to, the requirement for Contractor and/or Contractor's employees to enter into a Private Contractor Management Control Agreement. For Contractor's reference, a copy of the Private Contractor Management Control Agreement is attached hereto as **Exhibit J**.

19. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

20. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of defiling of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

21. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

22. Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision, or part thereof, shall not affect the validity or invalidity of any other provision.

23. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

24. Attorney's fees. If either parties required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

25. Exhibits. Each exhibit, schedule and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

26. Precedence of Documents. In the event of any conflict between the body of this Agreement and any exhibit, schedule or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit, schedule or attachment. Furthermore, any terms or conditions contained within any exhibit, schedule or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

28. Time of the Essence. Time is of the essence in this Agreement and failure to comply with this provision shall constitute a material breach of this Agreement.

29. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

30. Extent of Agreement. Each party acknowledges that they have read and fully understood the contents of this Agreement. This Agreement and the FAS Contract represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument dually authorized and executed by both City and Contractor.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
A California municipal corporation

Broadcast Microwave Services, LLC., a
California corporation, DBA "Data911",

By: _____
[Name],
[Title]

By: Chuck Beck
Name: Chuck Beck

Title: President
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: J. Hasty 2-15-19
[Name] John Hasty Date
Senior Deputy City Attorney

By: _____
Name: _____

Title: _____
(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

REVIEWED BY:

By: _____
Date
Deputy

Addresses:
CITY:
City of Fresno
Attention: [Name]
[Title]
[Street Address]
Fresno, CA [Zip]
Phone: (559) [#]
FAX: (559) [#]
Attachments:

Data911:
Attention: [Name]
[Title]
[Street Address]
[City, State Zip]
Phone: [area code and #]
FAX: [area code and #]

- 01.0 - Agreement - D911 - SES and MDS Extended Warranty - 2019.docx
- 03.0 - Exhibit A - Software List -
- 04.0 - Exhibit B - Software Enhancement Services - Statement of Work
- 07.0 - Exhibit D - Spec - Communication Link Specification -
- 08.0 - Exhibit E - Spec - Name Alert System
- 09.0 - Exhibit F - Spec - Historical Activity Time-Based Snapshot System

- 10.0 - Exhibit G - Spec - Rights Modification Notification System
- 11.0 - Exhibit H - Insurance Indemnification Requirements -
- 11.1 - Exhibit H - Cert of Liability and Auto Insurance
- 12.0 - Exhibit I - Conflict of Interest Disclosure
- 13.0 - Exhibit J - CLETS - Private Contractor Management Control Agreement