

RESOLUTION NO.2015-05-526-R

**A RESOLUTION AUTHORIZING AND APPROVING THE  
MAYOR AND RECORDER TO EXECUTE AND RENEW  
AN AGREEMENT FOR SECURITY SYSTEM SERVICES  
WITH 1<sup>ST</sup> CHOICE PROTECTION SYSTEMS**

**WHEREAS**, the City of Tontitown, Arkansas, has entered into an agreement for security system services with 1<sup>st</sup> Choice Protection Systems; and

**WHEREAS**, said agreement for security system services is in need of renewal; and

**WHEREAS**, the City of Tontitown is not required to solicit bids to extend or renew the contract pursuant to A.C.A. 14-58-104.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Tontitown, Arkansas:

Section 1: That the Mayor and Recorder are hereby authorized and directed to execute the attached agreement for security system services on behalf of the City of Tontitown, Arkansas, and are further authorized to execute any and all documents necessary to effectuate this purpose.

**PASSED AND APPROVED** this 5<sup>th</sup> day of May, 2015.

  
\_\_\_\_\_  
PAUL COLVIN, Jr., Mayor

ATTEST:

 *BOOKKEEPER*  
\_\_\_\_\_  
ALICIA COLLINS, Recorder-Treasurer



**1<sup>ST</sup> CHOICE PROTECTION SYSTEMS LLC**

79 Colt Square, Suite 3  
Fayetteville, AR 72703  
(479) 527-0300

**CENTRAL OFFICE MONITORING CONTRACT**

Agreement dated 4-27-15, by and between 1<sup>ST</sup> CHOICE PROTECTION SYSTEMS LLC (hereinafter referred to as

"1<sup>ST</sup> CHOICE" or "ALARM COMPANY") and Tont-town Water Dept

(hereinafter referred to as "Subscriber" or "Buyer"). Premises where communication software and security equipment is installed: 1836

5 Pinnalto Rd Tont-town AR 72770 Phone: 479-361-2996

WHEREAS, Subscriber owns an electronic security system and desires central office monitoring service, the parties agree as follows:

1. COMMUNICATION SOFTWARE REMAINS PERSONAL PROPERTY OF 1<sup>ST</sup> CHOICE: 1<sup>ST</sup> CHOICE shall lease, instruct Subscriber in the proper use of the security system, install, program and service in the premises of the Subscriber, communication software, which together with lawn signs and decals, shall remain the sole personal property of 1<sup>ST</sup> CHOICE and shall not be considered a fixture or a part of the realty, and Subscriber shall not permit the attachment thereto of any apparatus not furnished by 1<sup>ST</sup> CHOICE. If the communication equipment is part of the instrument panel then the chip or software programmed to transmit a signal shall be leased, remain 1<sup>ST</sup> CHOICE's property, and all reference in this agreement to communication software shall be deemed to read chip or software. Passcode to CPU software remains property of 1<sup>ST</sup> CHOICE. Provided Subscriber performs this agreement for the full term thereof, upon termination 1<sup>ST</sup> CHOICE shall at its option provide to Subscriber the passcode to the CPU software or change the passcode to the manufacturer's default code.

2. DESCRIPTION OF SERVICE AND EQUIPMENT VALUE: value of installed software is: \$ 599.00

Initial service provided: ☒ Monitoring ☐ Guard Response ☒ Radio or Cellular Backup ☐ High Speed Internet Monitoring

Approximate date of installation: 4-27-15 Estimated date for completion: 4-27-15

3. INSTALLATION, RENTAL AND SERVICE CHARGES: Subscriber agrees to pay 1<sup>ST</sup> CHOICE:

(a) The sum of \$ 0, plus tax for the installation of the communication software and equipment. The balance of payments for the term of this agreement is due upon execution of this agreement. For the convenience of the parties and so long as there is no default in payments, Subscriber may make the payments as provided in 3(b).

(b) The sum of \$ 27.95, plus tax, per month, payable 1 month in advance for the rental, monitoring and servicing of the communication software for the term of this agreement commencing on the first day of the month next succeeding the date hereof, and continuing monthly thereafter, all payments being due on the first of the month.

4. TERM OF AGREEMENT/TERMINATION/RENEWAL/INCREASE: The term of this agreement shall be for a period of five years and shall automatically renew month to month thereafter under the same terms and conditions. 1<sup>ST</sup> CHOICE shall be permitted, from time to time to increase the monitoring charge by an amount not to exceed nine percent each year and Subscriber agrees to pay such increase as invoiced. Subscriber has the right without additional cost or penalty to terminate this contract at the end of the initial term or the current renewal by sending written notice of termination to 1<sup>ST</sup> CHOICE at least 30 days before the expiration of the initial term or current renewal term.

5. CENTRAL OFFICE MONITORING: Upon receipt of a signal from the communication software, 1<sup>ST</sup> CHOICE or its designee communication center shall make every reasonable effort to notify Subscriber and the appropriate municipal police or fire department. Subscriber acknowledges that signals transmitted from Subscriber's premises directly to municipal police or fire departments are not monitored by personnel of 1<sup>ST</sup> CHOICE or 1<sup>ST</sup> CHOICE's designee communication center and 1<sup>ST</sup> CHOICE does not assume any responsibility for the manner in which such signals are monitored or the response, if any, to such signals. Subscriber acknowledges that signals which are transmitted over telephone lines, wire, air waves or other modes of communication pass through communication networks wholly beyond the control of 1<sup>ST</sup> CHOICE and are not maintained by 1<sup>ST</sup> CHOICE and, therefore, 1<sup>ST</sup> CHOICE shall not be responsible for any failure which prevents transmission signals from reaching the central office monitoring center or damages arising therefrom. Subscriber agrees to furnish 1<sup>ST</sup> CHOICE with a written list of names and telephone numbers of those persons Subscriber wishes to receive notification of alarm signals. All changes and revisions shall be supplied to 1<sup>ST</sup> CHOICE in writing. Subscriber authorizes 1<sup>ST</sup> CHOICE to access the control panel to input or delete data and programming. If the equipment contains listening devices permitting central office to monitor sound then upon receipt of an alarm signal central office shall monitor sound for so long as central office in its sole discretion deems appropriate to confirm an alarm condition. If Subscriber requests 1<sup>ST</sup> CHOICE to remotely activate or deactivate the system, change combinations, openings or closings, or re-program system functions, Subscriber shall pay 1<sup>ST</sup> CHOICE \$50.00 for each such service. 1<sup>ST</sup> CHOICE may, without prior notice, suspend or terminate its services, in central station's sole discretion, in event of Subscriber's default in performance of this agreement or in event central station facility or communication network is nonoperational or subscriber's alarm system is sending excessive false alarms. Central station is authorized to record and maintain audio and video transmissions, data and communications, and shall be the exclusive owner of such property.

6. NO WARRANTIES OR REPRESENTATIONS: SUBSCRIBER'S EXCLUSIVE REMEDY: 1<sup>ST</sup> CHOICE does not represent nor warrant that the security equipment and central office monitoring will prevent any loss, damage or injury to person or property, by reason of burglary, theft, hold-up, fire or other cause, or that the security equipment will in all cases provide the protection for which it is installed or intended. Subscriber acknowledges that 1<sup>ST</sup> CHOICE is not an insurer, and the Subscriber assumes all risk for loss or damage to Subscriber's premises or its contents. 1<sup>ST</sup> CHOICE has made no representations or warranties, and hereby disclaims any warranty of merchantability or fitness for any particular use. Subscriber's exclusive remedy for 1<sup>ST</sup> CHOICE's default hereunder is to require 1<sup>ST</sup> CHOICE to repair or replace, at 1<sup>ST</sup> CHOICE's option, any equipment covered by this agreement which is non-operational.

7. EXCULPATORY CLAUSE: Subscriber agrees that 1<sup>ST</sup> CHOICE is not an insurer and no insurance coverage is offered herein. The security equipment is designed to reduce certain risks of loss, though 1<sup>ST</sup> CHOICE does not guarantee that no loss will occur. 1<sup>ST</sup> CHOICE is not assuming liability, and, therefore shall not be liable to Subscriber for any loss, personal injury or property damage sustained by Subscriber as a result of burglary, theft, hold-up, fire, equipment failure, smoke, or any other cause, whatsoever, regardless of whether or not such loss or damage was caused by or contributed to by 1<sup>ST</sup> CHOICE's negligent performance, failure to perform any obligation or strict products liability. Subscriber releases 1<sup>ST</sup> CHOICE from any claims for contribution, indemnity or subrogation.

SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS OF THIS CONTRACT. READ THEM BEFORE YOU SIGN THIS CONTRACT. BUYER ACKNOWLEDGES RECEIVING A FULLY EXECUTED COPY OF THIS CONTRACT AT TIME OF EXECUTION.

1<sup>ST</sup> CHOICE PROTECTION  
SYSTEMS LLC:

(for residential customers only)

NOTICE OF CANCELLATION

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.

By: Colthoun

Subscriber Agrees to have its credit card automatically charged for all charges under this contract.

Credit Card #: \_\_\_\_\_

Security Code: \_\_\_\_\_

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

☐ Mastercard ☐ Visa ☐ American Express

Cardholder's Name (As it appears on credit card): \_\_\_\_\_

Billing Address: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Subscriber \_\_\_\_\_

(Print Full Name) \_\_\_\_\_ Social Security Number \_\_\_\_\_

Address \_\_\_\_\_

Tax ID SS# or EIN \_\_\_\_\_ Type and jurisdiction of organization and ID, if any  
The undersigned personally guarantees subscriber's performance of this agreement

Signature (Name must be printed below) \_\_\_\_\_ Social Security Number \_\_\_\_\_

Residence Address \_\_\_\_\_



8. **LIMITATION OF LIABILITY:** Subscriber agrees that should there arise any liability on the part of 1<sup>ST</sup> CHOICE as a result of 1<sup>ST</sup> CHOICE's negligent performance to any degree, failure to perform any of 1<sup>ST</sup> CHOICE's obligations, equipment failure or strict products liability, that 1<sup>ST</sup> CHOICE's liability shall be limited to the sum of six times the monthly payment at time liability is fixed or the sum of \$250.00, whichever is greater. If Subscriber wishes to increase 1<sup>ST</sup> CHOICE's maximum amount of 1<sup>ST</sup> CHOICE's limitation of liability, Subscriber may, as a matter of right, at any time, by entering into a supplemental contract, obtain a higher limit by paying an annual payment consonant with 1<sup>ST</sup> CHOICE's increased liability. This shall not be construed as insurance coverage.

9. **LIQUIDATED DAMAGES:** The parties agree that in the event Subscriber suffers damages as a result of 1<sup>ST</sup> CHOICE's negligence to any degree or failure to perform any obligation, it would be impractical and extremely difficult to anticipate or fix actual damages. Therefore, Subscriber agrees that should there arise any liability on the part of 1<sup>ST</sup> CHOICE, Subscriber agrees to accept \$250.00, or the amount provided for in paragraph 8, whichever is greater, as liquidated damages in complete satisfaction of such liability and 1<sup>ST</sup> CHOICE is released and discharged from any further liability.

10. **CARE OF EQUIPMENT:** Subscriber agrees not to tamper with, remove or otherwise interfere with the communication software which shall remain in the same location as installed and Subscriber agrees to bear the cost of repairs or replacement made necessary as a result of any painting, alteration, remodeling or damage, including damage caused by unauthorized intrusion to the premises, lightning or electrical surge, except for ordinary wear and tear during the warranty period, in which event repair or replacement shall be made by 1<sup>ST</sup> CHOICE without additional charge.

11. **ALTERATION OF PREMISES FOR INSTALLATION:** 1<sup>ST</sup> CHOICE is authorized to make preparations such as drilling holes, driving nails, making attachments or doing any other thing necessary in 1<sup>ST</sup> CHOICE's sole discretion for the installation and service of the communication software, and 1<sup>ST</sup> CHOICE shall not be responsible for any condition created thereby as a result of such installation, service, or removal of the communication software, and Subscriber represents that the owner of the premises, if other than Subscriber, authorizes the installation of the communication software under the terms of this agreement.

12. **SUBSCRIBER'S DUTY TO SUPPLY ELECTRIC AND TELEPHONE SERVICE:** Subscriber agrees to furnish, at Subscriber's expense, all 110 Volt AC power, electrical outlets, receptacles, telephone hook-ups, RJ31 Block or equivalent, internet connection, high speed broadband cable or DSL and IP Address, as deemed necessary by 1<sup>ST</sup> CHOICE in its sole discretion and to notify 1<sup>ST</sup> CHOICE of any change in such service.

13. **TESTING AND SERVICE OF COMMUNICATION SOFTWARE:** The parties hereto agree that the communication software, once installed, is in the exclusive possession and control of the Subscriber, and it is Subscriber's sole responsibility to test the operation of the communication software and to notify 1<sup>ST</sup> CHOICE if it is in need of repair. 1<sup>ST</sup> CHOICE shall not be required to service the communication software if subscriber is in default and unless it has received notice from Subscriber, and upon such notice, 1<sup>ST</sup> CHOICE shall service the communication software to the best of its ability within 36 hours, exclusive of Saturday, Sunday and legal holidays, during the business hours of 9 a.m. and 5 p.m. Any repair or other services provided by 1<sup>ST</sup> CHOICE to Subscriber's alarm or security equipment shall be at 1<sup>ST</sup> CHOICE's option on a per call request by Subscriber, and Subscriber shall pay for such labor and material at time such repair or other service is performed. All such repair or other service shall be governed by the terms of this contract. In the event Subscriber complies with the terms of this agreement and 1<sup>ST</sup> CHOICE fails to repair the communication software within 36 hours after notice is given, excluding Saturdays, Sundays, and legal holidays, Subscriber agrees to send notice that the communication software is in need of repair to 1<sup>ST</sup> CHOICE, in writing, by certified or registered mail, return receipt requested and Subscriber shall not be responsible for payments due while the security equipment remains inoperable. If 1<sup>ST</sup> CHOICE fails to repair the communication software within 48 hours after receipt of said notice, Subscriber shall not be obligated to pay any amount for the communication software from date said notice is given, until the communication software is restored to working order. In any lawsuit between the parties in which the condition or operation of the communication software is in issue, the Subscriber shall be precluded from raising the issue that the communication software was not operating unless Subscriber can produce a post office certified or registered receipt, signed by 1<sup>ST</sup> CHOICE, evidencing that service was requested by Subscriber. Only communication and security system software is covered by service. It shall be Subscriber's sole responsibility to maintain the communication hardware in working order.

14. **LEGAL ACTION:** The parties agree that due to the nature of the services to be provided by 1<sup>ST</sup> CHOICE, the payments to be made by the Subscriber for the term of this agreement pursuant to paragraph 3(b) form an integral part of 1<sup>ST</sup> CHOICE's anticipated profits; that in the event of Subscriber's default it would be difficult if not impossible to fix 1<sup>ST</sup> CHOICE's actual damages. Therefore, in the event Subscriber defaults in the payment of any charges to be paid to 1<sup>ST</sup> CHOICE, the balance of all payments for the entire term herein shall immediately become due and payable and Subscriber shall be liable for 80% thereof as liquidated damages and 1<sup>ST</sup> CHOICE shall be permitted to terminate all its services under this agreement and remotely re-program or delete any programming without relieving Subscriber of any obligation herein. In the event of Subscriber's breach of this agreement, 1<sup>ST</sup> CHOICE may at its option either remove its software or deem same sold to Subscriber for 80% of the amount specified as the value of the equipment in addition to the liquidated damages provided for herein. Should 1<sup>ST</sup> CHOICE prevail in any litigation between the parties Subscriber shall pay 1<sup>ST</sup> CHOICE's legal fees. The parties waive trial by jury in any action between them. In any action commenced by 1<sup>ST</sup> CHOICE against Subscriber, Subscriber shall not be permitted to interpose any counterclaim. Any action by subscriber against 1<sup>ST</sup> CHOICE must be commenced within thirteen months of the accrual of the cause of action or shall be barred. All actions or proceedings against 1<sup>ST</sup> CHOICE must be based on the provisions of this agreement. Any other action that subscriber may have or bring against 1<sup>ST</sup> CHOICE 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.

15. **DELAY IN INSTALLATION:** 1<sup>ST</sup> CHOICE shall not be liable for any damage or loss sustained by Subscriber as a result of delay in installation of equipment, equipment failure, or for interruption of service due to electric failure, strikes, walk-outs, war, acts of God, or other causes, including 1<sup>ST</sup> CHOICE's negligence in the performance of this contract. The estimated date work is to be substantially completed is not a definite completion date and time is not of the essence.

16. **INSURANCE:** The Subscriber shall maintain a policy of public liability, property damage, burglary and theft insurance under which 1<sup>ST</sup> CHOICE is named as insured, and under which the insurer agrees to indemnify and hold 1<sup>ST</sup> CHOICE harmless from and against all costs, expenses including attorneys' fees and liability arising out of or based upon any and all claims, injuries and damages arising under this agreement, including, but not limited to, those claims, injuries and damages contributed to by 1<sup>ST</sup> CHOICE's negligent performance to any degree or its failure to perform any obligation. The minimum limits of liability of such insurance shall be one million dollars for any injury or death, and property damage, burglary and theft coverage in an amount necessary to indemnify Subscriber for property on its premises. 1<sup>ST</sup> CHOICE shall not be responsible for any portion of any loss or damage which is recovered or recoverable by the Subscriber from insurance covering such loss or damage or for such loss or damage against which the Subscriber is indemnified or insured.

17. **INDEMNITY/WAIVER OF SUBROGATION RIGHTS/ASSIGNMENTS:** Subscriber agrees to and shall indemnify and hold harmless 1<sup>ST</sup> CHOICE, its employees, agents and subcontractors, from and against all claims, lawsuits, including those brought by third parties or Subscriber, including reasonable attorneys' fees and losses, asserted against and alleged to be caused by 1<sup>ST</sup> CHOICE's performance, negligence or failure to perform any obligation under this agreement. Parties agree that there are no third party beneficiaries of this contract. Subscriber on its behalf and any insurance carrier waives any right of subrogation Subscriber's insurance carrier may otherwise have against 1<sup>ST</sup> CHOICE or 1<sup>ST</sup> CHOICE'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 1<sup>ST</sup> CHOICE. 1<sup>ST</sup> CHOICE shall have the right to assign this contract and shall be relieved of any obligations herein upon such assignment. 1<sup>ST</sup> CHOICE shall be permitted to assign this contract and upon such assignment shall have no further obligation hereunder.

18. **FALSE ALARMS/PERMIT FEES:** Subscriber is responsible for all alarm permits and permit fees, agrees to file for and maintain any permits required by applicable law and indemnify or reimburse 1<sup>ST</sup> CHOICE for any fines relating to permits or false alarms. 1<sup>ST</sup> CHOICE shall have no liability for permit fees, false alarms, false alarm fines, police or fire response, any damage to personal or real property or personal injury caused by police or fire department response to alarm, whether false alarm or otherwise, or the refusal of the police or fire department to respond. In the event of termination of police or fire response by the municipal police or fire department this contract shall nevertheless remain in full force and Subscriber shall remain liable for all payments provided for herein. Should 1<sup>ST</sup> CHOICE be required by existing or hereinafter enacted law to perform any service or furnish any material not specifically covered by the terms of this agreement Subscriber agrees to pay 1<sup>ST</sup> CHOICE for such service or material.

19. **1<sup>ST</sup> CHOICE'S RIGHT TO SUBCONTRACT SPECIAL SERVICES:** Subscriber agrees that 1<sup>ST</sup> CHOICE is authorized and permitted to subcontract any services to be provided by 1<sup>ST</sup> CHOICE to third parties who may be independent of 1<sup>ST</sup> CHOICE, and that 1<sup>ST</sup> CHOICE shall not be liable for any loss or damage sustained by Subscriber by reason of fire, theft, burglary or any other cause whatsoever caused by the negligence of third parties, and Subscriber appoints 1<sup>ST</sup> CHOICE to act as Subscriber's agent with respect to such third parties, except that 1<sup>ST</sup> CHOICE shall not obligate Subscriber to make any payments to such third parties. Subscriber acknowledges that this agreement, and particularly those paragraphs relating to 1<sup>ST</sup> CHOICE's disclaimer of warranties, exemption from liability, even for its negligence, limitation of liability and indemnification, inure to the benefit of and are applicable to any assignee, subcontractors and communication centers of 1<sup>ST</sup> CHOICE.

20. **NON-SOLICITATION:** Subscriber agrees that it will not solicit for employment for itself, or any other entity, or employ, in any capacity, any employee of 1<sup>ST</sup> CHOICE assigned by 1<sup>ST</sup> CHOICE to perform any service for or on behalf of Subscriber for a period of two years after 1<sup>ST</sup> CHOICE has completed providing service to Subscriber. In the event of Subscriber's violation of this provision, in addition to injunctive relief, 1<sup>ST</sup> CHOICE shall recover from Subscriber an amount equal to such employee's salary based upon the average three months preceding employee's termination of employment with 1<sup>ST</sup> CHOICE, times twelve, together with 1<sup>ST</sup> CHOICE's counsel and expert witness fees.

21. **SECURITY INTEREST/COLLATERAL:** To secure Subscriber's obligations under this agreement Subscriber grants 1<sup>ST</sup> CHOICE a security interest in the security equipment installed by 1<sup>ST</sup> CHOICE and 1<sup>ST</sup> CHOICE is authorized to file a financing statement.

22. **FULL AGREEMENT/SEVERABILITY/CONFLICTING DOCUMENTS:** This agreement constitutes the full understanding of the parties and may not be amended or modified or canceled except in writing signed by both parties, except that in the event 1<sup>ST</sup> CHOICE issues a UL certificate to Subscriber, 1<sup>ST</sup> CHOICE will comply with Underwriters Laboratory Inc. requirements regarding items of protection provided for in this agreement. Should there arise any conflict between this agreement and Subscriber's purchase order or other document, this agreement will govern, whether such purchase order or document is prior to or subsequent to this agreement. This contract shall be governed by the laws of the State of Arkansas. Should any provision of this agreement be deemed void, all other provisions will remain in effect.