

Summary

Board Bill Number 200

Primary Sponsor: Alderman Thomas Oldenburg

December 11, 2020

The purpose of this ordinance is to approve a contract between the City of St. Louis and Persistent Surveillance Systems dba Community Support Program. The contract will provide aerial investigation research to the City, specifically technical assistance, training, technology, research, and subject matter expertise to assist the St. Louis Metropolitan Police Department in reducing and investigating crime. This ordinance will have a significantly positive effect on the City, its residents, the reduction and investigation of crime, and public safety.

BOARD BILL NUMBER 200 INTRODUCED BY: ALDERMAN THOMAS OLDENBURG

1 An ordinance approving a contract between the City of St. Louis (the “City”) and Persistent
2 Surveillance Systems d/b/a Community Support Program (the “Company”), and directing the St.
3 Louis Metropolitan Police Department (“SLMPD”) and other City officials to enter into such
4 contract and any related agreements; and containing an Emergency Clause.

5 **WHEREAS**, public safety and crime reduction are top priorities for the City, SLMPD, and
6 this Board; and

7 **WHEREAS**, as of December 6, 2020, the City has seen a 27 year record number of more
8 than 247 homicides and other significant numbers of violent crime including more than 33 people
9 under the age of 20; each of these homicides represents a person in our city who is missed by
10 parents and friends and deeply impacts our city; and

11 **WHEREAS**, of the 247 homicides this year, as of December 6, 2020, 179 remain unsolved
12 leaving killers on the street while the St. Louis homicide rate is the highest in the City’s history
13 exceeding 82 homicides per 100,000 people per year with nearly a month left in the year; and

14 **WHEREAS**, St. Louis currently has the highest homicide rate for a major city in the United
15 States, and based on available 2019 data would be the 4th worst homicide rate for major cities in
16 the world; and

17 **WHEREAS**, SLMPD faces a serious shortage of approximately 140 officers, indicating
18 an urgent need for additional resources; and

19 **WHEREAS**, increased resources have been directed to the City to increase public safety
20 and reduce crime, notably recently through “Operation Legend,” wherein (i) the U.S. Department
21 of Justice sent more than fifty (50) federal investigators to the City, (ii) the Bureau of Justice
22 Assistance made available one million dollars (\$1,000,00.00) to support the operation’s violent

1 crime reduction efforts and shot spotter responses in the City, and (iii) the City received two (2)
2 Special Assistant United States Attorneys from the Missouri Attorney General’s Office to support
3 violent crime prosecutions; and

4 **WHEREAS**, the City needs additional resources and creative solutions to reduce crime
5 and increase public safety; and

6 **WHEREAS**, the Company’s technology (i) uses wide area imaging to provided
7 investigative information to aide police officers in solving crime and increasing deterrence, (ii)
8 provides supportive information for criminal investigations, and (iii) helps build trust between
9 community members and law enforcement by increasing accountability and by solving and
10 deterring violent crime; and

11 **WHEREAS**, the Company’s technology has and can be used to support defense attorneys
12 and public defenders in clearing defendants falsely accused, has and can be used to support
13 investigations of officer involved shootings and allegations of officer misconduct; and

14 **WHEREAS**, the Company’s technology includes robust privacy protections, such as fully
15 auditable areas viewed, strict limitations on resolution, cybersecurity protections, and the inability
16 to view private covered areas or areas where a reasonable expectation of privacy exists; and

17 **WHEREAS**, 76% of Baltimore respondents to an October 2019 scientific poll expressed
18 support for the AIR program including 82% of African-American females and 82% of respondents
19 to a poll by the Baltimore Business Journal were “comfortable” with the Company’s technology
20 “as long as it’s keeping people safe;” and

21 **WHEREAS**, the Company’s technology offers an ideal way to fulfill the City’s critical
22 need for additional resources to reduce crime and increase public safety, and offers additional

1 benefits such as investigating FBI Part 1 and State Class A Felony crimes and specific crimes
2 designated by the Board of Aldermen, and assisting civil authorities during weather emergencies
3 and natural disasters.

4 **NOW THEREFORE BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

5 **SECTION ONE.** The Mayor and Comptroller are hereby authorized and directed to enter
6 into, execute, and deliver, on behalf of the City, a Professional Services Agreement (“Agreement”)
7 between the City and the Company pursuant to which the Company will provide aerial
8 investigation research (“AIR”) to the City, as defined in the Agreement, specifically technical
9 assistance, training, technology, research, and subject matter expertise to assist the SLMPD in
10 implementing the Company’s AIR technology subject to the Rules, Restrictions, and Limitations
11 included in **Exhibit A** and, on terms and conditions set forth in the Agreement, in substantially the
12 form attached hereto as **Exhibit B**, which is incorporated herein and made a part of this Ordinance
13 by this reference.

14 **SECTION TWO.** Emergency Clause. This being an Ordinance for the immediate
15 preservation of public peace, health, and safety, it is hereby declared to be an immediate measure
16 within the meaning of Sections 19 and 20 of Article IV of the Charter of the City and therefore
17 this Ordinance shall become effective immediately upon its passage and approval by the Mayor.

Board Bill Number 200

Exhibit A – Rules, Restrictions, and Limitations

The AIR Program shall be executed in accordance with the following Rules, Restrictions, and Limitations. Any capitalized terms not otherwise defined have the meanings given to them by the Agreement.

1. SLMPD and the Company shall clearly demarcate the AIR Program’s capabilities and integrations at the outset, and require notice and approval before expanding them.

The City and the Company agree the Agreement provides a clear delineation of AIR’s capabilities and integrations detailing precisely how AIR will be used, including but not limited to the crimes for which AIR is deployed and the resolution of the cameras. The scope of the use of AIR shall not be expanded to include the addition of night vision infrared technology not currently used by the Company, processing images obtained by AIR analysts via facial recognition, or the incorporation of new ground-based surveillance technologies not currently utilized except as specifically authorized following 30 days’ written Notice to the Board of Aldermen, and written Amendments to the Agreement which must be approved by the Mayor and the Police Commissioner prior to the expansion of the scope of this Agreement.

2. SLMPD shall publish on its website an AIR use Policy before beginning operations.

Prior to Commencement of Aerial Operations, the SLMPD shall publish an AIR use policy on its website. This requirement helps ensure that key decisions about program operations are made by high-ranking policymakers in the department, not on an ad hoc basis. Setting policy at a departmental level also ensures that officer discretion is constrained. Making the policy public ensures that the public is aware of these decisions and provides a degree of public accountability.

Accordingly, prior to commencement of Aerial operations SLMPD shall specify and publish on its website:

- which agency personnel are authorized to use the program;
- what training is required before agency personnel can access the program;
- what responsibilities supervisors will have, if any, to document and review each deployment or use;
- the specific steps agency personnel must take, including required documentation, to initiate an AIR investigation;
- the process by which data will be deleted after the retention period elapses;
- the circumstances (if any) under which data will be shared with other government agencies; and
- the manner in which the program will be documented, audited, and reported to the public, consistent with this Ordinance.

3. Offenses that may be investigated using AIR Technology shall be limited to the following FBI PART 1 Crimes, Missouri Class A Felony Crimes, and crimes specifically approved by the Board of Aldermen as set forth below:

- Homicides, (Class A and Part 1)
- Robbery (Class A and Part 1)
- Shootings and Aggravated Assault (Class A and Part 1)
- Burglary (Part 1)
- Arson (Part 1)
- Motor Vehicle Theft (Part 1)
- Forcible Rape (Part 1)
- Trafficking Drugs Over Statutory Amount (Class A)
- Kidnapping (Class A)

In addition, to the above crimes the following are also specifically approved by the Board of Aldermen:

- Any Officer Involved Shooting
- Felony Larceny from a Motor Vehicle
- Felony Unlawful Use of a Weapon
- Vehicular Hit and Run with Injury or Death
- Missing Persons Investigation Support
 - Amber Alerts
 - Juvenile Missing Persons 16 and Under
 - Endangered Missing Persons
- Illegal Dumping

At the request of the Police Commissioner and the Mayor, the AIR Program will also be authorized to assist in non-criminal emergency response efforts relating to floods, tornadoes and similar actions. Other Supplemental Requests, such as a Silver Alert missing persons case, will require obtaining a warrant.

4. SLMPD and the Company shall provide transparency and empirical justification for decisions about where the AIR Program operates.

It is the intention of the AIR Program to support the entire City of St. Louis. When not able to support the entire City due to weather, or other operational limitations, AIR’s aerial surveillance planes shall only be deployed as published in areas of the City where there is empirical evidence target crimes are more likely to occur than the areas not being surveilled. Prior to Commencement of Operations, SLMPD and Company shall set deployment criteria after carefully considering the possibility of disparate impacts and how best to mitigate them.

5. SLMPD and the Company shall document an adequate factual predicate for any investigation before permitting access to AIR Program data. In some instances, this should involve judicial approval.

For basic tracking of persons and vehicles to and from the scene of a target crime, an AIR investigation may be commenced upon a written statement from an officer that a target crime has occurred or based on alerts from SLMPD’s Computer Aided Dispatch (“CAD”) system or Shot Spotter alerts that relate to the approved Target Crimes.

Such tracking does not necessitate a court order—although warrants are an important limitation on officer discretion in many cases, discretion is limited naturally when analysts simply are tracking subjects traveling to and from the documented scene of a crime within the data set of one Aerial Flight

of no more than nine hours. All Officer Requests for AIR support shall be made in writing, accompanied by a signed statement from the requesting officer specifying the target crime at issue and the factual basis for the investigation.

Supplemental Requests that are not tied to the scene of a crime, or involve tracking over multiple days, require more rigorous requirements. Supplemental Requests require that police establish probable cause and obtain a warrant to conduct surveillance of a particular person, vehicle, or location associated with an approved target crime. These rules are also applicable to the use of AIR to locate the subjects of arrest warrants for target offenses.

6. SLMPD and the Company shall specify rules around tracking and identification of victims, witnesses, and associates.

AIR's reach is not limited to suspects, but may be used to track and identify possible victims, witnesses, and individuals who associate with suspects in investigations of Target Crimes. Accordingly, once AIR analysts determine a vehicle or person to no longer be of interest to the investigation, no further tracking of that vehicle or person is permitted.

7. SLMPD and the Company shall implement additional protections around First Amendment activities.

AIR program does not and will not support the investigation of protests, and other First Amendment related activities absent approved criminal investigations associated with allowable investigable crimes at locations of protests. In order to provide additional First Amendment protections, analysts shall not be permitted to conduct analysis of aerial surveillance images of Protected First Amendment Activities, such as protests, marches, and First Amendment locations, such as houses of worship without a warrant. When such images are included in Crime Scenes, the AIR Program, in consultation with the SLMPD, shall seek a warrant to continue to analyze Aerial Imagery of Protected First Amendment Activities. Under no circumstances shall the AIR program track persons or vehicles from or to Protected First Amendment Activities, such as protests, marches, and First Amendment locations, such as houses of worship without a warrant.

8. SLMPD and the Company shall provide specific and clear guidance around data retention.

SLMPD and the Company shall set clear and enforceable retention limits, subject to after-the-fact auditing. Retention periods shall generally coincide with the retention period for the ground cameras. The framework should specify how much footage is to be retained. SLMPD and the Company shall implement protocols to require that data retained in connection with one case be inaccessible for any other investigation absent a court order. Absent a Court Order, after 45 days access to the AIR Data shall not be available for new investigations. In order to allow potential defendants adequate time to request AIR imagery support, the Contractor will retain the AIR imagery data for one hundred and eighty (180) days. Investigative briefings and Reports used in the prosecution of Target Crimes, including related AIR imagery will be maintained by Contractor for a longer duration in accordance with applicable law until legal proceedings and appeals are complete and until the statute of limitations expires. Contractor will institute physical, technical, and policy systems to ensure the integrity of the data it records in its surveillance and analysis.

9. SLMPD and the Company shall specify data security and data access procedures.

Given the sensitivity of AIR data, particularly when it is combined with ground surveillance, SLMPD and the Company shall treat AIR data as secure Confidential Material and shall maintain AIR

data in accordance with generally accepted standards of care and practice as is customary and recommended by the FBI. The AIR program has a comprehensive data security and data access program in place and adherence to that program is a condition of program continuation and will be ensured by external auditors and reporting.

10. The Company shall minimize noise impact.

The AIR Program shall not fly below 4000 feet above ground level and shall minimize the noise from Aircraft by avoiding climbing from the surface overpopulated areas. The AIR program will evaluate and implement all reasonable efforts to reduce the impact of aircraft noise on the community.

11. SLMPD and the Company shall enable and provide appropriate discovery to defense counsel.

SLMPD shall be required to inform prosecutors and the court in any case in which AIR was used as part of an investigation that results in a prosecution. Defense Counsel in each criminal case shall be provided with AIR evidence produced to SLMPD. To provide support to defense counsel, AIR analysts shall be made available to support requests from defense counsel at a reasonable cost. The AIR analysts shall document fully the reasoning behind any investigative conclusions they reach (e.g., whether an individual is deemed a suspect or not involved). AIR analysts shall document their conversations associated with investigations with SLMPD, including pertinent information conveyed in both directions.

12. SLMPD and the Company shall operate under ongoing reporting and assessment requirements.

SLMPD and the Company shall provide quarterly reports to the Board of Aldermen of the activities of the AIR Program. The AIR program will support external academic and professional researchers to evaluate the impact and effectiveness of the program. AIR program and SLMPD will provide data necessary to conduct these research efforts.

13. SLMPD and the Company shall submit to strict auditing procedures.

The AIR program will maintain records and appropriate tools to allow the strict and comprehensive audit of all conducted investigations, all viewed locations, and all created tracks in a manner to allow for the audit of investigations, viewed locations, and tracks created by external and internal auditors. The Company will maintain written justification for each investigation initiated and each track created. The Company will also provide resources, information, and support to allow the unimpeded execution of these audits to ensure compliance with the terms and limitations outlined in this Ordinance to protect citizens' privacy.

14. Consequences for violations of these principles may result in termination.

The regulatory framework herein contained is intended to ensure AIR follows strict rules in an effort to limit any inappropriate impacts. Failure to follow the AIR Program Rules may include but is not be limited to termination of the Agreement and cessation of the AIR Program.

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Exhibit B – Agreement

**PROFESSIONAL SERVICES AGREEMENT
Aerial Investigation Research (“AIR”)**

This **PROFESSIONAL SERVICES AGREEMENT** (this “Agreement”) is dated as of _____, 2020 and is entered into by and between the ST. LOUIS METROPOLITAN POLICE DEPARTMENT, an agency and instrumentality of the State of Missouri (“SLMPD”), and PERSISTENT SURVEILLANCE SYSTEMS, LLC, an Ohio limited liability company d/b/a Community Support Program (the “Contractor”). SLMPD and Contractor are each referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the City of St. Louis (the “City”) suffers from extremely high levels of violent crime and the City, and the Mayor’s Office and SLMPD, its principal law enforcement agency, are engaged in a continuous effort to use evidence-based law enforcement strategies to reduce violent crime and improve public safety;

WHEREAS, the Contractor proposes to conduct a three year program (the “ Project”) using its AIR technology and analytics in conjunction with SLMPD to assist SLMPD in investigating approved target crimes and locating missing persons;

WHEREAS, SLMPD desires to participate in the Project and work with the Contractor pursuant to the terms and conditions set forth in this Agreement;

WHEREAS, Contractor and SLMPD agree to seek funding so that SLMPD shall have no financial obligations to pay the costs and fees associated with the Project;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth below and for other good and valuable consideration receipt and sufficiency of which is hereby acknowledged, SLMPD and the Contractor agrees as follows:

1. PURPOSE:

1.1. SLMPD seeks to continuously develop effective, evidence-based policing strategies to improve public safety and police community relations. The purpose of this Agreement is for SLMPD to test out and rigorously evaluate an innovative AIR technology used to assist SLMPD investigate and reduce violent crime in the City. The Contractor will provide technical assistance, training, technology and research and subject matter expertise to assist SLMPD assess, develop, implement and evaluate this public safety technology and community building strategy.

2. SCOPE OF SERVICES:

2.1. The Contractor shall provide the services, on a non-exclusive basis, as described in the Scope of Services attached hereto as **Schedule 1** and made a part of this Agreement, and the Rules, Restrictions, and Limitations (the “Rules, Restrictions, and Limitations”) set forth in and required by St. Louis City Ordinance No. _____.

3. CONTRACTOR’S RESPONSIBILITIES:

- 3.1.** The Contractor’s primary point of contact (the “POC”) for the Project is Ross T. McNutt, PhD, the Contractor’s founder and sole member. The Contractor shall exercise independent professional judgment and shall assume professional responsibility for all services provided hereunder.
- 3.2.** The Contractor shall be available for monthly management meetings with SLMPD, the Health Department of the City of St. Louis, and the stakeholders of Cure Violence, or as needed to ensure on-going communication and resolution of concerns.
- 3.3.** The Contractor will employ sufficient personnel to staff its City Offices to analyze video and draft reports and otherwise assist SLMPD in the investigation of criminal activity. Where Contractor’s data and analysis is used in a criminal case that results in arrest, charges or prosecution, the Contractor will make available relevant data, analysis and reports to the prosecution and defense, subject to applicable court rules and procedures and applicable laws.
- 3.4.** Contractor shall provide the Independent Auditors with access to personnel, offices, documentation, and information as are reasonably required for the Independent Auditors to conduct audits of the Project. Contractor, and SLMPD shall cooperate in good faith to mutually agree upon the scope, frequency, and other terms of such audits and reports.
- 3.5.** Contractor will provide quarterly updates, or upon reasonable request by SLMPD, to the Public Safety Committee of the Board of Aldermen (“BOA”) of the City of St. Louis, in concert with the Independent Auditors, SLMPD and the Public Safety Dept. The quarterly updates may occur at BOA meetings open to the public. The information to be communicated is intended to inform the BOA and public of the progress, challenges, operations and other relevant information relating to the Project.

4. SLMPD’S RESPONSIBILITIES:

- 4.1.** SLMPD shall provide the Contractor with access to its offices and personnel as are reasonably required for the Contractor to perform its duties and responsibilities under this Agreement.
- 4.2.** SLMPD’s Commissioner, or designee, shall be SLMPD’s POC for this Project. SLMPD’s POC shall assign a Lieutenant or other officer to coordinate activities with the Contractor personnel who (i) are assigned to SLMPD’s facilities, (ii) access SLMPD data or information systems or (iii) work with SLMPD criminal investigators.
- 4.3.** SLMPD shall take the reasonably necessary steps to ensure their capacity to meet the recommendations the Contractor has outlined for success. This includes but is not limited to:
 - 4.3.1.** subject to available funding, a project manager to facilitate the work of SLMPD investigators, the Contractor, the Independent Auditors, an independent reviewer of the Contractor’s use of the aerial imagery and public interest in the Project; and
 - 4.3.2.** a commitment to the implementation of new policing approaches for crime reduction.

- 4.4. SLMPD shall provide the Independent Auditors with access to personnel, offices, documentation, and information as are reasonably required for the Independent Auditors to conduct its audits and reports. The Independent Auditor reports shall include, at a minimum, the following metrics: (1) the Project's effect on the solvability of crime, (2) the Project's effect on the deterrence of crime, (3) the Project's effect on the clearance rate for crimes, and (4) police and community relations.
- 4.5. SLMPD shall provide the City's Public Health Department with information about the Project as is reasonably required for the administration of the Cure Violence program.
- 4.6. SLMPD shall perform under this Agreement in accordance with the Rules, Restrictions, and Limitations.

5. **TERM:**

- 5.1. The term ("Term") of this Agreement will commence immediately upon the date (the "Effective Date") first above written and will expire three (3) years after the Effective Date, unless terminated prior to that date in accordance with Section 9 below.
- 5.2. Contractor shall provide to SLMPD no later than thirty (30) days after the date of this Agreement a proposed schedule to SLMPD for the implementation of the services and SLMPD and Contractor shall use good faith efforts to agree on such schedule within fifteen (15) days of Contractor's delivery of the proposed schedule to SLMPD.

6. **FUNDING:**

- 6.1. The Contractor and the City shall seek one or more funders (hereinafter referred to as, the "funder") to pay Contractor's fees and expenses with respect to the Project, pursuant to one or more separate grant agreements to be negotiated with the funder. The Contractor and the City shall also seek grants to pay the Independent Auditors to cover the costs and fees to conduct audits of the Project and based on a separate mutual agreement of The Funder and such Independent Auditors as to grant terms and conditions and the Independent Auditors' compliance with those terms and conditions. Except as may be explicitly agreed upon in those grant agreements, The Funder shall have no obligation with respect to the Project, including but not limited to Contractor's performance or obligations under this Agreement, any continuation of the Project beyond the Term, or any renewal term as may be agreed upon by the parties.
- 6.2. SLMPD and the City shall have no responsibility or liability to pay any fees or expenses of the Contractor, the Independent Auditors or any other person or entity in connection with the Program.
- 6.3. If, for any reason, a the Funder is not secured (or any replacement funding source) does not provide the funding necessary to support the expenses and fees relating to the Project, including without limitation, the expenses and fees for the Independent Auditors, Contractor shall have the option to pursue and obtain replacement funding from other third party sources in its sole discretion and this Agreement shall continue in effect with such replacement funder assuming all rights of the funder under this Agreement as may be more particularly agreed upon by the Contractor and such funder. Notwithstanding the foregoing, in the event the funder discontinues funding or such funding is insufficient to cover all costs and fees under this Agreement, Contractor shall have the option to terminate the Project and this Agreement with thirty (30) days' written notice to SLMPD.

7. INSURANCE:

- 7.1.** The Contractor shall procure and maintain the following specified insurance coverage during the entire life of this Agreement, including extensions thereof.
- 7.1.1.** Professional Liability, Errors and Omissions Insurance, at a limit of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate, for claims related to the services under this Agreement.
 - 7.1.2.** Aviation Liability Insurance at limits of not less than One Million Dollars (\$1,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages.
 - 7.1.3.** Workers' Compensation coverage as required by the State of Missouri or other applicable State's law.
 - 7.1.4.** Commercial General Liability Insurance, at a limit of not less than One Million Dollars (\$1,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages, including products and completed operations coverage. For those policies with aggregate limits, a minimum limit of Two Million Dollars (\$2,000,000) is required. Such insurance shall include contractual liability insurance.
- 7.2.** The Contractor's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- 7.3.** To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the Mayor, Board of Aldermen, and SLMPD, and the City's elected/appointed officials, employees, and agents. Any insurance and/or self-insurance maintained by the City or SLMPD, its elected/appointed officials, employees, or agents shall not contribute with the Contractor's insurance or benefit the Contractor in any way.
- 7.4.** Required insurance coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to SLMPD. There will be an exception for non-payment of premium, which is ten (10) days' notice of cancellation.
- 7.5.** Unless otherwise approved by SLMPD, insurance is to be placed with insurers with a Best's rating of no less than A:VII, or, if not rated with Best's, with minimum surpluses the equivalent of Best's surplus size VII and said insurers must be licensed/approved to do business in the State of Missouri.
- 7.6.** The Mayor, Board of Aldermen, and SLMPD, and the City and its elected/appointed officials, employees, and agents shall be covered, by endorsement, as additional insured as respects to liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement, and such coverage of additional insureds shall be primary and non-contributory.

- 7.7. The Contractor shall furnish to SLMPD a “Certificate of Insurance,” with a copy of the additional insured endorsement as verification that coverage is in force. SLMPD reserves the right to require complete copies of insurance policies at any time.
- 7.8. Failure to obtain insurance coverage as required or failure to furnish Certificate(s) of Insurance or complete copies as required shall be a default by the Contractor under this Agreement.
- 7.9. Notwithstanding anything to the contrary in any applicable insurance policy, the Contractor expressly warrants, attests and certifies that there are no carve outs or exclusions to the policy coverage and limitations stated herein, except as required by law.

8. INDEMNIFICATION AND RELEASE:

- 8.1. Contractor shall indemnify, defend and hold SLMPD, the City, and the BOA and each of their officials, agents and employees harmless from and against any and all claims, damages, losses, injuries and expenses (including reasonable attorneys’ fees) (“Losses”), relating to or arising out of: (i) any act or omission of Contractor, its officers, employees, subcontractors, or agents in connection with the performance of the services; (ii) any breach of a covenant, representation or warranty made by Contractor under this Contract; (iii) the use by Contractor of any intellectual property that infringes on the rights of a third party in connection with the services (whether such intellectual property is owned by Contractor or a third party) or the incorporation by Contractor of intellectual property into the services; and (iv) any actual or alleged violation of law caused by Contractor, the services provided hereunder, the AIR technology, or the performance under this Agreement; provided, however, that Contractor shall not be responsible for any Losses to the extent that such Losses are caused by the negligence or willful misconduct of SLMPD, the City, the BOA, or any of their officials, agents, and employees.
- 8.2. In recognition of the funder’s role in connection with this Agreement, each Party, on behalf of itself and its respective present and former parents, subsidiaries, affiliates, officers, directors, shareholders, members, successors, and assigns (collectively, “Releasers”) hereby releases, waives, and forever discharges the funder, their respective associated entities, and each of their respective present and former, direct and indirect, founders, parents, subsidiaries, affiliates, employees, officers, directors, managers, members, agents, representatives, permitted successors, and permitted assigns (collectively, “Releasees”) of and from any and all causes of action, suits, losses, liabilities, debts, sums of money, obligations, costs, expenses, liens, covenants, agreements, damages, judgments, claims, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law or equity, which any of such Releasers ever had, now have, or hereafter can, shall, or may have against any of such Releasees for, upon, or by reason of any matter, cause, or thing whatsoever arising out of or relating to this Agreement.
- 8.3. The Parties hereby designate all Releasees as third-party beneficiaries of Section 8.2, having the right to enforce such Section.
- 8.4. The obligations of this Section 8 shall survive the expiration or earlier termination of this Agreement.

9. TERMINATION:

- 9.1.** Either Party may immediately terminate this Agreement in the event that:
- 9.1.1.** the other Party breaches any material obligation, warranty, representation or covenant under this Agreement and does not remedy such failure within thirty (30) days after its receipt of written Notice of such breach,
 - 9.1.2.** the other Party becomes insolvent or is unable to pay its debts as due, enters into or files (or has filed or commenced against it) a petition, arrangement, action or other proceeding seeking relief or protection under the bankruptcy laws of the United States or similar laws of any other jurisdiction or transfers all of its assets to another person or entity,
 - 9.1.3.** SLMPD has not used the Service for a consecutive six (6) month period, or
 - 9.1.4.** If Contractor elects to terminate this Agreement and the Project as a result of failure by the funder (or any such replacement funding source) to continue funding the expenses and fees of the Project in accordance with Section 6.3.
 - 9.1.5.** SLMPD shall have the right to terminate this Agreement in the event of a violation of the Rules, Restrictions, and Limitations, if such violation is not cured by Contractor within thirty (30) days after its receipt of written Notice of such violation.
- 9.2.** If Contractor terminates the Agreement under this provision, SLMPD is entitled to thirty (30) more days of limited use of the services for the sole purpose of permitting SLMPD to retrieve SLMPD Data.
- 9.3.** If an Independent Auditor discontinues its services as an Independent Auditor, for whatever reason, Contractor shall have the right to engage a new Independent Auditor, in its sole discretion; provided, however, that Contractor shall have the right to terminate this Agreement with thirty (30) days' notice to SLMPD in the event of such discontinuance by the Independent Auditor.
- 9.4.** **Notice of Termination and Performance Matters.** the funder and the Contractor will provide prompt written Notice to SLMPD if the funder notifies Contractor that it will discontinue funding Contractor or any Independent Auditor for the Project under any of its grant agreements. The Parties shall also immediately notify the funder in writing of any event or circumstance that does or would reasonably be expected to impact the performance of either Party under this Agreement.

10. AUDIT AND RETENTION OF RECORDS:

- 10.1.** Financial records, supporting documentation, statistical records and all other records and documents pertinent to this Agreement shall be retained by Contractor for a period of three (3) years from the expiration date of this Agreement or pursuant to any applicable statute of limitations, whichever is longer, except in cases where unresolved audit questions, investigations or cases require retention for a longer period as determined by SLMPD. SLMPD and/or its designee reserve the right to audit Contractor's records accounts relating to this Agreement at any time.

11. INFRINGEMENT PROTECTIONS:

- 11.1.** The Contractor represents and warrants to the SLMPD that any concepts, idea, studies, models, presentations, graphics, images, maps, guides, photos, printed materials, reports, brochures, operating manuals, designs, data, electronic files, software, processes, plans, procedures and other materials prepared or used by the Contractor in performance of services under this Agreement do not infringe or otherwise violate any intellectual property right of others, including patent, copyright, trademark, or trade secret.
- 11.2.** The Contractor agrees to defend at its expense any action brought against the SLMPD to the extent based on a claim that the work product or services provided by Contractor violates any third party intellectual property right. The Contractor will pay any costs and damages finally awarded against the SLMPD in such action that are attributable to such claim, provided that the SLMPD promptly notifies the Contractor in writing of the claim (provided, however, that the failure to so notify shall not relieve the Contractor of its indemnification obligations), allows the Contractor to control the defense, provides the Contractor with the information and assistance necessary for the defense and/or settlement of the claim, and does not agree to any settlement without the Contractor's prior written consent. In no event shall the Contractor agree to any settlements related to this Agreement without first receiving the SLMPD's written consent.
- 11.3.** Should the Contractor's work product or services become, or in the Contractor's opinion be likely to become, the subject of any intellectual property claim, the SLMPD may at its sole option direct the Contractor to (i) procure for the SLMPD the right to continue using the product or services, (ii) replace or modify the product or services so as to make it non-violating, or, if (i) and (ii) are not commercially reasonable, (iii) terminate this Agreement and the SLMPD shall be entitled an equitable adjustment in accordance with the Agreement.

12. CONFIDENTIALITY:

- 12.1. Confidential Information.** As used herein, "Confidential Information" means any information of the Contractor not generally known to the public or recognized as standard industry practice, including without limiting the generality of the foregoing, oral or written (including, without limitation, storage in electronic or machine readable media) information with respect to Contractor's trade secrets, know-how, proprietary processes, operations, employees, contractors, prospects, business plans, product or service concepts, business methods, hardware, software, codes, data, designs, drawings, products, business models and marketing strategies and such other information normally understood to be confidential or otherwise designated as such in writing by the Contractor, as well as information discerned from, based on or relating to any of the foregoing which may be prepared by a party receiving such information (a "Recipient"), all of which the Recipient expressly acknowledges and agrees shall be confidential and proprietary information belonging to the Contractor. Confidential Information shall also include, without limitation, any other document or information (whether of the Contractor or of any supplier or vendor or customer of the Contractor or other person or entity with whom or which the Contractor has an agreement concerning the confidentiality of information) which comes into the Recipient's possession as a result of this Agreement. Confidential Information shall not include any information which SLMPD can demonstrate (a) has become generally available to and known by the public (other than as a result of a disclosure directly or indirectly by SLMPD, any of its affiliates or any of its or their respective employees,

contractors or agents), (b) has been made available to SLMPD on a non-confidential basis from a source other than Contractor, provided that such source is not and was not bound by a confidentiality agreement with Contractor or any other legal obligation of non-disclosure, or (c) has been independently acquired or developed by SLMPD without violating any of its obligations under this Agreement.

12.2. Non-Disclosure of Confidential Information. SLMPD shall hold confidential all Confidential Information and shall not disclose or use (except as expressly provided in this Agreement) such Confidential Information without the express written consent of Contractor. Confidential Information of Contractor shall be protected by the SLMPD with the same degree of care as SLMPD uses for protection of its own confidential information, but no less than reasonable care. SLMPD may disclose Confidential Information only to those of its employees who have a need to know the Confidential Information for purposes of performing or exercising rights granted under this Agreement and only to the extent necessary to do so. At any time upon the request of Contractor, the SLMPD shall promptly, at the option of Contractor, either return or destroy all (or, if Contractor so requests, any part) of the Confidential Information previously disclosed and all copies thereof, and the SLMPD shall certify in writing as to its compliance with the foregoing. SLMPD agrees to secure and protect the Confidential Information in a manner consistent with the maintenance of Contractor's rights therein and to take appropriate action by instruction or agreement with its licensed users to satisfy its obligations hereunder. SLMPD shall use its reasonable commercial efforts to assist Contractor in identifying and preventing any unauthorized access, use, copying or disclosure of the Confidential Information, or any component thereof. Without limitation of the foregoing, SLMPD shall advise Contractor immediately in the event SLMPD learns or has reason to believe that any person has violated or intends to violate these confidentiality obligations or the proprietary rights of Contractor. In the event SLMPD is required to disclose any Confidential Information by law or court order, it may do so, provided that Contractor is provided a reasonable opportunity to prevent such disclosure, and, in the event of a disclosure, that the SLMPD apply reasonable commercial efforts to ensure that available confidentiality protections are applied to such information. In such event, SLMPD shall not be liable for such disclosure unless such disclosure was caused by, or resulted from, in whole or in part, a previous disclosure by SLMPD, any of its affiliates or any of its or their respective employees, contractors or agents, not permitted by this Agreement. Contractor Confidential Information shall not include information which can be demonstrated by SLMPD: (i) to have become part of the public domain except by an act or omission or breach of this Agreement on the part of SLMPD, its employees, or agents; (ii) to have been supplied to SLMPD after the time of disclosure without restriction by a third party who is under no obligation to Contractor to maintain such information in confidence; or (iii) required to be disclosed by law or court order, provided that Contractor is provided a reasonable opportunity to prevent such disclosure, and, in the event of a disclosure, that SLMPD apply reasonable commercial efforts to ensure that available confidentiality protections are applied to such information. Notwithstanding the foregoing, Contractor may publish the fact of the existence of this Agreement and/or the business relationship created hereby, and may include reference to it in its marketing collateral.

12.3. Sunshine Law (Public Records) Compliance. Notwithstanding the foregoing, the Parties acknowledge that SLMPD is a public governmental body governed by the Missouri Sunshine Law, RSMo., Sections 610.010, et seq. Nothing contained herein shall abrogate SLMPD's responsibility to respond to open records requests pursuant to the Sunshine Law, including the notice provisions contained in this Section 12.

12.4. Non-Disclosure of SLMPD Confidential Information. Contractor shall hold confidential all information disclosed to Contractor (a) concerning the business affairs or proprietary and trade secret information of SLMPD, (b) any information that derives economic value from not being generally known to persons other than SLMPD and its employees, and (c) any information that is the subject of efforts by SLMPD that are reasonable under the circumstances to maintain its secrecy or confidentiality, whether disclosed to Contractor by SLMPD in oral, graphic, written, electronic or machine readable form (“SLMPD Confidential Information”) and shall not disclose or use such SLMPD Confidential Information without the express written consent of SLMPD. SLMPD Confidential Information shall be protected by Contractor with the same degree of care as Contractor uses for its own confidential information, but no less than reasonable care. Contractor may disclose SLMPD Confidential Information only to those of its employees who have a need to know the SLMPD Confidential Information for purposes of performing or exercising rights granted under this Agreement and only to the extent necessary to do so. At any time upon the request of SLMPD, Contractor shall promptly, at the option of SLMPD, either return or destroy all (or, if SLMPD so requests, any part) of the SLMPD Confidential Information previously disclosed and all copies thereof, and Contractor shall certify in writing as to its compliance with the foregoing. Contractor agrees to secure and protect the SLMPD Confidential Information in a manner consistent with the maintenance of SLMPD’s rights therein and to take appropriate action by instruction or agreement with its employees to satisfy its obligations hereunder. Contractor shall use reasonable commercial efforts to assist SLMPD in identifying and preventing any unauthorized access, use, copying or disclosure of the SLMPD Confidential Information, or any component thereof. Without limitation of the foregoing, Contractor shall advise SLMPD immediately in the event Contractor learns or has reason to believe that any person has violated or intends to violate these confidentiality obligations or the proprietary rights of SLMPD, and Contractor will, at Contractor’s expense, cooperate with SLMPD in seeking injunctive or other equitable relief in the name of Contractor or SLMPD against any such person. SLMPD Confidential Information shall not include information which can be demonstrated by Contractor: (i) to have become part of the public domain except by an act or omission or breach of this Agreement on the part of Contractor, its employees, or agents; (ii) to have been supplied to Contractor after the time of disclosure without restriction by a third party who is under no obligation to SLMPD to maintain such information in confidence; or (iii) required to be disclosed by law or court order, provided that SLMPD is provided a reasonable opportunity to prevent such disclosure, and, in the event of a disclosure, that Contractor apply reasonable commercial efforts to ensure that available confidentiality protections are applied to such information.

12.5. Passwords. Any and all logon identifiers and passwords provided hereunder are deemed Confidential Information of Contractor. SLMPD and Licensed Users are responsible for maintaining the confidentiality of such logon identifiers and passwords. SLMPD agrees to (a) notify Contractor of any unauthorized use of such logon identifiers or passwords or any other breach of security pertaining to the Service when it became known to the customer, and (b) ensure that Licensed Users exit from their accounts at the end of each session. Contractor cannot and will not be liable for any loss or damage arising from SLMPD’s or any Licensed User’s failure to comply with this Section 12.5.

12.6. Publicity.

12.6.1. The Parties desire to have a coordinated communication strategy about the Project. Prior to any advertising, community engagement or education,

publicity (i.e., speaking events, press interviews, press release, professional or trade publication, website advertisement, or other meeting, document or announcement), or promotional materials initiated by (or in response to requests to) the Contractor relating to the services under this Agreement or the Project, the Contractor shall obtain prior written approval regarding any advertising, publicity or promotional materials from the SLMPD before such advertising, publicity or materials can be released. Materials shall be presented to the SLMPD for prior written approval and shall be returned to the Contractor in a timely manner. SLMPD will be responsible for answering all media requests related to the operation of the Program, and Contractor will notify SLMPD of any media inquiry made to Contractor.

12.6.2. Prior to any publicity (i.e., speaking events, press interviews, press release, professional or trade publication, website, advertisement, or other public document or announcement) initiated by SLMPD or Contractor relating to the funder its associated entities, employees, representatives or agents, Contractor shall obtain prior written approval regarding such promotional materials from the funder before such materials can be released. Materials shall be presented to the party wishing to initiate the publicity to the funder at least three (3) business days in advance of the proposed publicity.

12.6.3. The Parties hereby designate the funder as a third-party beneficiary of Section 12.6.3 having the right to enforce such Section.

12.6.4. The provisions of this Section 12.6 shall survive the expiration or earlier termination of this Agreement.

12.6.5. Notwithstanding any provision herein to the contrary, Contractor may for marketing purposes: (i) make comments relating to the Project's existence and efficacy to governmental and public entities, and (ii) provide other information relating to this Agreement and the Project (other than SLMPD's Confidential Information without the prior consent of SLMPD) to governmental and public entities that are prospective users of the Contractor's technology and services.

12.7. Term. With regard to Confidential Information that constitutes trade secrets, the obligations in this Section shall continue for so long as such information constitutes a trade secret under the Missouri Uniform Trade Secrets Act, RSMo. Sections 417.450 to 417.467.

13. MODIFICATIONS AND AMENDMENTS:

13.1. Any and all modifications, alterations, or amendments to the provisions of this Agreement must be by means of a written amendment that refers to and incorporates this Agreement, is duly executed by an authorized representative of each Party. No modifications, alterations, or amendments of this Agreement are valid and enforceable unless the above requirements have been satisfied.

14. COMPLIANCE WITH LAWS:

14.1. The Contractor hereby represents, warrants, covenants, and agrees that:

14.1.1. It is qualified to do business in the State of Missouri and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

- 14.1.2. The Contractor's name in this Agreement is its full legal name;
 - 14.1.3. It has the requisite corporate power (if applicable), authority and legal capacity to enter into this Agreement and fulfill its obligations hereunder;
 - 14.1.4. The execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body (if applicable);
 - 14.1.5. During the Term, it will comply with all federal, state and local laws, ordinances, rules and regulations, including interim expenditure and annual report requirements, and applicable codes of ethics pertaining to or regulating the services to be performed pursuant to this Agreement, including those now in effect and hereafter adopted;
 - 14.1.6. There are no suits or proceedings pending or threatened, whether in law or in equity, to the best of the Contractor's knowledge, which if adversely determined, would have a material adverse effect on the financial condition or business of the Contractor; and
 - 14.1.7. It has obtained, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to perform its obligations under this Agreement.
- 14.2. The Contractor's violation of the above representations and warranties shall entitle the SLMPD to terminate this Agreement immediately upon delivery of written Notice of termination to the Contractor, if Contractor does not remedy such failure within thirty (30) days after receipt of written notice from the SLMPD of such breach.

15. REPRESENTATIONS:

- 15.1. Each Party (the "Representing Party") represents and warrants to the other that: (a) it has the authority to enter this Agreement and to perform its obligations under this Agreement; (b) the execution and performance of this Agreement does not and will not violate any agreement to which the Representing Party is a party or by which it is otherwise bound; and (c) when executed and delivered, this Agreement will constitute a legal, valid and binding obligation of the Representing Party, enforceable in accordance with its terms.
- 15.2. In addition to the foregoing: Contractor warrants that the services will materially conform to the applicable then-current documentation relating to the services when used in an operating environment that complies with the then-current documentation relating to the services. If Contractor alters the documentation in a way that materially diminishes the scope of the services, SLMPD shall have the right to terminate this Agreement upon thirty (30) days prior written Notice to Contractor. In the event that the software which is part of the Service fails to perform in accordance with this warranty, SLMPD shall promptly inform Contractor of such fact, and, as SLMPD's sole and exclusive remedy, Contractor shall either: (i) repair or replace the service to correct any defects without any additional charge to SLMPD, or (ii) terminate this Agreement. SLMPD represents and warrants to Contractor that SLMPD (i) will use the service only for lawful purposes; (ii) will not interfere with or disrupt the operation of the service or the servers or networks involved with the operation of the service; or (iii) attempt to gain unauthorized access to the service,

other accounts, computer systems or networks connected to the service, through any other means.

16. SLMPD AND CITY REQUIREMENTS:

16.1. Nondiscrimination.

16.1.1. The Contractor shall operate under this Agreement so that no person otherwise qualified is denied employment or other benefits on the grounds of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, disability or other unlawful forms of discrimination except where a particular occupation or position reasonably requires consideration of these attributes as an essential qualification for the position. The Contractor shall post in conspicuous places, available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

16.1.2. The Contractor shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, gender identity or expression, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers. The Contractor shall provide equal opportunity for subcontractors to participate in all of its public sector and private sector subcontracting opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace, such as those specified in Title 3, Chapter 3.44.080 of the St. Louis City Code, as amended from time to time. The Contractor understands and agrees that violation of this clause is a material breach of this Agreement and may result in contract termination, debarment, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

16.1.3. Upon the SLMPD's request, and only after the filing of a complaint against the Contractor, the Contractor agrees to provide SLMPD, within 60 calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Contractor has used in the past four (4) years on any of its contracts that were undertaken with the SLMPD, including the total dollar amount paid by the Contractor for each subcontract or supply contract. The Contractor agrees to fully cooperate in any investigation conducted by the SLMPD pursuant to the SLMPD's non-discrimination policies. The Contractor understands and agrees that violation of this clause is a material breach of this Agreement and may result in contract termination, debarment, and other sanctions.

16.2. Living Wage. Contractor shall comply with the applicable provisions of the City's Living Wage Ordinance No. 65597.

16.3. MBE/WBE. The requirements of the City Code, Title 8, Chapter 8.118 (pertaining to Minority and Women-Owned Business Enterprise Program), as amended, are hereby incorporated by reference into this Agreement. If applicable, failure of the Contractor to comply with this subtitle shall constitute a material breach of this Agreement and shall entitle the SLMPD to terminate this Agreement immediately upon delivery of written Notice of termination to the Contractor. The Contractor will make good faith efforts to

utilize minority and women's business enterprises and maintain records reasonably necessary for monitoring compliance with this subtitle. (See Title 8, § 8.118.010, St. Louis City Code).

- 16.4. Conflict of Interest.** No elected official of the City, nor other officer, employee or agent of the City or SLMPD who exercises any functions or responsibilities in connection with this Agreement, shall have any personal interest, direct or indirect, in this Agreement or be an employee of or otherwise engaged by the Contractor. By executing this Agreement, the Contractor asserts that it has not engaged in any practice or entered into any past or ongoing agreement that would be considered a conflict of interest with this Agreement. The Contractor agrees to refrain from entering into all such practices or agreements during the Term of this Agreement (and any extensions thereto) that could give rise to a conflict of interest. Furthermore, the Contractor asserts that it has fully disclosed to SLMPD any and all practices and/or agreements of whatever nature or duration that could give rise to a conflict of interest and will continue to do so during the Term of this Agreement and any extensions thereto.

17. STATE REQUIREMENTS:

- 17.1. Political Contribution Disclosure.** The Contractor is aware of and will comply with all applicable provisions of the Missouri Revised Statutes, Suffrage and Elections, § 130 et seq., "Campaign Finance and Disclosure Law" ("Election Law"). The Contractor certifies, in accordance with § 130.058 of the Election Law, that it has filed the statement required under § 130.120 of the Election Law.

- 17.2. Unauthorized Alien Employees.** As a condition for the award of this Agreement, Contractor shall, pursuant to the provisions of RSMo., Sections 285.530 through 285.555, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with this Agreement, and so affirming same by sworn affidavit and provision of supporting documentation.

18. MISCELLANEOUS PROVISIONS:

- 18.1. No Waiver.** A Party's failure to insist on compliance or enforcement of any provision of this Agreement shall not affect its validity or enforceability or constitute a waiver of future enforcement of that provision or of any other provision of this Agreement.

- 18.2. Severability.** Each provision of this Agreement shall be deemed to be a separate, severable, and independently enforceable provision. The invalidity or breach of any provision shall not cause the invalidity or breach of the remaining provisions or of this Agreement, which shall remain in full force and effect.

- 18.3. Modifications.** All amendments or modifications of this Agreement shall be in writing signed by an authorized representative of each Party hereto. The Parties expressly disclaim the right to claim the enforceability or effectiveness of: (a) any amendments to this Agreement that are not executed by an authorized representative of Contractor and SLMPD; and (b) any other amendments based on course of dealing, waiver, reliance, estoppel or similar legal theory. The Parties expressly disclaim the right to enforce any rule of law that is contrary to the terms of this Section.

18.4. Governance.

18.4.1. This Agreement is made in the State of Missouri and shall be governed by the laws of the State of Missouri, including the applicable statute of limitations, without regard to the conflict of law rules.

18.4.2. The legal venue of this Agreement and any disputes arising from it shall be in the City of St. Louis, Missouri. The Contractor hereby irrevocably waives any objections and any right to immunity on the ground of venue or the convenience of the forum, or to the jurisdiction of such courts or from the execution of judgments resulting therefrom.

18.5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective personal and legal representatives, successors, guardians, heirs and permitted assigns of the Parties hereto and all persons claiming by and through them. The Contractor shall not assign, transfer, or subcontract any part of this Agreement without the prior written consent of the SLMPD, which shall may be withheld in SLMPD's sole discretion.

18.6. Notice.

18.6.1. All notices, requests, claims, demands and other communications required or permitted under this Agreement (collectively, "Notices") shall be in writing and be given (i) by delivery in person, (ii) by a nationally recognized next day courier service, (iii) by registered or certified mail, postage prepaid, to the address of the Party specified in this Agreement or such other address as either Party may specify in writing to the following:

FOR THE SLMPD:

Attention: _____

with copy to:

Attention: _____

FOR THE CONTRACTOR:

Community Support Program
Attn: Ross T. McNutt, President
140 North Valley Road
Xenia OH 45385

with copy to:

Waite Tomb & Eberly
124 West Main Street
Troy, OH 45473
Attention: Wayne E. Waite

- 18.6.2.** All Notices shall be effective upon receipt by the Party to which Notice is given.
- 18.7. Headings.** Any heading of the paragraphs in this Agreement is inserted for convenience and reference only and shall be disregarded in construing and/or interpreting this Agreement.
- 18.8. Recitals.** The recitals are hereby incorporated as part of this Agreement.
- 18.9. Survival.** The representations, warranties, covenants, promises, and agreements contained in this Agreement shall survive the execution and consummation of this Agreement, and shall continue until the applicable statute of limitations shall have barred any claims thereon.
- 18.10. Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any Party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise.
- 18.11. Independent Contractor.**
- 18.11.1.** It is agreed by the Parties that at all times and for all purposes hereunder that the Contractor is not an employee, representative or agent of the SLMPD. No statement contained in this Agreement shall be construed so as to find the Contractor or any of its employees, subcontractors, servants, or agents to be employees, representatives or agents of the SLMPD, and they shall be entitled to none of the rights, privileges, or benefits of employees of the SLMPD.
- 18.11.2.** The Contractor warrants that individual(s) performing work under this Agreement shall be employee(s) of the Contractor for all purposes, including but not limited to unemployment insurance, tax withholdings, workers compensation coverage as required by applicable federal and state law.
- 18.12. Force Majeure.** Neither Party shall have any liability to the other or to third parties for any failure or delay in performing any obligation under this Agreement due to circumstances beyond its reasonable control including, without limitation, acts of God or nature, actions of the government, fires, floods, strikes, civil disturbances or terrorism, or power, communications, satellite or network failures.
- 18.13. Entire Agreement.** This Agreement constitutes the entire, full and final understanding between the Parties hereto and neither Party shall be bound by any representations, statements, promises or agreements not expressly set forth herein.
- 18.14. Null and Void.** Should this Agreement not be approved by the Board of Estimates, it shall be considered null and void.

*THE REMAINDER OF THIS PAGE IS BLANK;
SIGNATURE PAGE FOLLOWS.*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

WITNESS:

**PERSISTENT SURVEILLANCE SYSTEMS, LLC,
d/b/a COMMUNITY SUPPORT PROGRAM**

By: _____
Name: Ross T. McNutt, PhD
Title: President
Date:

**SAINT LOUIS METROPOLITAN POLICE
DEPARTMENT**

By: _____
Name:
Title: Police Commissioner
Date:

COMPTROLLER

By: _____
Name:
Date:

APPROVED AS TO FORM:

By: _____
Name:
Title: City Counselor
Date:

ATTEST:

Custodian of the City Seal

Schedule 1

Scope of Services Aerial Investigation Research (“AIR”)

Overview

Contractor will conduct a three (3) year project (the “Project”) using aerial investigation research technology and analytics (the “Activities”) to assist SLMPD investigate certain crimes in the City. The Project is designed to determine whether AIR is effective to accomplish Project goals (the “Goals”). The Project Goals include (i) increasing the solvability of crimes, (ii) improving clearance rates, (iii) improving police community relations, (iv) assisting with the City of St. Louis Health Department’s Cure Violence Program and (v) deterring criminal activity. The Project is an initiative of SLMPD to develop effective, evidenced based policing strategies to improve public safety and police community relations. The Project will be independently evaluated. The Project and the Independent Auditors will not require any funding by SLMPD or the City.

During this Project, Contractor’s imagery data will be used by SLMPD to investigate Felony Crimes, Missing Person’s Alerts, and illegal dumping.

In addition to these Crimes, SLMPD may request Contractor’s technology and analytical support in extraordinary and exigent circumstances, on a case by case basis, only as identified and specifically approved in writing by the City Mayor and SLMPD Police Commissioner. Exigent cases may include for example, cases involving imminent danger or loss of life, a kidnapping, chemical spill or train derailment.

This Scope of Services is subject to change based upon SLMPD operational requirements.

Operations

During the Term, Contractor will fly up to three (3) aircraft over the City to collect imagery data of major portions of the City. Weather permitting, each aircraft will fly a minimum of forty hours per week and use its Hawkeye Wide Area Imaging System to capture up to 32 square miles of the City per image every second. The resolution is limited to 1 pixel per person and therefore individuals and vehicles are shown as a single dot and these dots are tracked from a crime scene. At a resolution of one pixel per person or vehicle, it is not possible to determine any identifiable characteristic including an individual’s ethnicity, sex, or clothing or, make, model or license plate. The system will not differentiate between police or non-police personnel or vehicles. Contractor’s system will not use infrared night vision technology. Contractor’s camera systems are sensitive enough to capture images at night with ambient City lighting. Contractor will not track individuals or vehicles in real time. Aircraft will fly during the day and at night during high crime hours, without exceeding a cumulative eighteen (18) hours per day.

Contractor data is transmitted from the aircraft to Contractor’s ground stations where Contractor analysts use imagery data to locate crimes, track individuals and vehicles from crime scene and supplemental locations related to the crime scene and extract information to assist SLMPD in the investigation of Target Crimes. During the Project, only Target Crimes will be investigated using AIR investigation except in exigent circumstances as described above.

Contractor will analyze Target Crimes upon specific request by SLMPD or based on alerts from SLMPD’s Computer Aided Dispatch (“CAD”) system or Shot Spotter alerts that relate to the approved Target Crimes. Contractor analysts will document their work product in writing and present it to SLMPD during investigative briefings and in written reports. In cases where these briefings and reports result in an arrest that is based in whole or in part on Contractor’s briefings or reports, copies of these briefings and reports

will be provided to prosecutors and defense attorneys in the ordinary course of SLMPD's operations and in fulfillment of any Brady or Giglio obligations. Prosecutors and defense counsel may request and Contractor will provide additional analysis from Contractor in furtherance of criminal prosecutions and defense of those cases.

Contractor, at its sole expense, will provide all personnel, planes, equipment, pilots, mechanics and logistical support required to fly the planes, collect the data, analyze the data and provide SLMPD, prosecutors and defense counsel with briefings and reports, and Project reports.

Contractor expects to hire between 20 to 40 analysts for this Project. Contractor will hire and train analysts from the St. Louis region. Contractor analysts will develop the investigation briefings and reports to be presented to SLMPD investigators. Upon request of SLMPD, prosecutors or defense counsel, Contractor will brief and provide AIR reports on specific cases.

Contractor analysts will be located at a Contractor office located in the City. In addition, one or more Contractor analysts may be located in SLMPD's Watch Center to be teamed with a SLMPD sworn officer or SLMPD analyst. Additional Contractor analysts will be located at Contractor's headquarters to provide quality control of the investigation briefings, Project reports and augmenting analysis as needed.

Contractor may integrate its imagery data analysis with SLMPD systems to aid in the investigation process. Contractor will provide program management support for integration efforts as may be determined by SLMPD. These SLMPD systems include:

Computer Aided Dispatch (CAD) System: Contractor analysts will monitor SLMPD's CAD system from monitors in SLMPD facilities to identify Target Crimes.

Real Time Crime Center Ground Based Cameras Integration: In its briefings and reports, Contractor analysts will track individuals and vehicles that pass the City's RTCC, and those cameras they have access to cameras noting the time the vehicles pass the cameras. Contractor analysts will access or request camera information to provide more detailed descriptions of the vehicles and include that information in the investigation briefings.

Shot Spotter Gun Shot Detection System: Contractor will use the Shot Spotter Acoustic Gunshot Detection System to speed the identification of the location of active gun shots within the imagery. Contractor has integrated the Shot Spotter Gun Shot Detection System into its iView Software allowing analysts to quickly identify the location and time of gunshots. This assists analysts and allows more rapid support to the citizens and responding officers.

License Plate Readers – Contractor will provide time and location of the vehicles that are tracked from the crime scene pass license plate readers allowing the vehicles to be identified.

In accordance with written authorization from technology vendors, Contractor may integrate its iView software to accept and utilize the CAD, the Real Time Crime Center ("RTCC") camera system, the Shot Spotter Gunshot Detection System, and the License Plate readers to help make all of the systems work together to enhance their ability to help solve and deter crimes.

Investigation Briefings and Reports: As quickly as possible following Contractor's notice of a Target Crime on the CAD System monitors or SLMPD's request to Contractor to analyze a Target Crime, Contractor will provide SLMPD an investigative briefing that details the information associated with a reported Target Crime to assist SLMPD in its investigations. The briefing will include the results of the imagery analysis, the location and timing of a crime, the observable actions at the crime scene, the tracks of vehicles and people to and from the crime scene, the location the vehicles and people from the crimes

scene visited after and before the crime. Contractor investigation briefings will include observations of driving patterns and driving behaviors of vehicles from the crime scene prior to and after a crime.

Contractor will provide a detailed Investigation Briefing Report (the "Report") on a Target Crime. The Report will include the imagery of the crime scene, tracks of vehicles and people who were at the scene of the crime as potential suspects or witnesses prior to and after the crime, locations the vehicles and people visited prior to and after the crime, ground-based camera video made available to Contractor by SLMPD including but not limited to RTCC camera video images of the vehicles and people tracked from the crime scene for the cameras they pass on the way to and from the crime scene. The Report will also include tracks of people and vehicles that met with people who were tracked from the crime scene and the locations they came from and went to. Contractor will work with SLMPD investigators to identify information helpful to solving their cases. SLMPD intends to use the imagery, reports, and briefings provided by Contractor only for the purpose of investigating the Target Crime for which it was requested.

If Contractor's Briefings or Reports are used in connection with an arrest related to a Target Crime, Contractor's Briefings and Reports will be provided to prosecutors when they are assigned to a case. Prosecutors will provide the Briefings and Reports to defense attorneys once a suspect has been arrested for a Target Crime. In providing this information to prosecutors and defense attorneys Contractor will follow the procedures outlined in SLMPD Policy as is done with the ground cameras.

Real Time Support: Contractor will not provide SLMPD real time support except upon the request of the City Mayor and The Commissioner of SLMPD.

Project Reports. Contractor will provide SLMPD and the funder with the following reports on a weekly, monthly and quarterly basis:

- Dates, times and area flown covered by Contractor imagery
- Number of discrete Briefing Reports
- Number of Discrete Investigative Reports
- Total Number of Target Crimes that use AIR investigative resources
- Total Exigent Cases with categories
- Court Orders related to AIR received
- Expert Testimony related to AIR provided
- Other appropriate details as agreed by the Parties

- Contractor will include details provided by SLMPD on the Arrests that resulted from use of AIR analysis
- Convictions or pleas that result from AIR analysis

The above reports will not include any personally identifiable information.

Expert Witness Service

Upon request of SLMPD or any prosecuting agency, Contractor will provide an expert to testify in legal proceedings, free of charge, regarding the Contractor's surveillance technology and services and on issues related to security, chain of custody and other matters related to the Contractor's technology and work product. The requesting agency will provide Contractor reasonable notice of the need for this testimony. This covenant will survive the expiration or termination of this Agreement and these services will be provided at no cost or expense to the SLMPD or the City.

Ownership of Contractor Data; Use Limitation Contractor's imagery data shall be owned and controlled by Contractor and not SLMPD. Contractor may use its imagery data for the sole and limited purpose of

assisting SLMPD with the Activities, and as provided above to prosecuting agencies and defense counsel in specific cases. In addition, Contractor may provide imagery data to the Independent Auditors. Contractor will not use the data for any other purpose. Contractor will not disclose or otherwise sell or convey any imagery data from the Project and will not allow anyone else to use the data for any other purpose, except as provided in this Agreement. Contractor will comply with any court orders related to production of its imagery. In addition, at the sole cost and expense of defense counsel, Contractor may provide analytic support and review of imagery within its retention period to assist defense counsel in specific criminal cases involving its clients.

Data Retention Program and Policies SLMPD and the Contractor shall set clear and enforceable retention limits, subject to after-the-fact auditing. Retention periods shall generally coincide with the retention period for the ground cameras. The framework should specify how much footage is to be retained.—SLMPD and the Contractor shall implement protocols to require that data retained in connection with one case be inaccessible for any other investigation absent a court order. Absent a Court Order, after 45 days access to the AIR Data shall not be available for new investigations. In order to allow potential defendants adequate time to request AIR imagery support, the Contractor will retain the AIR imagery data for one hundred and eighty (180) days. Investigative briefings and Reports used in the prosecution of Target Crimes, including related AIR imagery will be maintained by Contractor for a longer duration in accordance with applicable law until legal proceedings and appeals are complete and until the statute of limitations expires. Contractor will institute physical, technical and policy systems to ensure the integrity of the data it records in its surveillance and analysis.

Privacy Protection Program

Contractor will institute a program to protect individual privacy. These measures include (i) limits on crimes and other activities that may be analyzed, (ii) limited use of AIR imagery and data, (iii) limits on locations Contractor may analyze, (iv) limits on the individuals and vehicles that may be analyzed, (v) limits on the allowed resolution of imagery, and (vi) the recording, review, oversight and reporting processes associated with the Project.

Contractor will track and report all use of AIR data. All use of the data will be documented and annotated as to the purpose, justification, and use of the information provided. Detailed records of each investigation and support effort will be documented and maintained.

Contractor analysts and personnel will sign into the system and log their work against an approved investigation or support effort.

Tracks of individuals to and from crime scenes form the basis of the analysis. Each track must be assigned to a SLMPD approved investigation. Each track is documented as to the investigation supported and the analyst creating the track. Each track point is documented as to the time created and the analyst who created it. While non-useful tracks and track points can be hidden from the analyst's screens, no track points or tracks can be deleted from the system. All tracks and track points can be reviewed by Contractor managers and audit organizations to ensure that only authorized tracks are created and that the system is not misused.

Security videos will be taken of the Vendor's analysis center and stored for use in the event that unauthorized use of the AIR technology system occurs to determine the circumstances of the misuse.

Contractor will have both internal and external reviews oversight of its actions during the Project.

Internal review: Contractor provides internal review of its analysts to ensure that only authorized use of the system occurs. Any detected unauthorized use of the system will be self-reported by Contractor and included in the weekly, monthly and quarterly reports.

Independent Auditing: This effort will also include an external organization to ensure that only authorized use of the AIR system occurs. SLMPD will identify an appropriate audit organization which will be paid for by an outside entity to ensure its independence. The outside audit organization will report monthly as to the compliance of Contractor with its privacy protection program and authorized use of the data. The external auditor will flag any unauthorized use of the data.

Public Education

SLMPD and Contractor intend that there is full transparency and public awareness of its Project and its results. Contractor and SLMPD believe that full awareness will increase public support for the program and help deter people from committing crimes. Contractor will support program awareness, subject to the Agreement's confidentiality provisions, as directed and approved by SLMPD, and will support SLMPD request for media and public awareness support.

Media Access and Briefings

Contractor will support SLMPD efforts to enhance public awareness of the program.