

RESOLUTION NO. 24-13

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into A 2-Year Lease Agreement With Flock Safety, Inc. For An Automated License Plate Reader System, Appropriate Funding For The System, And Delegate Authority To The City Manager To Extend The Lease Agreement For Up To Three Additional Years For A Total Cost Not to Exceed \$61,000 Annually

WHEREAS, the Police Department has a desire to contract with Flock Safety, Inc. for an Automated License Plate Reader (ALPR) camera system as an investigative and prevention system; and,

WHEREAS, the ALPR system is an investigative tool that allows authorized personnel to search for suspect vehicles based on certain criteria; and

WHEREAS, an ALPR system is expected to greatly assist the Department in preventing and solving crimes in Emeryville; and

WHEREAS, the Flock Safety, Inc. ALPR cameras do not record videos and have a robust security system; and

WHEREAS, the data is owned by Emeryville Police Department and can only be accessed by authorized personnel following department policy; and

WHEREAS, the Department is recommending adding Flock Safety, Inc. ALPR cameras in major thoroughfares and entry/exit points in the City that have been identified to further assist in keeping Emeryville safe; now, therefore be it

RESOLVED, by the City Council of the City of Emeryville that the City Manager is authorized to enter into an agreement with Flock Safety, Inc. for a two-year lease agreement which can be extended by the City Manager, based on acceptable service, for up to three additional years in order to secure costs in an amount not to exceed \$61,000 annually; and be it further

RESOLVED, that the City Council appropriates \$122,000 to the Police Department's account 2200 85000 in the amount of \$61,000 in FY24/25 and \$61,000 in FY25/26 for the two-year lease agreement with Flock Safety, Inc.

Resolution No. 24-13
Flock Contract – ALPR Cameras
City Council Meeting | February 20, 2024
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ADOPTED, by the City Council of the City of Emeryville at a regular meeting on Tuesday, February 20, 2024, by the following vote:

AYES:	<u>5</u>	Mayor Welch, Vice Mayor Mourra and Council Members Bauters, Kaur and Priforce
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

DocuSigned by:

73C7D1936D4A437...
MAYOR

ATTEST:

APPROVED AS TO FORM:

DocuSigned by:

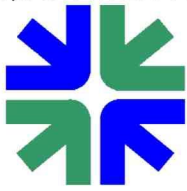
9AF9F67CE0294D6
CITY CLERK

DocuSigned by:

2C934D02DB55467
CITY ATTORNEY

ATTACHMENTS

- Exhibit A - Professional Services Contract with Flock
- Exhibit B – Sole Source Addendum



City of Emeryville

CALIFORNIA

PROFESSIONAL SERVICES CONTRACT

THIS PROFESSIONAL SERVICES CONTRACT ("Contract") is effective as of _____ (the "Effective Date"), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, ("City") and **FLOCK SAFETY** ("Contractor"), individually referred to as a "Party" and collectively as the "Parties".

WITNESSETH THAT

WHEREAS, the City desires to engage Contractor for Automated License Plate Readers; and

WHEREAS, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Contract; and

WHEREAS, the City has determined that the Contractor is qualified by training and experience to render such services; and

WHEREAS, the Contractor desires to provide such services; and,

WHEREAS, the public interest will be served by this Contract; and

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES AND TERMINATION DATE

1.1 Project Description

A complete project description is set forth in the Scope of Work, attached hereto as **Exhibit A** and incorporated herein by this reference.

1.2 Services

The services to be completed under this Contract ("Services") are described in the Scope of Work set forth in **Exhibit A**. The Services shall be performed in accordance with terms, conditions, and specifications set forth herein. To the extent there is a conflict between the Scope of Work, and the terms, conditions, and specifications set forth herein, the terms, conditions, and specifications set forth herein shall govern.

1.3 Schedule and Completion Date

The Services to be provided by Contractor under this Contract shall commence on the Effective Date and terminate on **FEBRUARY 2, 2026**. The Parties may, by mutual, written consent, extend the term of this Contract.

FOR CITY USE ONLY

Contract No.		CIP No.	
Resolution No.		Project No.	

2. WORK CHANGES

2.1 *City Rights to Change*

The City reserves the right to order changes in the Services to be performed under this Contract by altering, adding to or deducting from the Scope of Work. All such changes shall be incorporated in amendments executed by the Contractor and the City. Such amendments shall specify the changes ordered and any necessary adjustment of compensation and completion time.

2.2 *Additional Work Changes*

Any work added to the Scope of Work by an amendment shall be executed under all the applicable conditions of this Contract. No claim for additional compensation or extension of time shall be recognized unless contained in an amendment duly executed on behalf of the City and the Contractor.

2.3 *City Manager Execution*

The City Manager has authority to execute without further action of the Emeryville City Council, any number of amendments so long as their total effect does not materially alter the terms of this Contract or increase the total amount to be paid under this Contract, as set forth in Section 3.2 below.

3. COMPENSATION AND METHOD OF PAYMENT

3.1 *Compensation for Services Performed*

City agrees to pay the Contractor for the Services performed and costs incurred by Contractor upon certification by the City that the Services were actually performed and costs actually incurred in accordance with the Contract. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Contractor upon receipt and approval by the City of invoices setting forth in detail the Services performed and costs incurred. The City shall pay the Contractor within forty-five (45) days after approval of the invoice by City staff.

3.2 *Total Compensation Amount*

The total amount paid under this Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **ONE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$100,000)**, except as outlined in Section 2.3 above. The compensation for Services performed shall be as set forth in **Exhibit A**. Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

4. COVENANTS OF CONTRACTOR

4.1 *Assignment of Contract*

The Contractor covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Contract, without the prior express written consent of the City. As to any approved subcontractors, the Contractor shall be solely responsible for reimbursing them and the City shall have no obligation to them.

4.2 *Responsibility of Contractor and Indemnification of City*

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Contractor or subcontractors as well as any claim by any employee, agent, Contractor or independent contractor hired or employed by Contractor that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert contractors or expert witnesses incurred in connection therewith and the costs of investigation, arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Contractor, any subcontractor, anyone directly or indirectly employed by them or anyone that they control, except for where such loss, damage, injury or death was caused solely by the negligence of the City or its agents, officers or employees. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Contract.

If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

4.3 *Independent Contractor*

The Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Services as an independent contractor and not as the agent or employee of the City. The Contractor agrees to be solely responsible for its own matters relating to the time and place the Services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the Services;

hiring of contractors, agents or employees to complete the Services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Contractor agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of this Contract.

4.4 Insurance

Contractor shall not commence Services under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under **Exhibit B**, attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under **Exhibit B**. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

4.5 Records, Reports and Audits

4.5.1 Records

- A. Records shall be established and maintained by the Contractor in accordance with requirements prescribed by the City with respect to all matters covered by this Contract. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Contract. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.
- B. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

4.5.2 Reports and Information

Upon request, the Contractor shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Contract in the form requested by the City.

4.5.3 Audits and Inspections

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Contract. The Contractor will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Contract.

4.6 Conflicts of Interest

The Contractor covenants and declares that, other than this Contract, it has no holdings or interests within the City of Emeryville, nor business holdings, contracts or agreements with any official, employee or other representative of the City. For the duration of this Contract, in the event the Contractor or its principals, agents or employees acquire such a holding, interest, contract, or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Contractor will immediately notify the City of such holding, interest, contract, or agreement in writing.

4.7 Confidentiality

The Contractor agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of the City. The Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

4.8 Discrimination Prohibited

The Contractor covenants and agrees that in performing the Services required under this Contract, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability, except as provided in section 12940 of the Government Code.

4.9 Licenses, Certifications and Permits

The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Contractor by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Services contracted for under this Contract. All work performed by Contractor under this Contract shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

4.10 Key Personnel

All of the individuals listed in Exhibit A are necessary for the successful prosecution of the Services due to their unique expertise and depth and breadth of experience. There shall be no change in Contractor's Project Manager or members of the project team without the City's approval. Contractor recognizes that the composition of this team was instrumental in the City's decision to award the work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Contractor's obligations under this Contract and shall be grounds for termination.

4.11 Authority to Contract

The Contractor covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Contractor to the terms of this Contract, if applicable.

4.12 Ownership of Work

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the Services to be performed by the Contractor ("Materials") shall be and are the property of the City and the City shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Contractor assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

4.13 City Labor Requirements

4.13.1 Compliance

At the Effective Date, compliance with the City's living wage ordinance is ☒ **required** / ☐ **not required** for this Contract. If this Contract provides for compensation to Contractor of \$25,000 or more within a single fiscal year for providing Services to the City, then Contractor shall comply with the requirements of the City's Living Wage Ordinance set forth in [Chapter 31 of Title 5 of the Emeryville Municipal Code](#), unless (i) Contractor is a governmental entity, (ii) this Contract is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Contract is subject to federal or state laws or regulations that would preclude the application of the City's laws.

4.13.2 Applicability

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Contract for all employees of Contractor who perform at least twenty-five percent (25%) of the work arising from this Contract, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to [Section 5-31.08 of the Emeryville Municipal Code](#). Contractor shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.

4.13.3 Non-Compliance

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Contractor for back pay, reinstatement and

compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Contract and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

4.13.4 Living Wage

Contractor shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this Contract. "Living Wage" means no less than **\$18.00 PER HOUR** (which is [subject to increase annually on July 1st](#) to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

4.13.5 Minimum Wage and Paid Sick Leave

In addition to the Living Wage Ordinance, the Contractor may be required to comply with the [City's Minimum Wage, Paid Sick Leave, and Other Employment Standards Ordinance](#), as set forth in [Chapter 37 of Title 5 of the Emeryville Municipal Code](#), to the extent it is applicable.

4.14 *California Labor Requirements*

4.14.1 Prevailing Wage Requirements

Contractor is aware of the requirements of [California Labor Code](#) Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

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4.14.2 Registration

If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Contract and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

4.14.3 Labor Compliance Oversight

This Contract may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor’s performance of Services, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

4.14.4 Workers’ Compensation

Pursuant to the requirements of section 1860 of the [California Labor Code](#), Contractor will be required to secure the payment of workers’ compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Contract, Contractor certifies the following:

“I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

4.14.5 Event of Default

Failure by Contractor to comply with any provision of this Section shall constitute a default of this Contract and shall be grounds for termination as provided in this Contract.

5. TERMINATION

- A. The City may terminate this Agreement by providing sixty (60) days written notice to the Contractor. In the event the City terminates this Agreement in Year 1 or Year 2, the Contractor shall stop work immediately and shall be entitled to full compensation for the remaining amounts due in Year 2 for the initial contract term.
- B. Upon termination, City shall provide for payment to the Contractor for Services rendered and expenses incurred prior to the termination date.
- C. Upon receipt of a termination notice the Contractor shall: (1) promptly discontinue all Services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Contract, whether completed or in process, in the form specified by the City.
- D. Notwithstanding anything to the contrary, this Contract is subject to immediate termination in the event the City Council does not appropriate sufficient funds for this Contract.
- E. The rights and remedies of the City and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Contract or at law or in equity.

6. NO PERSONAL LIABILITY

No member, official or employee of the City shall be personally liable to the Contractor or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Contractor or successor or on any obligation under the terms of this Contract.

7. ENTIRE AGREEMENT

This Contract constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Contract not contained in this Contract shall be valid or binding. This Contract may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

8. SUCCESSORS AND ASSIGNS

Subject to the provisions of this Contract regarding assignment, this Contract shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

9. APPLICABLE LAW AND ATTORNEY'S FEES; VENUE

If any action at law or in equity is brought to enforce or interpret the provisions of this Contract, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this Contract shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

10. SEVERABILITY

The caption or headnote on articles or sections of this Contract are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Contract nor in any way affect this Contract. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Contract shall remain in full force and effect to the extent possible.

11. BUSINESS TAX CERTIFICATE

Prior to commencement of the Services to be provided hereunder, Contractor shall apply to the City of Emeryville Finance Department for a business tax certificate, pay the applicable business tax and maintain said business tax certificate during the term of this Contract, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

12. NOTICES

12.1 Communications Relating to Daily Activities

All communications relating to the day-to-day activities of the work and invoices shall be exchanged between **Lt. Robert Alton** for the City and **Jake Sherman** for the Contractor:

CITY	CONTRACTOR
Lt. Robert Alton Phone No: 510-596-3708 E-Mail : ralton@emeryville.org	Jake Sherman, Norcal Territory Sales Manager Phone No: 818.746.7444 E-Mail : jake.sherman@flocksafety.com

12.2 Official Notices

All other notices, writings or correspondence as required by this Contract shall be directed to the City and the Contractor, respectively, as follows:

CITY	CONTRACTOR
Jeffrey Jennings, Chief of Police 2449 Powell St. Emeryville, California 94608 Phone No: 510-596-3705 E-Mail : jjennings@emeryville.org <i>with a copy to:</i> Robert Alton, Lieutenant 2449 Powell St. Emeryville, California 94608 Phone No: 510-596-3708 E-Mail : ralton@emeryville.org	Legal Department 1170 Howell Mill Road, NW Suite 210 Atlanta, GA 30318 Phone No: 510-000-0000 E-Mail : legal@locksafety.com

13. COUNTERPARTS

This Contract may be signed in counterparts, each of which shall constitute an original. It is expressly agreed that each Party to this Contract shall be bound by its own telecopied, scanned, electronic or digital signature and shall accept the telecopied, scanned, electronic or digital signature of the other Party to this Contract.

14. NO THIRD-PARTY BENEFICIARIES

Except to the extent expressly provided for herein, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

15. NON-EXCLUSIVITY

City reserves right to employ other contractors in connection with the Services covered under this Contract.

16. ASSIGNMENT OR TRANSFER

Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Contract or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

17. WAIVER

The City's failure to enforce any provision of this Contract or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

18. OTHER REQUIREMENTS

Compliance with terms and conditions set forth in **Exhibit C** is ☐ **required** / ☒ **not required** for this Contract. Contractor shall also fully and adequately comply with the provisions included in **Exhibit C** ("Other Requirements") when attached hereto and incorporated herein by reference ("Other Requirements"). With respect to any conflict between such Other Requirements and the terms of this Contract and/or the provisions of state law, **Exhibit C** shall control.

SIGNATURES ON FOLLOWING PAGE

19. SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT

IN WITNESS WHEREOF the City and the Contractor have executed this Contract, which shall become effective as of the date first written above.

Approved As To Form:

DocuSigned by:
John Kennedy
2C934D02DB55407...

City Attorney

Dated: CITY OF EMERYVILLE

City Manager

Dated: FLOCK SAFETY

DocuSigned by:
Mark Smith
AC5C891454C24F3...

01/29/2024 (Signature)
Mark Smith, General Counsel

Attach: W-9 Form	Attach: Business License Certificate

EXHIBIT A SCOPE OF SERVICES

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 “**Anonymized Data**” means City Data permanently stripped of identifying details and any potential personally identifiable information, by commercially available standards which irreversibly alters data in such a way that a data subject (i.e., individual person or entity) can no longer be identified directly or indirectly.

1.2 “**Authorized End User(s)**” means any individual employees, agents, or contractors of City accessing or using the Services, under the rights granted to City pursuant to this Agreement.

1.3 “**City Data**” means the data, media and content provided by City through the Services. For the avoidance of doubt, the City Data will include the Footage.

1.4. “**City Hardware**” means the third-party camera owned or provided by City and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services.

1.5 “**Embedded Software**” means the Contractor proprietary software and/or firmware integrated with or installed on the Contractor Hardware or City Hardware.

1.6 “**Contractor Hardware**” means the Contractor device(s), which may include the pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface, to provide the Contractor Services as specifically set forth in the applicable product addenda.

1.7 “**Contractor IP**” means the Services, the Embedded Software, and any intellectual property or proprietary information therein or otherwise provided to City and/or its Authorized End Users. Contractor IP does not include Footage (as defined below).

1.8 “**Contractor Network End User(s)**” means any user of the Contractor Services that City authorizes access to or receives data from, pursuant to the licenses granted herein.

1.9 “**Contractor Services**” means the provision of Contractor’s software and hardware situational awareness solution, via the Web Interface, for automatic license plate detection, alerts, audio detection, searching image records, video and sharing Footage.

1.10 “**Footage**” means still images, video, audio and other data captured by the Contractor Hardware or City Hardware in the course of and provided via the Contractor Services.

1.11 “**Hotlist(s)**” means a digital file containing alphanumeric license plate related information pertaining to vehicles of interest, which may include stolen vehicles, stolen vehicle license plates, vehicles owned or associated with wanted or missing person(s), vehicles suspected of being involved with criminal or terrorist activities, and other legitimate law enforcement purposes. Hotlist also includes, but is not limited to, national data (i.e., NCIC) for similar categories, license plates associated with AMBER Alerts or Missing Persons/Vulnerable Adult Alerts, and includes manually entered license plate information associated with crimes that have occurred in any local jurisdiction.

1.12 “**Installation Services**” means the services provided by Contractor for installation of Contractor Services.

1.13 “**Retention Period**” means the time period that the City Data is stored within the cloud storage, as specified in the product addenda.

1.14 “**Vehicle Fingerprint™**” means the unique vehicular attributes captured through Services such as: type, make, color, state registration, missing/covered plates, bumper stickers, decals, roof racks, and bike racks.

1.15 “**Web Interface**” means the website(s) or application(s) through which City and its Authorized End Users can access the Services.

2. SERVICES AND SUPPORT

2.1 Provision of Access. Contractor hereby grants to City a non-exclusive, non-transferable right to access the features and functions of the Contractor Services via the Web Interface during the Term, solely for the Authorized End Users. The Footage will be available for Authorized End Users to access and download via the Web Interface for the data retention time defined on the Order Form (“**Retention Period**”). Authorized End Users will be required to sign up for an account and select a password and username (“**User ID**”). City shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, including any acts or omissions of authorized End user which would constitute a breach of this agreement if undertaken by City. City shall undertake reasonable efforts to make all Authorized End Users aware of all applicable provisions of this Agreement and shall cause Authorized End Users to comply with such provisions. Contractor may use the services of one or more third parties to deliver any part of the Contractor Services, (such as using a third party to host the Web Interface for cloud storage or a cell phone provider for wireless cellular coverage).

2.2 Embedded Software License. Contractor grants City a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as it pertains to Contractor Services, solely as necessary for City to use the Contractor Services.

2.3 Support Services. Contractor shall monitor the Contractor Services, and any applicable device health, in order to improve performance and functionality. Contractor will use commercially reasonable efforts to respond to requests for support within seventy-two (72) hours. Contractor will provide City with reasonable technical and on-site support and maintenance services in-person, via phone or by email at support@flocksafety.com (such services collectively referred to as “**Support Services**”).

2.4 Upgrades to Platform. Contractor may make any upgrades to system or platform that it deems necessary or useful to (i) maintain or enhance the quality or delivery of Contractor’s products or services to its agencies, the competitive strength of, or market for, Contractor’s products or services, such platform or system’s cost efficiency or performance, or (ii) to comply with applicable law. Parties understand that such upgrades are necessary from time to time and will not diminish the quality of the services or materially change any terms or conditions within this Agreement.

2.5 Service Interruption. Services may be interrupted in the event that: (a) Contractor's provision of the Services to City or any Authorized End User is prohibited by applicable law; (b) any third-party services required for Services are interrupted; (c) if Contractor reasonably believe Services are being used for malicious, unlawful, or otherwise unauthorized use; (d) there is a threat or attack on any of the Contractor IP by a third party; or (e) scheduled or emergency maintenance ("***Service Interruption***"). Contractor will make commercially reasonable efforts to provide written notice of any Service Interruption to City, to provide updates, and to resume providing access to Contractor Services as soon as reasonably possible after the event giving rise to the Service Interruption is cured. Contractor will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that City or any Authorized End User may incur as a result of a Service Interruption. To the extent that the Service Interruption is not caused by City's direct actions or by the actions of parties associated with the City, the time will be tolled by the duration of the Service Interruption (for any continuous suspension lasting at least one full day). For example, in the event of a Service Interruption lasting five (5) continuous days, the City will receive a credit for five (5) free days at the end of the Term.

2.6 Service Suspension. Contractor may temporarily suspend City's and any Authorized End User's access to any portion or all of the Contractor IP or Contractor Service if (a) there is a threat or attack on any of the Contractor IP by City; (b) City's or any Authorized End User's use of the Contractor IP disrupts or poses a security risk to the Contractor IP or any other City or vendor of Contractor; (c) City or any Authorized End User is/are using the Contractor IP for fraudulent or illegal activities; (d) City has violated any term of this provision, including, but not limited to, utilizing Contractor Services for anything other than the Permitted Purpose; or (e) any unauthorized access to Contractor Services through City's account ("***Service Suspension***"). City shall not be entitled to any remedy for the Service Suspension period, including any reimbursement, tolling, or credit. If the Service Suspension was not caused by the City, the Term will be tolled by the duration of the Service Suspension.

2.7 Hazardous Conditions. Contractor Services do not contemplate hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations

in which Contractor is to perform services under this Agreement, Contractor shall have the right to cease work immediately.

3. CITY OBLIGATIONS

3.1 **City Obligations.** Contractor will assist City Authorized End Users in the creation of a User ID. Authorized End Users agree to provide Contractor with accurate, complete, and updated registration information. Authorized End Users may not select as their User ID, a name that they do not have the right to use, or any other name with the intent of impersonation. City and Authorized End Users may not transfer their account to anyone else without prior written permission of Contractor. Authorized End Users shall not share their account username or password information and must protect the security of the username and password. Unless otherwise stated and defined in this Agreement, City shall not designate Authorized End Users for persons who are not officers, employees, or agents of City. Authorized End Users shall only use City-issued email addresses for the creation of their User ID. City is responsible for any Authorized End User activity associated with its account. City shall ensure that City provides Contractor with up to date contact information at all times during the Term of this agreement. City shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Contractor Services. City shall (at its own expense) provide Contractor with reasonable access and use of City facilities and City personnel in order to enable Contractor to perform Services (such obligations of City are collectively defined as “**City Obligations**”).

3.2 **City Representations and Warranties.** City represents, covenants, and warrants that City shall use Contractor Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of data, video, photo, or audio content.

4. DATA USE AND LICENSING

4.1 **City Data.** As between Contractor and City, all right, title and interest in the City Data, belong to and are retained solely by City. City hereby grants to Contractor a limited, non-exclusive, royalty-free, irrevocable, worldwide license to use the City Data and perform all acts as may be necessary for Contractor to provide the Contractor Services to City. Contractor does not own and shall not sell City Data.

4.2 City Generated Data. Contractor may provide City with the opportunity to post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available, messages, text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, or other information or materials produced by City (“**City Generated Data**”). City shall retain whatever legally cognizable right, title, and interest in City Generated Data. City understands and acknowledges that Contractor has no obligation to monitor or enforce City’s intellectual property rights of City Generated Data. City grants Contractor a non-exclusive, irrevocable, worldwide, royalty-free, license to use the City Generated Data for the purpose of providing Contractor Services. Contractor does not own and shall not sell City Generated Data.

4.3 Anonymized Data. Contractor shall have the right to collect, analyze, and anonymize City Data and City Generated Data to the extent such anonymization renders the data non-identifiable to create Anonymized Data to use and perform the Services and related systems and technologies, including the training of machine learning algorithms. City hereby grants Contractor a non-exclusive, worldwide, perpetual, royalty-free right to use and distribute such Anonymized Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, and other Contractor offerings. Parties understand that the aforementioned license is required for continuity of Services. Contractor does not own and shall not sell Anonymized Data.

5. CONFIDENTIALITY; DISCLOSURES

5.1 Confidentiality. To the extent required by any applicable public records requests, including the California Public Records Act, each Party (the “**Receiving Party**”) understands that the other Party (the “**Disclosing Party**”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “**Proprietary Information**” of the Disclosing Party) in compliance with legal requirements. Proprietary Information of Contractor includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of City includes non-public data provided by City to Contractor or collected by Contractor via Contractor Services, which includes but is not limited to geolocation information and environmental data collected by sensors. The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or

unauthorized use of such Proprietary Information that the Party takes with its own proprietary information, but in no event less than commercially reasonable precautions, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information except as required by law. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public; or (b) was in its possession or known by it prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it without restriction by a third party; or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any public records request or judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such request to contest such order within a reasonable period of time given any applicable laws which require disclosure of this information. At the termination of this Agreement, all Proprietary Information will be returned to the Disclosing Party, destroyed or erased (if recorded on an erasable storage medium), together with any copies thereof, when no longer needed for the purposes above, or upon request from the Disclosing Party, and in any case upon termination of the Agreement. Notwithstanding any termination, all confidentiality obligations of Proprietary Information that is trade secret shall continue in perpetuity or until such information is no longer trade secret.

5.2 Usage Restrictions on Contractor IP. Contractor and its licensors retain all rights, title and interest in and to the Contractor IP and its components, and City acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. City further acknowledges that Contractor retains the right to use the foregoing for any purpose in Contractor's sole discretion. City and Authorized End Users shall not: (i) copy or duplicate any of the Contractor IP; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Contractor IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Contractor IP; (iii) attempt to modify, alter, tamper with or repair any of the Contractor IP, or attempt to create any derivative product from any of the foregoing; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Contractor IP; (v) remove, obscure, or alter any notice of any intellectual

property or proprietary right appearing on or contained within the Contractor Services or Contractor IP; (vi) use the Contractor Services for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, pledge as security, or otherwise encumber, City's rights. There are no implied rights.

5.3 Disclosure of Footage. Subject to and during the Retention Period, Contractor may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Contractor has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to comply with a legal process, enforce this Agreement, or detect, prevent or otherwise address security, privacy, fraud or technical issues, or emergency situations.

6. PAYMENT OF FEES

6.1 Billing and Payment of Fees. City shall pay the fees set forth in the applicable Order Form based on the billing structure and payment terms as indicated in the Order Form. If City believes that Contractor has billed City incorrectly, City must contact Contractor no later than thirty (30) days after the closing date on the first invoice in which the error or problem appeared to receive an adjustment or credit. City acknowledges and agrees that a failure to contact Contractor within this period will serve as a waiver of any claim. If any undisputed fee is more than thirty (30) days overdue, Contractor may, without limiting its other rights and remedies, suspend delivery of its service until such undisputed invoice is paid in full. Contractor shall provide at least thirty (30) days' prior written notice to City of the payment delinquency before exercising any suspension right.

6.4 Taxes. City is responsible for all taxes, levies, or duties, excluding only taxes based on Contractor's net income, imposed by taxing authorities associated with the order. If Contractor has the legal obligation to pay or collect taxes, including amount subsequently assessed by a taxing authority, for which City is responsible, the appropriate amount shall be invoice to and paid by City unless City provides Contractor a legally sufficient tax exemption certificate and Contractor shall not charge City any taxes from which it is exempt. If any deduction or withholding is required by law, City shall notify Contractor and shall pay Contractor any additional amounts necessary to ensure that the net amount that Contractor receives, after any

deduction and withholding, equals the amount Contractor would have received if no deduction or withholding had been required.

7. TERM AND TERMINATION

7.1 **Term.** The initial term of this Agreement shall be for the period of time set forth on the Order Form (the “**Term**”). Following the Initial Term, unless otherwise indicated on the Order Form, this Agreement may be renewed for successive renewal terms for the greater of one year or the length set forth on the Order Form (each, a “Renewal Term”, and together with the Initial Term, the “Service Term”) upon written agreement between the City and Contractor prior to the end of the then-current term.

7.2 **Termination.** Upon termination or expiration of this Agreement, Contractor will remove any applicable Contractor Hardware at a commercially reasonable time period. In the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement prior to the end of the Term by giving thirty (30) days prior written notice to the breaching Party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach prior to the expiration of such thirty (30) day period (“**Cure Period**”). Either Party may terminate this Agreement (i) upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other Party's making an assignment for the benefit of creditors, or (iii) upon the other Party's dissolution or ceasing to do business. In the event of a material breach by Contractor, and Contractor is unable to cure within the **Cure Period**, Contractor will refund City a pro-rata portion of the pre-paid fees for Services not received due to such termination.

7.3 **Survival.** The following Sections will survive termination: 1, 3, 5, 6, 7, 8.3, 8.4, 9, 11.1 and 11.6.

8. REMEDY FOR DEFECT; WARRANTY AND DISCLAIMER

8.1 Manufacturer Defect. Upon a malfunction or failure of Contractor Hardware or Embedded Software (a “**Defect**”), City must notify Contractor’s technical support team. In the event of a Defect, Contractor shall make a commercially reasonable attempt to repair or replace the defective Contractor Hardware at no additional cost to the City. Contractor reserves the right, in its sole discretion, to repair or replace such Defect, provided that Contractor shall conduct inspection or testing within a commercially reasonable time, but no longer than seven (7) business days after City gives notice to Contractor.

8.2 Replacements. In the event that Contractor Hardware is lost, stolen, or damaged, City may request a replacement of Contractor Hardware at a fee according to the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>). In the event that City chooses not to replace lost, damaged, or stolen Contractor Hardware, City understands and agrees that (1) Contractor Services will be materially affected, and (2) that Contractor shall have no liability to City regarding such affected Contractor Services, nor shall City receive a refund for the lost, damaged, or stolen Contractor Hardware.

8.3 Warranty. Contractor shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Contractor or by third-party providers, or because of other causes beyond Contractor’s reasonable control, but Contractor shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

8.4 Disclaimer. THE REMEDY DESCRIBED IN SECTION 8.1 ABOVE IS THE CITY’S SOLE REMEDY, AND CONTRACTOR’S SOLE LIABILITY, WITH RESPECT TO DEFECTS. CONTRACTOR DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED “AS IS” AND CONTRACTOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF

MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 11.6.

8.5 Insurance. Contractor will maintain commercial general liability policies as stated in Exhibit B.

8.6 Force Majeure. Parties are not responsible or liable for any delays or failures in performance from any cause beyond their control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, pandemics (including the spread of variants), issues of national security, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, supply chain shortages of equipment or supplies, financial institution crisis, weather conditions or acts of hackers, internet service providers or any other third party acts or omissions.

9. LIMITATION OF LIABILITY; INDEMNITY

9.1 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, CONTRACTOR, ITS OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR LOSS OF REVENUE, BUSINESS OR BUSINESS INTERRUPTION; (B) INCOMPLETE, CORRUPT, OR INACCURATE DATA; (C) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (D) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (E) FOR ANY MATTER BEYOND CONTRACTOR'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY CITY TO CONTRACTOR FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY

OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY OF SECTION ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE REFERENCED IN SECTION 10.6. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY (I) IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) INDEMNIFICATION OBLIGATIONS.

9.2 Responsibility. Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable for the torts of its own officers, agents, or employees.

9.3 Contractor Indemnity. Contractor shall indemnify and hold harmless City, its agents and employees, from liability of any kind, including claims, costs (including defense) and expenses, on account of: (i) any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Agreement; or (ii) any damage or injury to property or person directly caused by Contractor's installation of Contractor Hardware, except for where such damage or injury was caused solely by the negligence of the City or its agents, officers or employees. Contractor's performance of this indemnity obligation shall not exceed the fees paid and/or payable for the services rendered under this Agreement in the preceding twelve (12) months.

10. INSTALLATION SERVICES AND OBLIGATIONS

10.1 Ownership of Hardware. Contractor Hardware is owned and shall remain the exclusive property of Contractor. Title to any Contractor Hardware shall not pass to City upon execution of this Agreement, except as otherwise specifically set forth in this Agreement. Except as otherwise expressly stated in this Agreement, City is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Contractor Hardware. City agrees and understands that in the event City is found to engage in any of the foregoing restricted actions, all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination for material breach by City. City shall not perform any acts which would interfere with the retention of title of the Contractor Hardware by Contractor. Should City default on any payment of the Contractor Services, Contractor may remove Contractor Hardware at

Contractor's discretion. Such removal, if made by Contractor, shall not be deemed a waiver of Contractor's rights to any damages Contractor may sustain as a result of City's default and Contractor shall have the right to enforce any other legal remedy or right.

10.2 Deployment Plan. Contractor shall advise City on the location and positioning of the Contractor Hardware for optimal product functionality, as conditions and locations allow. Contractor will collaborate with City to design the strategic geographic mapping of the location(s) and implementation of Contractor Hardware to create a deployment plan ("***Deployment Plan***"). In the event that Contractor determines that Contractor Hardware will not achieve optimal functionality at a designated location, Contractor shall have final discretion to veto a specific location, and will provide alternative options to City.

10.3 Changes to Deployment Plan. After installation of Contractor Hardware, any subsequent requested changes to the Deployment Plan, including, but not limited to, relocating, re-positioning, adjusting of the mounting, removing foliage, replacement, changes to heights of poles will incur a fee according to the reinstall fee schedule located at (<https://www.flocksafety.com/reinstall-fee-schedule>). City will receive prior notice and confirm approval of any such fees.

10.4 City Installation Obligations. City is responsible for any applicable supplementary cost as described in the City Implementation Guide, attached hereto as Exhibit C ("***Customer Obligations***"). City represents and warrants that it has, or shall lawfully obtain, all necessary right title and authority and hereby authorizes Contractor to install the Contractor Hardware at the designated locations and to make any necessary inspections or maintenance in connection with such installation.

10.5 Contractor's Obligations. Installation of any Contractor Hardware shall be installed in a professional manner within a commercially reasonable time from the Effective Date of this Agreement. Upon removal of Contractor Hardware, Contractor shall restore the location to its original condition, ordinary wear and tear excepted. Contractor will continue to monitor the performance of Contractor Hardware for the length of the Term. Contractor may use a subcontractor or third party to perform certain obligations under this agreement, provided that Contractor's use of such subcontractor or third party shall not release Contractor from any duty or liability to fulfill Contractor's obligations under this Agreement.

11. MISCELLANEOUS

11.1 Compliance With Laws. Parties shall comply with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules, including responding to any subpoena request(s).

11.2 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

11.3 Assignment. This Agreement is not assignable, transferable or sublicensable by either Party, without prior consent. Notwithstanding the foregoing, either Party may assign this Agreement, without the other Party's consent, (i) to any parent, subsidiary, or affiliate entity, or (ii) to any purchaser of all or substantially all of such Party's assets or to any successor by way of merger, consolidation or similar transaction.

11.4 Entire Agreement. This Agreement, together with the Order Form(s), the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>), and any attached exhibits are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous or contemporaneous negotiations, discussions or agreements, whether written and oral, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. None of City's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected. Any mutually agreed upon future purchase order is subject to these legal terms and does not alter the rights and obligations under this Agreement, except that future purchase orders may outline additional products, services, quantities and billing terms to be mutually accepted by Parties. In the event of any conflict of terms found in this Agreement or any other terms and conditions, the terms of this Agreement shall prevail. City agrees that City's purchase is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by Contractor with respect to future functionality or feature.

11.5 Relationship. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Parties do not have any authority of any kind to bind each other in any respect whatsoever. Contractor shall at all times be and act as an independent contractor to City.

11.6 Governing Law; Venue. This Agreement shall be governed by the laws of the state in which the City is located. The Parties hereto agree that venue would be proper in the chosen courts of the State of which the City is located. The Parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

11.7 Special Terms. Contractor may offer certain special terms which are indicated in the proposal and will become part of this Agreement, upon City's prior written consent and the mutual execution by authorized representatives ("*Special Terms*"). To the extent that any terms of this Agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

11.8 Publicity. Contractor has the right to reference and use City's name and trademarks and disclose the nature of the Services in business and development and marketing efforts.

11.9 Feedback. If City or Authorized End User provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency or Authorized End User hereby assigns to Contractor all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

11.10 Export. City may not remove or export from the United States or allow the export or re-export of the Contractor IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign City or authority. As defined in Federal Acquisition Regulation ("FAR"), section 2.101, the Services, the Contractor Hardware and Documentation are "commercial items" and according to the Department of Defense Federal Acquisition Regulation ("DFAR") section 252.2277014(a)(1) and are deemed to be "commercial computer software" and "commercial computer software documentation." Contractor is compliant with FAR Section 889 and does not contract or do business with, use any equipment, system, or service that uses the enumerated banned Chinese telecommunication companies, equipment or services as a substantial or essential component of any system, or as critical technology as part of any Contractor system. Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the

terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

11.11 **Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated sections.

11.12 **Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the Parties they are representing.

11.13 **Conflict.** In the event there is a conflict between this Agreement and any applicable statement of work, or City purchase order, this Agreement controls unless explicitly stated otherwise.

11.14 **Morality.** In the event the City or its agents or the Contractor become the subject of an indictment, contempt, scandal, crime of moral turpitude or similar event that would negatively impact or tarnish either Party's reputation, either Party shall have the option to terminate this Agreement upon prior written notice to the other Party.

11.15 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt to the address listed on the Order Form (or, if different, below), if sent by certified or registered mail, return receipt requested.

11.16 **Non-Appropriation.** Notwithstanding any other provision of this Agreement, all obligations of the City under this Agreement which require the expenditure of funds are conditioned on the availability of funds appropriated for that purpose. City shall have the right to terminate this Agreement for non-appropriation with thirty (30) days written notice without penalty or other cost.

FLOCK NOTICES ADDRESS:

1170 HOWELL MILL ROAD, NW SUITE 210

ATLANTA, GA 30318

ATTN: LEGAL DEPARTMENT

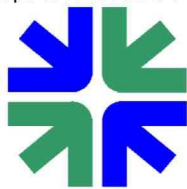
EMAIL: legal@locksafety.com

CITY NOTICES ADDRESS:

ADDRESS: [2449 Powell St., Emeryville, CA 94608](#)

ATTN: [Lt. Robert Alton](#)

EMAIL: ralton@emeryville.org



City of Emeryville

CALIFORNIA

ADDENDUM

Purchasing Supplies, Services and Equipment

Departments are encouraged to solicit bids for all purchases to ensure the City is obtaining competitive rates for its supplies, services and equipment. If a sole source contract is being recommended, complete the form below explaining why the City requires the goods and/or services from the selected vendor. Approval authority for purchases is outlined in Administrative Instruction No. 605, Section 3.2. Public Works and Maintenance projects have a separate bidding process that is in accordance with the Public Contract Code and other applicable state law.

- reference [Administrative Instruction No. 605](#)

SECTION 1. PROJECT INFORMATION

Department Police	Project Manager Lt. R. Alton	CIP Number N/A	Project Number N/A
Project Name / Brief Description Flock Safety Inc. LPR System			

SECTION 2. BID PROPOSAL PROCESS

Disclose your top three bids. Project Managers are required to maintain all bid information in the project files for records retention purposes.

	COMPANY / CONTRACTOR NAME	AMOUNT QUOTED
1.	Flock Safety, Inc.	\$100,000
2.	Company / Contractor Name	\$0.00
3.	Company / Contractor Name	\$0.00

SECTION 3. SELECTION OF CONTRACTOR

The Contractor selected for this contract is **FLOCK SAFETY, INC.**

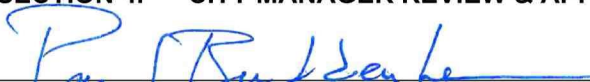
BID SELECTION PROCESS. Explain your reasons for choosing this Contractor. If you do not have the minimum required quotes, please explain why.

N/A

SOLE SOURCE JUSTIFICATION. If you are requesting to bypass the bidding process and wish to recommend a specific Contractor, please explain why.

ALPR technology use was approved by City Council on 12/19/23. Flock Safety, Inc. is the ALPR system used by most police departments in Alameda, Contra Costa, Solano and San Mateo Counties. It is the only LPR provider that is integrated and partnered with our digital media storage system. The only fully integrated ALPR system that includes production, delivery and installation. The only provider that has a transparency portal that details policies and compliant with state law. Fully integrated DOJ secure cloud-software & hardware platform. The provider receiving positive use reports by Bay Area cities, and most used throughout the greater bay area jurisdictions in order to share data while being compliant with the law. They are fully complaint with the California Values Act (SB 54). The data is 100% owned by the City of Emeryville and will not be shared for immigration enforcement.

SECTION 4. CITY MANAGER REVIEW & APPROVAL


City Manager Signature

02/08/2024

Date