

INDEPENDENT CONTRACTOR AGREEMENT

This Contract, which is effective on the date it is fully executed, is between the STOCKTON POLICE DEPARTMENT, hereinafter called SPD, and VIEVU, LLC, hereinafter called CONTRACTOR. The parties agree as follows:

1. **DUTIES.** CONTRACTOR agrees to exercise special skill to accomplish the following results: provide a complete turn-key Body Worn Camera (BWC) system (as outlined in Attachments 1 and 2), for the Stockton Police Department hereinafter called SPD. CONTRACTOR to furnish full set-up for 350 BWCs.

2. **COMPENSATION.** In consideration for CONTRACTOR accomplishing said result, SPD agrees to pay CONTRACTOR as outlined in Attachment 2. Payment begins upon completion of installation of all hardware and software, training, and implementation of the Body Worn Cameras on February 28th, 2017. CONTRACTOR will bill SPD monthly in equal installments of \$16,800.00 or an amount not-to-exceed \$1,008,000.00 in sixty (60) months. SPD will pay monthly invoices upon receipt and approval of project manager, but no more than 30 days following invoice date.

3. **TERM.** The term of this Contract shall begin on the date it is approved by the Stockton City Council, for a base period of five (5) years, with the option to extend for an additional three five (5) year terms. If this Contract is extended, the parties agree to extend the terms and conditions of the Contract as set forth herein, and as reflected in any executed amendment hereto, until the Contract is thereafter terminated.

4. **EARLY TERMINATION.** Either party hereto may terminate this Contract at any time by giving sixty (60) days' written notice to the other party.

5. **INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.**
To the fullest extent permitted by applicable law, CONTRACTOR shall exonerate, indemnify, defend, and hold harmless SPD (which for the purpose of paragraphs 5 and 6 shall include, without limitation, its officers, agents, employees and volunteers) from and against:

A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which CITY may sustain or incur or which may be imposed upon it as a result of, arising out of, or in any manner connected with the CONTRACTOR'S performance under the terms of this Contract, excepting any liability arising out of the sole negligence of the SPD. Such indemnification includes any damage to the person(s), or property(ies) of CONTRACTOR and third persons.

B. Any and all Federal, State, and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Contract (including, without limitation, unemployment insurance, social security and payroll tax withholding).

C. Force Majeure. If either party hereto is prevented in the performance of any act required hereunder by reason of act of God, fire, flood, or other natural disaster, malicious injury, strikes, lock-outs, or other labor troubles, riots, insurrection, war or other reason of like nature not the fault of the party in performing under this Agreement, then performance of such act shall be excused for the period of the delay and the period of the performance of any such act shall be extended for a period equivalent to the period of such delay.

6. INSURANCE. CONTRACTOR, at its sole cost and expense, for the full term of this Contract (and any extensions thereof), shall obtain and maintain, at minimum, compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects CITY and any insurance or self-insurance maintained by CITY shall be considered in excess of CONTRACTOR'S insurance coverage and shall not contribute to it. If CONTRACTOR normally carries insurance in an amount greater than the minimum amount required by the CITY for this Contract, that greater amount shall become the minimum required amount of insurance for purposes of this Contract. Therefore, CONTRACTOR hereby acknowledges and agrees that any and all insurances carried by it shall be deemed liability coverage for any and all actions it performs in connection with this Contract. Insurance is to be obtained from insurers reasonably acceptable to the SPD.

If CONTRACTOR utilizes one or more subcontractors in the performance of this Contract, CONTRACTOR shall obtain and maintain CONTRACTOR's Protective Liability insurance as to each subcontractor or otherwise provide evidence of insurance coverage from each subcontractor equivalent to that required of CONTRACTOR in this Contract, unless CONTRACTOR and SPD both initial here ____ / ____.

A. Types of Insurance and Minimum Limits

(1) Workers' Compensation Insurance in the minimum statutorily required coverage amounts. This insurance coverage shall be required unless the CONTRACTOR has no employees and certifies to this fact by initialing here _____.

(2) Automobile Liability Insurance for each of CONTRACTOR'S vehicles used in the performance of this Contract, including owned, non-owned (e.g. owned by CONTRACTOR'S employees), leased or hired vehicles, in the minimum amount of \$500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage is required unless the CONTRACTOR does not drive a vehicle in conjunction with any part of the performance of this Contract and CONTRACTOR and SPD both certify to this fact by initialing here ____ / ____.

(3) Comprehensive or Commercial General Liability Insurance coverage at least as broad as the most recent ISO Form CG 00 01 with a minimum limit of \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, including coverage for: (a) products and completed operations, (b) bodily and personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.

(4) Professional Liability Insurance in the minimum amount of \$1,000,000 with 250,000 retention and combined single limit, if, and only if, this Subparagraph is initialed by CONTRACTOR and SPD ____ / ____.

B. Other Insurance Provisions

(1) If any insurance coverage required in this Contract is provided on a "Claims Made" rather than "Occurrence" form, CONTRACTOR agrees that the retroactive date thereof shall be no later than the date first written above (in the first paragraph on page 1), and that it shall maintain the required coverage for a period of three (3) years after the expiration of this Contract (hereinafter "post Contract coverage") and any extensions thereof. CONTRACTOR may maintain the required post Contract coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post Contract coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Contract. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Contract in order to purchase prior acts or tail coverage for post Contract coverage shall be deemed to be reasonable.

(2) All policies of Comprehensive or Commercial General Liability Insurance shall be endorsed to cover the Stockton Police Department, its officials, employees, agents and volunteers as

additional insured with respect to liability arising out of the work or operations and activities performed by or on behalf of CONTRACTOR, including materials, parts or equipment furnished in connection with such work or operations. Endorsements shall be at least as broad as ISO Form CG 20 10 11 85, or both CG 20 10 10 01 and CG 20 37 10 01, covering both ongoing operations and products and completed operations.

(3) CONTRACTOR will provide thirty (30) days' prior written notice of cancellation of a policy and 10 days' notice for nonpayment of premium to the following:

**Stockton Police Department
22 E Market St
Stockton, CA 95202**

Should CONTRACTOR fail to obtain such an endorsement to any policy required hereunder, CONTRACTOR shall be responsible to provide at least thirty (30) days' notice (10 days for nonpayment of premium) of cancellation of such policy to the CITY as a material term of this Contract.

(4) CONTRACTOR agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide CITY on or before the effective date of this Contract with Certificates of Insurance and endorsements for all required coverages. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. All Certificates of Insurance and endorsements shall be delivered or sent to:

**Stockton Police Department
22 E Market St
Stockton, CA 95202**

(5) CONTRACTOR hereby grants to SPD a waiver of any right of subrogation which any insurer of said CONTRACTOR may acquire against the SPD by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the SPD has received a waiver of subrogation endorsement from the insurer.

7. EQUAL EMPLOYMENT OPPORTUNITY. During and in relation to the performance of this Contract, CONTRACTOR agrees as follows:

A. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, ancestry, physical or mental disability, medical condition (including cancer-related and genetic characteristics), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Contract provides compensation in excess of \$50,000 to CONTRACTOR and if CONTRACTOR employs fifteen (15) or more employees, the following requirements shall apply:

(1) The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, national origin, ancestry, physical or mental disability, medical condition (including cancer-related and genetic characteristics), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising, layoff or

termination, rates of pay or other forms of compensation, selection for training (including apprenticeship), employment, upgrading, demotion, or transfer.

8. INDEPENDENT CONTRACTOR STATUS. CONTRACTOR and SPD have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of SPD. CONTRACTOR is responsible for all insurance (workers' compensation, unemployment, etc.) and all payroll related taxes. CONTRACTOR is not entitled to any employee benefits. SPD agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The CONTRACTOR rather than SPD has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, SPD may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the SPD supplies the instrumentalities, tools and work place; (f) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of SPD; (i) CONTRACTOR and CITY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The SPD conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors that indicate that CONTRACTOR is an independent contractor.

By their signatures on this Contract, each of the undersigned certifies that it is his or her considered judgment that the CONTRACTOR engaged under this Contract is in fact an independent contractor.

9. ACKNOWLEDGMENT. CONTRACTOR shall acknowledge in all reports and literature that the City of Stockton has provided funding to the CONTRACTOR.

10. ATTACHMENTS. Should a conflict arise between the language in the body of this Contract and any attachment to this Contract, the language in the body of this Contract controls. This Contract includes the following attachments:

Attachment 1 – Scope of Services

Attachment 2 – Scope of Systems, Fees, and Maintenance

11. MISCELLANEOUS. This written Contract, along with any attachments, is the full and complete integration of the parties' agreement forming the basis for this Contract. The parties agree that this written Contract supersedes any previous written or oral agreements between the parties, and any modifications to this Contract must be made in a written document signed by all parties. The unenforceability, invalidity or illegality of any provision(s) of this Contract shall not render the other provisions unenforceable, invalid or illegal. Waiver by any party of any portion of this Contract shall not constitute a waiver of any other portion thereof. Any arbitration, mediation, or litigation arising out of this Contract shall occur only in the Stockton Police Department, notwithstanding the fact that one of the contracting parties may reside outside of the Stockton Police Department. This Contract shall be governed by, and interpreted in accordance with, California law.

Contract No. _____

INDEPENDENT CONTRACTOR AGREEMENT

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

2. VIEVU, LLC

By: _____
SIGNED

PRINTED

4. CITY OF STOCKTON

By: _____
SIGNED

PRINTED

Address: 645 Elliot Avenue W, Suite 370
Seattle, WA 98119

Telephone: 1-888-285-4548

Fax: 1-206-299-3380

Email: _____

3. APPROVED AS TO INSURANCE:

Risk Management

1. APPROVED AS TO FORM:

City Attorney's Office

ATTACHMENT 1 SCOPE OF SERVICES

CONTRACTOR will fully support the Body Worn Camera (BWC) program for the SPD.

CONTRACTOR will provide a designated project manager along with a project management team responsible for SPD's BWC project.

CONTRACTOR will report to SPD'S project manager and be responsible for all aspects of the BWC implementation. This includes the following:

- Hardware
 - 350 BWCs with 30 month unit technology refresh
 - 35 Multi-Dock Stations with unit technology refresh if required
 - 30 Month Technology Refresh
- Software
 - VIEVU Solution Subscription
 - 100 TB of Storage per Camera (pooled)
 - 2 Redaction License
- Project Manager and Implementation Team
- Deployment Support
- Training
- Product Development
 - Invitation to future power users group meetings
 - Ability to test future technologies as a beta-tester
- On-Going Support and Maintenance 24/7, 365 days per year
 - 10% on-site spares
 - 85 TB of data from currently deployed LE3 BWCs will be migrated to the cloud

Project Management by CONTRACTOR and SPD shall begin on the date this contract is approved by the Stockton City Council. CONTRACTOR and SPD shall work together to ensure final site readiness actions have been completed, and full deployment of the BWCs shall be implemented by February 28th, 2017.

CONTRACTOR shall notify the SPD of any and all upgrades to the BWC system and expected dates upgrades to be provided. CONTRACTOR shall provide information for emerging technologies and innovations that will benefit the SPD BWC program.

CONTRACTOR shall announce any technology enhancements. CONTRACTOR shall make efforts to modify and enhance reporting, storage, and other components to make the BWC as efficient as possible. CONTRACTOR will identify and offer the best developments and to consistently meet the needs of the SPD'S office.

At 30 months from the initial LE4 set-up and refresh agreed to in this contract, CONTRACTOR shall replace all BWC units with new units that are either compatible next generation models, or the current model. The model provided will be at the discretion of SPD with respect to the CONTRACTOR capability to provide support. SPD and CONTRACTOR agree that a unit refresh at sixty (60) months from the initial LE4 set up and refresh will require a new contract agreement.

ATTACHMENT 2

SCOPE OF SYSTEM, FEES AND MAINTENANCE

CONTRACTOR agrees to exercise special skill to accomplish the following results: provide a complete turn-key Body Worn Camera (BWC) system, for the Stockton Police Department, hereinafter called SPD, detailed as follows:

1. CONTRACTOR IMPLEMENTATION. Implementation scheduled for a CONTRACTOR Solution and Body Worn Cameras (BWC) program to be fully implemented and deployed no later than May 1, 2017.
2. IMPLEMENTATION REQUIREMENTS FOR BWC PROGRAM AND CONTRACTOR SOLUTION.
 - A. OPERATIONAL REQUIREMENTS - CONTRACTOR must have the BWC functions operational no later than May 1, 2017:
 - Auto-tag video with metadata by event type for retention from Intergraph CAD
 - Authenticate users with Active Directory using ADFS 3.0 with SAML
 - Automatically maintain (insert, update, disable) based on Active Director
 - Control security permissions based on SPD definitions
 - B. EQUIPMENT REQUIREMENTS - CONTRACTOR must have the BWC functions operational no later than May 1st, 2017:
 - 350 Body Worn Cameras
 - 35 Full functional multi-camera docks capable of connection to Cloud storage without the use of a PC
 - C. OTHER REQUIREMENTS – SPD must have the following to support site readiness prior to May 1, 2017:
 - A computer with Windows Vista, 7, 8 or 10 is available for camera assignment and download using the VIEVU Solution Connector software.
 - You have an internet connection that meets the minimum specifications (see <http://www.viewu.com/support/viewu-solution-support/> for more information.)
 - D. SYSTEM REQUIREMENTS – CONTRACTOR SHALL PROVIDE THE FOLLOWING:
 - System shall provide an automated method of transfer to move files from the camera to storage system such as drop-in docking station or wireless upload.
 - System shall have docking and charging stations that allow multiple units to be connected simultaneously without the need for connecting cables or provide individual power supplies to each individual device for charging.
 - System shall include client software playback with audit trail.
 - The SPD shall be provided with software that includes multiple security levels for viewing and making copies of videos.
 - The system administrator (SPD) shall have the ability to set and control user access and rights.
 - The SPD shall be provided with software that operates under a minimum Windows 7 professional 32 bit and 64 bit or later operating system, and IE11 and higher web browsers.
 - The system shall allow the system administrator (SPD) to control the length of retention of videos.
 - There shall be various searches available for finding videos including by officer/user and date and time.

- The system shall allow multiple video files from the same event to be exported as a single session with multiple files for distribution.
 - The system shall allow a method for marking files or identifying them by preset classifications.
 - The storage solution shall have the ability to download video from multiple cameras simultaneously.
 - The Videos shall be indexed by officer name, and date and time.
- E. SPD SMARTPHONE SPECIFICATIONS
- The CONTRACTOR shall provide a Smart Phone Application, which will be applied for deployment of the BWC system on May 1, 2017.
- F. SYSTEM COMPLIANCE
- The BWC solution shall include compatibility with SPD mobile devices with android or iOS operating systems, and its system and its data must run in Criminal Justice Information Service (CJIS) compliant facilities and support models.
3. CONTRACTOR SOLUTION. CONTRACTOR is providing a purchase plan that includes one LE4 camera, a product warranty for contract period, a license to our Cloud software housed in Microsoft Azure Government CJIS compliant Cloud, Cloud storage, 24/7, 365 days per year support, on-site set-up and training, and deployment provided by CONTRACTOR, for the term of this contract. Contract provides for 350 Body Worn Cameras and all BWCs will be replaced at 30 months.
4. CLOUD STORAGE SPACE. CONTRACTOR will provide the City with 100 TB of storage space. The SPD will not be charged any fees for an overage of any individual BWC as long as SPD has a retention period of 3 years or less for video retention.
5. PRODUCT WARRANTY. The included warranty is valid only when contract is in force.

Ownership. The CONTRACTOR represents that it is the owner of the entire right, title, and interest in and to Licensed Software, and that it has the sole right to grant licenses there under, and that it has not knowingly granted licenses there under to any other entity that would restrict rights granted hereunder except as stated herein.

Software Warranty. CONTRACTOR represents and warrants to the City that the Licensed Software, when properly installed by the City, will perform substantially as described in CONTRACTOR's then current Documentation for such software for a period of thirty-six (36) months from the date of Acceptance.

Hardware Warranty. CONTRACTOR represents and warrants to the City that the BWC devices and associated hardware shall be free from defects in materials and workmanship and shall conform in all material respect to the Specifications for a period of thirty-six months (36) from the date of Acceptance, provided the BWC Devices and associated hardware in question has been stored and used in accordance with CONTRACTOR's instructions and user manual, and has not been otherwise subjected to misuse or abuse. It is understood and agreed that any BWC devices delivered to the City prior to Acceptance shall be covered under a warranty grace period until such time as the warranty begins on the date of Acceptance. The use of non-CONTRACTOR approved specifications or accessories or replacement parts will void any hardware warranty.

Extended Multi-Dock Warranty. CONTRACTOR represents and warrants to SPD that the Multi-Dock Stations shall be free from defects in materials and workmanship and shall conform in all material respect to the Specifications for as long as the City continues to own or use the product.

6. PAYMENT TERMS. The solution shall be in place for a duration of sixty (60) months beginning May 1, 2017, for a cost of \$201,600.00 annually, renewable thereafter 5 years from May 1, 2017, for three five (5) 5-year extension terms in the amount of \$1,008,000.00 per 5 year term.
 - A. CONTRACTOR shall provide SPD with an invoice as of the first of each month and payment is due within 30 days of invoice date.
 - B. Payments begin upon completion of installation of all hardware and software, training, and implementation of the Body Worn Cameras on May 1, 2017 and continue monthly, thereafter.
7. Termination Requirements: CONTRACTOR will retain data stored in the Software in a limited functionality account for 60 days after expiration or termination of this Contract. Within the first 5 days of the termination of this Agreement CONTRACTOR will provide the SPD detailed instructions on how to download files, including metadata. After 60 days, CONTRACTOR will disable the account and delete all data. It is the responsibility of the SPD to remove any data within 60 days.