

LICENSE AGREEMENT

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the "Effective Date"), is by and between the City of Duluth, a municipal corporation, acting through the Duluth Police Department, hereinafter referred to as "City", and the city of Hermantown, a municipal corporation, acting through the Hermantown Police Department, hereinafter referred to as "Licensee".

WITNESSETH:

WHEREAS, the City has access to the Bureau of Criminal Apprehension ("BCA") Minnesota License Plate Data File on the City File Server; and

WHEREAS, the Licensee has an Automated License Plate Reader, but lacks the capacity to access the BCA Minnesota License Plate Data File through Licensee's information technology system; and

WHEREAS, the Licensee wishes to utilize the City's File Server to access the BCA Minnesota License Plate Data File in order to fully utilize Licensee's Automatic License Plate Reader; and

WHEREAS, the City wishes to provide Licensee limited access and usage rights to City's File Server.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Definitions

a. Automated License Plate Reader ("ALPR"). A device that records license plate data of moving and/or stationary vehicles. For purposes of this definition, "device" includes any related equipment including, but not limited to, wires, hinges and brackets along with any data generated including data collected from the device or any data generated after data is collected by the device and compared to any database used to identify license plates associated with certain unlawful acts.

b. BCA MN License Plate Data File (MN LP Data File). The MN LP Data File contains merged data from select FBI NCIC Hot File records from all 50 states including

the District of Columbia and Canada, specific data from select MN Hot File records and MN Driver and Vehicle Services (DVS) data on “withdrawals” (registered vehicles of revoked, suspended, canceled and disqualified licensed operators).

c. City File Server. A City data platform that allows access to separate programs and files including the MN LP Data File.

2. The License

The City grants Licensee a nonexclusive, nontransferable, limited license to access the City’s File Server to facilitate access to the MN LP Data File only. Licensee has acquired its own ALPR and agrees to secure its own software license from 3M. Licensee shall not access or attempt to access any other programs, files or data. Licensee agrees to comply with all state and federal security policies regarding access to data and accepts all responsibility for its access to the data. Licensee also agrees to ensure that all users of Licensee’s ALPR receive adequate training on compliance with state and federal security requirements and laws.

3. Access to File Server

Licensee will access the City File Server for the sole purpose of utilizing Licensee’s ALPR. Licensee is solely responsible to comply with all laws and regulations governing the use of its ALPR and access to City File Server. In addition, Licensee shall abide by the following requirements when utilizing City File Server:

- a. To access the City File Server using Licensee’s identifying credentials;
- b. To perform all required updates under applicable license agreements and laws;
- c. To verify and store the data from the MN LP Data File in accordance with the FBI and BCA regulations and applicable law; and
- d. To independently verify an ALPR response as required by law or policy before taking enforcement action.

4. Protecting Confidential and Proprietary Information

The proprietary information of the City and Licensee, is and shall remain, the valuable intellectual property of each respective party. Except as required by law, neither party shall disclose any such information to any third party for any reason without the express written consent of the other party and shall only use proprietary information for internal and lawful purposes to facilitate and assist Licensee in the utilization of the ALPR. In addition, Licensee agrees to provide reasonable safeguards

in accordance with industry standard to protect its software, hardware systems and data from unauthorized intrusion by its employees or third parties.

5. Term

The term of this Agreement shall commence upon the Effective Date and continue in effect for three (3) years and shall thereafter be automatically renewed for three-year periods unless terminated as provided in Section 6.

6. Notice of Termination

Either party may terminate this Agreement at any time upon thirty (30) days written notice. Written notice of termination shall be made by certified mail or personal delivery directed to the other party specified in the Notice section of this Agreement. Notices are deemed effective upon delivery to the authorized representative.

7. Effect of Termination

Termination of this Agreement shall not discharge any liability, responsibility, or right of any party which arises from the performance or failure to adequately perform the terms of this Agreement prior to the effective date of termination, nor shall termination discharge any obligation which by its nature would survive after the date of termination.

8. Cost

The City grants License to Licensee at no cost to Licensee.

9. City Warranty

City makes no representation that the File Server is suitable for specific uses and Licensee accepts use of the City File Server in an “as is” condition without representations or warranties of any kind, and City shall not be obligated to make any alterations or improvements on or to the City File Server.

10. Data Practices

This Agreement is subject to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (MGDPA). City and Licensee agree that they will continue to be responsible authorities for data collected or created by their respective agency. Licensee agrees to comply with the MGDPA and shall be responsible for responding to data requests relating to data collected or created in connection with Licensee’s use of its Automated License Plate Reader. City and Licensee agree that

the originator of the data continues to own the data and responsibilities attendant to creation and maintenance of such data. All requests for data will be forwarded to the originating agency for processing in compliance with the law.

11. Indemnification

The City shall not in any way be liable or responsible for any loss or damage that may occur pursuant to Licensee's use of the City File Server. The Licensee agrees that it shall defend, indemnify and save harmless, the City, its officers, agents, servants and employees from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons including agents or employees of the City or the Licensee resulting from or arising out of the Licensee's use of the City File Server. On ten (10) days' written notice from the City, the Licensee will appear and defend all lawsuits against the City growing out of such claims or damages.

12. Insurance

a. During the term of this Agreement, Licensee shall provide such insurance as will protect Licensee and the City against risk of loss or damage to the City File Server and against any and all claims which may arise or result from the use of the City File Server. Licensee shall procure and maintain continuously in force Public Liability Insurance pursuant to the limits on liability established in Minnesota Statutes Chapter 466. Insurance shall cover:

1. Public liability, including premises and operations coverage;
2. Independent contractors--protective contingent liability;
3. Personal injury;
4. Owned, non-owned and hired vehicles;
5. Contractual liability covering the indemnity obligations set forth herein;
6. Products--completed operations; and

b. Additionally, Licensee shall maintain Workers' Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law.

c. All insurance required in this agreement shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota.

d. Licensee shall provide to the City a Certificate of Insurance evidencing said coverage. The Certificate of Insurance for Public Liability shall name the City as an additional insured. The City does not represent or guarantee that these types or limits of coverage are adequate to protect the Licensee's interests and liabilities. Licensee shall immediately notify the City in the event the insurance coverages required herein are cancelled or materially changed, in which event the City may immediately terminate this Agreement.

13. Independent Contractor

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting the Licensee or any of its officers, agents, servants and employees as an officer, agent, servant, representative or employee of the City for any purpose or in any manner whatsoever. The Licensee's officers, agents, servants and employees shall not be considered employees of the City and any and all claims which may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said officers, agents, servants and employees while engaged in performing any work under this Agreement, and any and all claims whatsoever on behalf of said officers, agents, servants and employees arising out of employment, including, without limitation, claims of discrimination, shall in no way be the responsibility of the City. The Licensee's officers, agents, servants and employees shall not be entitled to claim or collect from the City any compensation or right or benefits of any kind whatsoever, including but not limited to health benefits, sick leave or vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay.

14. Assignment

Licensee shall not in any way assign or transfer its rights or interests under this Agreement or any part hereof without the prior written consent of the City.

15. Notices

Any notice to be given by either party shall be deemed to be properly served if deposited with the United States Postal Service, or other acceptable mailing service, postage prepaid, addressed as follows:

Licensee

Hermantown Police Department

City of Duluth

Duluth Police Department

Attn: Chief of Police
5111 Maple Grove Rd
Hermantown, MN 55811

Attn: Chief of Police
2030 Arlington Ave.
Duluth, MN 55811

16. Compliance with Laws, Rules and Regulations

Licensee agrees to observe, comply and abide with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City now in effect or hereafter promulgated which are applicable to its activities under this License Agreement. Licensee shall procure at its own expense all licenses, permits or other rights required for the activity contemplated by this License Agreement.

17. Choice of Law and Venue

All questions concerning the interpretation or application of provisions of this License shall be decided according to the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota.

18. No Third Party Claims

Except as is specifically set forth herein, this Agreement is to be construed and understood solely as an Agreement between the City and the Licensee and shall not be deemed to create any rights in any other person or organization. Except as is specifically set forth herein, no person shall have the right to make claim that she or he is a third party beneficiary of this License Agreement or of any of the terms and conditions hereof, which, as between the City and the Licensee, may be waived at any time by mutual agreement between the City and the Licensee.

19. Waiver

The failure of the City to enforce any of the provisions of this contract shall not constitute a waiver by the City of that or any other provision.

20. Severability

The parties agree that if any term or provision of this License Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

21. Amendments

Any amendments to this License Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

22. Entire Agreement

This License Agreement constitutes the entire agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter.

IN WITNESS WHEREOF, the parties have set their hands the day and date shown below.

CITY OF DULUTH

By _____
Mayor

Attest:

City Clerk

Date Attested: _____

Countersigned:

City Auditor

As to form:

City Attorney

CITY OF HERMANTOWN.

By _____
Its: Mayor

And by _____
Its: City Clerk