#15-225
3/26/2015

CITY OF FRESNO
City Clerk's Office (Original)

AGREEMENT WITH
CITY OF FRESNO, CALIFORNIA
FOR SERVICES

SST, Inc. (also "ShotSpotter") and the City of Fresno, a municipal corporation ("City") agree to the following Services and License Agreement and General Terms and Conditions (hereinafter, "Agreement"). The following Agreement is an essential part of the "Purchase Documents" (which term shall include this Agreement and all executed proposals and purchase orders, together with all attachments and appendices) under which City purchases the ShotSpotter Gunshot Location services identified in the Purchase Documents and described herein (altogether, "Service"). City's access, or use of any part of the Service (and/or signature on the purchase order and/or agreement) shall constitute City's representation that City has read all the terms and conditions of this Agreement, and City's acceptance of them as an integral part of the Agreement and City's purchase or order of the Service. If City does not agree to be bound by these terms and conditions, City should not access or use any part of the Service.

1. SERVICES. In consideration of the parties' mutual undertakings set forth in the Purchase Documents and in this Agreement, City and ShotSpotter agree that the Service shall consist of ShotSpotter performing the following:

(i) Providing City access to Reviewed Alerts delivered via a password-protected internet portal ("Alert Console") and user interface supplied by SST (together the Alert Console and interface shall be called the "Software"). Reviewed Alerts consist of data for gunfire incidents, detected by the ShotSpotter Gunshot Location System and reviewed by an SST incident reviewer employee (see Exhibit A);

(ii) Providing access to historical Reviewed Alerts and incident information via the Software; and

(iii) Other services as specified in the Purchase Documents.

SST will install or convert the ShotSpotter Gunshot Location System in the coverage area specified in the Purchase Document. SST will host the Service and may update the functionality and Software of the Service from time to time in its sole discretion and in accordance with this Agreement.

Except in the circumstances where a system has been previously purchased and is being converted, SST shall retain ownership of, and all rights to, all components of the ShotSpotter Gunshot Location System, including hardware components, Software, and

firmware. Under this Agreement, the City is licensing rights to access the incident information detected by the ShotSpotter Gunshot Location System.

For the duration of this Agreement, the ShotSpotter Acoustic Sensors placed on City-owned utility poles and related hardware necessary for performance of the services described in Exhibit B shall be property of the City of Fresno. Upon termination of this Agreement, nonperformance resulting in material breach, or failure to renew the terms of the Agreement, ownership of the sensors and related hardware will revert to ShotSpotter, Inc. Unless provided for otherwise, ShotSpotter will remove the sensors from installed locations upon reversion of ownership to ShotSpotter. This term does not alter the fact that ShotSpotter remains responsible for installation, maintenance and service of said sensors, according to the terms of the Agreement, for as long as the Agreement remains in force.

2. LICENSE. The following sets forth the terms and conditions of City's non-exclusive, non-transferable and terminable license to use the Service and Data (as those terms are defined herein).

This License creates important legal rights and obligations, so please read it carefully before using the Service. This License constitutes an offer by ShotSpotter to City. By manifesting electronically City's assent to these terms, using the service, or by issuing a purchase order or signing a purchase agreement, City agrees to be bound by the terms and conditions of this license. If City does not agree to be bound by the terms of this License, City should not issue or execute a Purchase Document, or use the Service.

A. RIGHTS IN DATA. "Gunfire Data" are data, information, and electronic files created, generated, modified, compiled, displayed, stored or kept in the course of providing the Service, including, without limitation, information in reviewed alerts accessible through the Service software, and other data or information accessible, generated, compiled or displayed through the Service software or system. "City Data" are Data created, modified, compiled, stored, kept or displayed by City based on Gunfire Data obtained from SST pursuant to this Agreement. The term "Data", as used in this Agreement, includes data, information, and electronic files, written reports, studies, drawings, or other digital, graphic, electronic, chemical or mechanical representations.

SST shall own and have the unrestricted right to use Gunfire Data for internal purposes such as research or product development. SST may provide, license or sell Gunfire Data to third parties (excluding press or media) to be used for research or analytical purposes, for example, but not by way of limitation, gunshot violence statistics or studies, and for other law enforcement-related purposes, including, for example, to create national gunfire indices or priorities.

SST will not release or disseminate to any person or entity Gunfire Data related to or consisting of specific forensic or law enforcement incident information that the City identifies as pertaining to any active inquiry, investigation or prosecution, unless in response to a valid order or subpoena issued by a court or other governmental body, or as otherwise required by law. SST will not release, sell, license, or otherwise distribute the Gunfire Data to any press or media without prior express consent of City.

City shall have the unrestricted right to download, make copies of, distribute and use Gunfire Data within its own organization, exclusively for its own internal purposes, and for purposes of detecting and locating gunfire, routine archival recordkeeping, evidence preservation, and investigative, or evidentiary, and prosecutorial purposes. City will not provide to, license use of, or sell Customer Data or Gunfire Data to any third parties, which restriction does not include collaborating with other neighboring law enforcement agencies with regard to investigation and prosecution of specific crimes detected by the SST systems.

SST consents to City allowing inspection of and disclosing governmental records to the public upon request, which may include SST data downloaded from the SST system and placed into the City's CAD system or incorporated into a police report, as required by the California Public Records Act (Statutes of 1968, Chapter 1473, currently codified as California Government Code §§ 6250 through 6276.48).

B. RESTRICTIONS. The Software and Data are ShotSpotter's proprietary products, may incorporate components supplied to ShotSpotter under license by third-party suppliers, and may be protected by United States (U.S.) patent, trade secret, copyright law and international treaty provisions. All such rights in and to Software and Data and any part thereof are the property of ShotSpotter or ShotSpotter's suppliers. By virtue of this License, City acquires only the right to use the Software and Data in accordance with this Agreement, but otherwise acquire no license, title or ownership rights, express or implied, in or to the Software or Data, or any right to use or practice any of ShotSpotter's patents, copyrights, trademarks, or trade secrets, all of which rights are reserved expressly by Shotspotter or ShotSpotter's suppliers. City may not make any copies of the written materials or documentation that accompanied any component of the Software, or use them, or any other information concerning the Service that ShotSpotter has designated as confidential, for any purpose other than bona fide use of the Service or Software for the specific purposes contemplated herein, nor allow anyone else to do so.

City shall not, without ShotSpotter's express written consent, which may be withheld or conditioned in ShotSpotter's sole discretion:

(i) modify, adapt, alter, translate, copy, perform or display (publicly or otherwise) or create compilations, derivative, new or other works based, in whole or in part, on the Software or Data, or on the Service;

(ii) merge, combine, integrate or bundle the Software or the Data, in whole or in part, with other software, hardware, data, devices, systems, technologies, products, services, functions or capabilities;

(iii) transfer, distribute, make available the Service, Data, or Software to any person other than the specific end-user City identified to SST in the Purchase Documents, sell, resell, sublicense, lease, rent, or loan the Service, Data, or Software, in whole or in part; or

(iv) provide use or permit operation of any of the Service, Software or Data by any person other than the original end- user City designated in the Purchase Documents, nor in or through any application service provider, service bureau, rental or time-sharing arrangement;

(v) disassemble, decompile, or otherwise reverse engineer or attempt to reconstruct, derive, or discover, any source code, underlying ideas, algorithms, formulae, routines, file formats, data structures, programming, routines, interoperability interfaces, drawings, or plans from the Data or Software, or any data or information created, compiled, displayed, or accessible through the System, in whole or in part; or

(vi) remove, modify or obscure any identification or proprietary or restrictive rights markings or notices from the Data, Software or any component thereof.

SST and its licensors retain all ownership of all intellectual property rights in and to all Data, Software, all computer programs, related documentation, technology, knowhow and methods and processes embodied in or made available to City in connection with the Service, including, without limitation, all patent rights, copyrights, trade secret rights, trademarks and service marks. All rights not expressly granted to City herein are reserved by SST. City shall take all reasonable measures to protect SST's intellectual property rights in the Service and Software, including providing assistance and measures as are reasonably requested by SST from time to time.

City is hereby placed on notice that alteration or removal of copyright management information (including, without limitation, licensor's name and other identifying information, name of the Service, the terms and conditions of this License, and identifying numbers or symbols) embodied in or associated with the Service is prohibited, because such conduct may cause others to infringe ShotSpotter's rights in and to the system, Service and/or Software. City agrees it will not obscure or remove

any confidentiality, patent, trademark, or copyright notices on any component of the Service, or any documentation.

C. TERMINATION. City agrees that City's right to use the Service, Software, and Data will terminate automatically if City violates any of the terms of this License, or fail to timely pay any sums City owes ShotSpotter or resellers or integrators of ShotSpotter's Service, or fail to renew the Service upon expiration of the Service term. In the event of termination, City's access to the Data and Software will be terminated, and SST will cease delivering Reviewed Alerts, and disable City's access to the Data. City agrees that SST shall not be liable to City nor to any third party for any suspension of the Service resulting from City's nonpayment of fees as described in this section.

D. MODIFICATION TO OR DISCONTINUATION OF THE SERVICE. SST reserves the right at any time and from time to time to modify, temporarily or permanently, the Service (or any part thereof). In the event that SST modifies the Service in a manner which removes or disables a feature or functionality on which City materially relies, SST, at City's request, shall use commercially reasonable efforts to restore such functionality to City. In the event that SST is unable to substantially restore such functionality, City shall have the right to terminate the Agreement and receive a pro-rata refund of the annual Service fees paid under the Agreement for use of the Service which was paid for by City but not yet furnished by SST as of the date of such termination. City acknowledges that SST reserves the right to discontinue offering the Service at the conclusion of City's then current term. City agrees that SST shall not be liable to City or to any third party for any modification of the Service as described in this section.

E. OTHER RESTRICTIONS. City acknowledges and agrees that the source code and internal structure of the Software, Data and Service, as well as documentation, operations manual and training material are ShotSpotter's confidential property, and trade secrets, the value of which would be destroyed by disclosure to the public. Use by anyone other than City of the Service, documentation, and Data is prohibited, unless pursuant to a valid assignment under this Agreement.

3. LIMITED EXCLUSIVE WARRANTY. Provided that City complies with City's obligations under the terms and conditions stated herein, ShotSpotter warrants that the Software (as defined herein) will be free of defects in workmanship which materially impair the functioning of the Service and Software in substantial conformity with the specifications documentation accompanying the Service.

The Software covered under this limited exclusive warranty consists exclusively of ShotSpotter Alert Console software and user interface, installed and operated locally on

City's computers and devices supplied by SST for City's use in connection with a ShotSpotter System..

A. REVIEWED ALERT SERVICE LEVELS. As regards to sonic event review and alert services, subject to the City's compliance with its obligations hereunder, and to the disclaimers and limitations set forth in Exhibit A, and in Sections 5(C), 6, 7, 13 and 15 of this Agreement, ShotSpotter agrees to provide the service levels set forth in Exhibit A, attached hereto.

B. SYSTEM CONFIGURATION AND SERVICE LEVELS. As regards to System configuration, subject to the City's compliance with its obligations hereunder, and to the disclaimers and limitations set forth in Exhibit B, and in Sections 5(C), 6, 7, 13 and 15 of this Agreement, ShotSpotter agrees to provide the service levels set forth in Exhibit B, attached hereto.

C. OTHER WARRANTY. SST warrants that the Service, Data, and Software shall be free of viruses, Trojan horses, worms, spyware, or other malicious code or components.

The limited exclusive warranties expressly set forth in this Agreement are the only warranties made to City and are provided in lieu of any other warranties (if any) created by any documentation or packaging, or otherwise express or implied. These limited exclusive warranties give City specific legal rights, and City may also have other rights, which vary by jurisdiction.

4. SST SUPPORT. During the term of the Services, SST will make commercially reasonable efforts to promote City's successful utilization of the Service, including but not limited to providing City with user guides, online help, online training presentation, and online training sessions (as available). SST will provide reasonable efforts to respond via email to requests for support relating to incident classification within 8 hours of the request.

In addition, SST will use commercially-reasonable efforts to respond to other support requests within 24 hours of receipt of the request during the period of 8am to 5 pm Monday through Friday. The e-mail support specialist shall be responsible for receiving City reports of missed incidents, or errors in the Service, and, to the extent practicable over email or telephone, making commercially reasonable efforts to assist City in resolving City's reported problems. In the event the problem cannot be resolved telephonically, then SST will use commercially-reasonable efforts to restore functionality of the Service to Service specifications within 72 business hours of receipt of the report.

A. FORENSIC REPORTS. SST, at the specific request of the City, will produce and provide a reasonable quantity of detailed incident forensic reports for any ShotSpotter detected incidents, including Reviewed Alerts, if such information is deemed by City to be valuable to City for investigation follow-up, prosecutorial requirements, or after action review.

Such reports must be requested a minimum of 5 days in advance of when needed, and all such requests must be in writing and addressed to the SST Customer Service Department. City should expect delivery of these reports within 5 days after receipt of the request. This benefit shall only be available to City if City is fully current with payments due under this Agreement. In the case, that City is not current with their payments, then forensic reports shall not be generated nor provided to City until City becomes current with its payment obligations.

B. EXPERT WITNESS SERVICES. SST offers expert witness services which are offered free of charge. The City will make travel arrangements, and pay for, the expert's travel, utilizing the standard city per diem and travel reimbursement rates. At the specific request of the City, SST will provide individual(s) for the purposes of expert witness testimony for any ShotSpotter detected incidents, including Reviewed Alerts, for which the incident information is deemed by the City to be valuable to the City's prosecutorial requirements. City understands that SST undertakes to provide individuals whose qualifications are sufficient for such services, but does not warrant that any person or his or her opinion will be accepted by every court. SST requires at least 14 days' prior notice of such a requirement in writing from the City. City must include dates, times, specific locations and a point of contact for SST personnel. Due to the nature of legal proceedings, SST cannot guarantee that its services described in this section shall produce the outcome, legal or otherwise, which City desires.

5. TERM, RENEWAL

A. TERM AND COMMENCEMENT. The Service term shall be specified in the Purchase Document and will commence on the date that the Service is available to City via the Alert Console.

B. RENEWAL. The Service may be renewed for successive periods of one year each, in accordance with the following procedure. Not later than 30 days prior to the expiration of the Service term then in effect, City shall issue a purchase order and tender payment in full for the next annual renewal (unless otherwise agreed in writing by SST), and the term shall be renewed for another year. SST shall provide City with renewal fees, terms, and conditions for the next successive renewal term upon City's request but no later than 90 days from the expiration date. City acknowledges that the Service fees, terms, conditions, and service levels hereunder are subject to change and

that such fees, terms and conditions, and service levels may vary from those applicable to this Agreement in successive renewal terms.

If City fails to renew in a timely manner and hence allows the Service term to expire then the Service will terminate in accordance with Section 2(C). At its discretion, SST may remove the ShotSpotter Gunshot Location System and any components from the coverage area at that time. If SST does not remove the ShotSpotter Gunshot Location System from the coverage area, City may reinstate the Service at a later date by renewing, however City will not have access to any Reviewed Alerts that they would have had access to during the lapsed period.

C. COMMERCIAL CARRIER DATA SERVICES. The ShotSpotter Gunshot Location System may use wired, wireless, or cellular wireless acoustic sensor communications, which necessitates the existence of a real-time data communications channel from each sensor to the hosted servers via a commercial carrier. The unavailability or deterioration of the quality of such wired, wireless, or wireless cellular communications may impact the ability of SST to provide the Service. In such circumstances, SST will use commercially reasonable efforts to obtain alternate wired or wireless cellular communications or adjust the coverage area as necessary. In the event SST is unable to do so, SST will terminate the Service and refund a pro-rata portion of the annual Service fee to City.

6. IP INFRINGEMENT - EXCLUSIVE REMEDY. Subject to the terms and conditions hereof, SST agrees to defend and indemnify City (provided it is the actual End-user City of the Service) from and against losses, suits, damages, liability and expenses (including reasonable attorney fees) arising out of a claim asserted in a lawsuit or action against the end-user City by a third party unrelated to the City, in which such third party asserts a claim that the Service and/or Software, when used in accordance with SST's specifications and for the purposes intended, infringes any U.S. patent which was issued by the U.S. Patent and Trademark Office, or U.S. copyright which was registered by the U.S. Copyright Office, as of the effective date of City's agreement to purchase the ShotSpotter Flex System.

Provided, however, that SST shall have the right to choose counsel to defend such suit and/or action, and to control the settlement (including determining the terms and conditions of settlement) and the defense thereof, and that City shall provide SST with reasonably prompt written notice of any such suit or action, and of any oral, written or other communication or other information or circumstances of which City becomes aware that could reasonably be expected to lead to such a suit or action (including any and all cease and desist demands or warnings, and offers or invitations to enter license agreements), and shall provide SST all reasonable assistance and information in connection with SST's investigation and defense of any claim of infringement.

Further provided, however, that this section shall not apply and SST shall have no obligation to defend and indemnify City in the event the City or a reseller, integrator, service provider or supplier modifies, alters, substitutes, or supplements any of the Service, or Software, or to the extent that the claim of infringement arises from or relates to the integration, bundling, merger or combination of any of the same with other hardware, software, systems, technologies, or components, functions, capabilities or applications not licensed by SST as part of the Service, nor shall it apply to the extent that the claim of infringement arises from or relates to meeting or conforming to any instruction, design, direction or specification furnished by the City, nor to the extent that the Service or Software are used for or in connection with any purpose, application or function other than detecting and locating gunshots exclusively through acoustic means.

If, in SST's opinion, the Service, or Software may, or is likely to become, the subject of such a suit or action, does become the subject of a claim asserted against a City in a lawsuit which SST is or may be obliged to defend under this section, or is determined to infringe the foregoing patents or copyrights of another in a final, non-appealable judgment subject to SST's obligations under this section, then SST may in full and final satisfaction of any and all of its obligations under this section, at its option: (1) procure for City the right to continue using the affected Service or Software, (2) modify or replace such Service or Software to make it or them non-infringing, or (3) refund to the purchaser a pro-rata portion of the annual Service price paid for the Service System.

The foregoing section states the entire liability of SST and City's and its suppliers' exclusive remedy for or relating to infringement or claims or allegations of infringement of any patent, copyright, or other intellectual property rights in or to the system, system components, and software. This section is in lieu of and replaces any other expressed, implied, or statutory warranty against infringement of any and all intellectual property rights.

7. LIMITED WARRANTIES EXCLUSIVE; DISCLAIMERS *IMPORTANT; PLEASE READ CAREFULLY* To the maximum extent permitted by applicable law, the limited warranties expressly set forth above are exclusive, and in lieu of all other warranties, whether written, oral, express, implied or statutory. There are no warranties that extend beyond those expressly set forth herein, and no prior statements, representations, or course of dealing by any SST representatives shall vary, expand, or modify these warranties.

To the maximum extent permitted by applicable law, all other representations or warranties, express, implied, or statutory, including without limitation, any warranties of non-infringement, quality, suitability, merchantability, fitness for a particular purpose or otherwise of any services or any goods provided incidental to the services provided

under this agreement are hereby expressly disclaimed and superseded by the exclusive limited express warranty and disclaimers set forth herein.

Without limiting the generality of the foregoing limitations and disclaimers, while the Service is not designed, sold, or intended to be used to detect, intercept, transmit or record oral or other communications of any kind, SST cannot control how the Service is used, and, accordingly, SST does not warrant or represent, expressly or implicitly, that use of the Service will comply or conform to the requirements of federal, state or local statutes, ordinances and laws, or that use of the Service will not violate the privacy rights of third parties. City shall be solely responsible for using the Service in full compliance with applicable law and the rights of third persons.

Further, regardless of any prior statements, representations, or course of dealings by any SST representatives, ShotSpotter does not warrant or present, expressly or implicitly, that the Service or its use will: result in the prevention of crime or hostile enemy action, apprehension or conviction of any perpetrator of any crime, military prosecution of any enemy force, or detection or neutralization of any criminal, combatant or threat; prevent any loss, death, injury, or damage to property due to the discharge of a firearm or other weapon; in all cases result in a Reviewed Alert for all firearm discharges within the designated coverage area; or that the SST-supplied network will remain in operation at all times or under all conditions.

SST expressly disclaims, and does not undertake or assume any duty, obligation or responsibility for any decisions, actions, reactions, responses, failure to act, or inaction, by City as a result of or in reliance on, in whole or in part, any Services or Reviewed Alerts provided by SST, or for any consequences or outcomes, including any death, injury, or loss or damage to any property, arising from or caused by any such decisions, actions, reactions, responses, failure to act, or inaction. It shall be the sole and exclusive responsibility of the City to determine appropriate decisions, actions, reactions, or responses, including whether or not to dispatch emergency responder resources. City hereby expressly assumes all risks and liability associated with any and all action, reaction, response, and dispatch decisions, and for all consequences and outcomes arising from or caused by any decisions made or not made by City in reliance, in whole or in part, on any Services provided by SST, including any death, injury, or loss or damage to any property.

Any and all warranties, express or implied, of fitness for high risk purposes requiring fail-safe performance are hereby expressly disclaimed. City and ShotSpotter each acknowledge and agree that the Service is not a consumer good, and is not intended for sale to or use by or for personal, family or household use.

8. CITY'S OBLIGATIONS. City acknowledges and agrees that SST's duties, including warranty obligations, and ability to perform its obligations to City, shall be predicated and conditioned upon City's timely performance of and compliance with City's obligations hereunder, including, but not limited to:

A. City agrees to pay all sums due under the purchase agreement or order as and when they are due pursuant to the terms of such agreement or order. Actual access and use of the SST Service shall constitute evidence that the Service is active and the final payment is due.

B. Non-Allocation. The effectiveness of this contract is contingent upon the City receiving the CalGRIP 2014 Grant award all three years. The City is committed to the CalGRIP Grant Program for the entire funding cycle commencing January 1, 2015, and ending December 31, 2017. CalGRIP Grant Funding is dependent upon satisfactory performance of the City and availability of State funding. SST understands and agrees that the availability of funds is subject to City receiving awards of funds from state and federal agencies. Should grant awards funding this Agreement be encumbered, withdrawn, or otherwise made unavailable to City, whether earned by or promised to SST, or should City in any fiscal year fail to allocate said funds to this Agreement, City shall not provide said funds unless and until they are made available for payment to City and City received and allocates said funds. No other funds owned or controlled by City shall be obligated under this Agreement. City shall provide immediate notification to ShotSpotter if such grant awards are encumbered, withdrawn, or otherwise made unavailable to City, or should City in any fiscal year fail to allocate said funds to this Agreement, at which time City shall release ShotSpotter from all obligations under this Agreement.

C. City agrees to use its best efforts to timely perform and comply with all obligations allocated to City in the Purchase Documents and/or other contract documents, including, without limitation, provisions regarding assisting SST in obtaining sensor site permissions from premises owners or lessors, in locations reasonably acceptable to SST, which obligations are incorporated by reference and made a part hereof. Unless the Statement of Work or other contract documents signed by SST allocates such obligations to SST expressly, City shall be responsible for facilitating SST in obtaining from premises owners or lessors all rights necessary to enter onto their premises to install sensors, and to place, operate and maintain such sensors on such premises. SST's duties, including warranty obligations to City shall be predicated and conditioned upon City's timely performance of and compliance with City's obligations set forth herein, and in the Purchase Documents.

D. City shall not permit any alteration, modification, substitution, or supplementation of the SST Service or web portal, or the combining, connection,

merging, bundling, or integration of the SST Service or web portal into or with any other system, equipment, hardware, software, technology, function, or capability, without ShotSpotter's prior written consent.

E. Unless otherwise expressly agreed in advance in writing by SST, City shall not resell, transfer, distribute or allow access to the Service or web portal or any portion thereof, to any person other than the specific end-user previously identified to SST in the Purchase Documents, and shall not authorize or appoint any contractors, subcontractors, original equipment manufacturers, value added integrators, systems integrators or other third parties to operate, have access to, or sublicense the Products.

F. City Must Have Internet Access. In order to use the Service, City must have or must obtain access to the World Wide Web to enable a secure https connection from the City's workstation to SST's hosted services, either directly or through devices that access Web-based content. City must also provide all equipment necessary to make such (and maintain such) connection.

G. Passwords and Access. City may designate up to the number of users under City's account, which corresponds to the access required by assigning unique passwords and user names. City will be responsible for the confidentiality and use of City's password and user names, and agrees that sharing passwords and/or user names with unauthorized users is prohibited.

H. City shall comply with all applicable laws, rules, and regulations relating to the goods and services provided hereunder.

9. INTELLECTUAL PROPERTY RIGHTS; LIMITED LICENSE. ShotSpotter and ShotSpotter's licensors retain all ownership of all intellectual property rights in and to all data, software, computer programs, related documentation, technology, knowhow, and processes embodied in or made available to City in connection with the Service, and Software, including, without limitation, all patent rights, copyrights, trade secret rights, trademarks, and service marks. City's rights to install and use the Data and Software are limited, and shall be strictly in accordance with the License set forth in Section 2 hereof. Any and all rights not granted expressly in such License are hereby reserved.

10. EXPORT CONTROL. City acknowledge that the ShotSpotter Flex System is the subject of a Commodity Jurisdiction determination by the U.S. State Department, and has been determined to be a controlled commodity, software and/or technology subject to the U.S. Export Administration Regulations of the U.S. Department of Commerce. Accordingly, no part of the Data, Software, ShotSpotter Flex System or any GLS System component thereof may be transferred, consigned, shipped, delivered, received, exported or re-exported, nor may any technical data directly relating to any of the same or the underlying information or technology be disclosed, downloaded,

uploaded, transmitted, received, furnished, or otherwise provided, to, by or through any person, government, country, or to any end-user, or for any end users, except in compliance with applicable U.S. export control laws administered by the U.S. Government, and any other applicable U.S. laws, including the sanctions laws administered by the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC), the U.S. Anti-Boycott regulations, and any applicable laws of the United States. In this respect, no resale, transfer, or re-export of any ShotSpotter Flex System exported to City pursuant to a license from the U.S. Department of Commerce may be control laws administered by the U.S. Government, and any other applicable U.S. laws, including the sanctions laws administered by the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC), the U.S. Anti-Boycott regulations, and any applicable laws of City's country. In this respect, no resale, transfer, or re-export of any ShotSpotter Flex System exported to City pursuant to a license from the U.S. Department of Commerce may be resold, transferred, or reported without prior authorization by the U.S. Government. City agrees not to export, re-export or engage in any "deemed export," or to transfer or deliver, or to disclose or furnish, to any foreign (non- U.S.) government, foreign (non-U.S.) person or end-user, or to any U.S. person or entity, any of the ShotSpotter Flex System, GLS System components, Data, Software, Services, or any technical data or output data or direct data product thereof, or any service related thereto, in violation of any such restrictions, laws or regulations, or without all necessary registrations, licenses and or approvals. Unless otherwise agreed and so specified in the Purchase Documents, City shall obtain and bear all expenses relating to any necessary determinations, registrations, licenses and/or exemptions with respect to its exportation, re- exportation or "deemed export" of the ShotSpotter Flex System, Data, Software or any GLS System Components or Services, as well as with respect to the disclosure or furnishing of any technical data or other information and services relating to any of the same.

In addition to compliance with the foregoing, and without limiting the generality thereof, City shall not disclose, discuss, download, ship, transfer, deliver, furnish, or otherwise export or re-export any such item(s) to or through: (a) any person or entity on the U.S Department of Commerce Bureau of Industry and Security's List of Denied Persons or Bureau of Export Administration's anti- proliferation Entity List; (b) any person on the U.S. Department of State's List of Debarred Parties; (c) any person or entity on the U.S. Treasury Department Office of Foreign Asset Control's List of Specially Designated Nationals and Blocked Persons; or (d) any other end-user or for any end-use prohibited by law or regulation, as any and all of the same may be amended from time to time, or any successor thereto.

11. PROTECTION OF CONFIDENTIAL INFORMATION. Unless either party (the "Receiving Party") obtains prior written consent from the other (the "Disclosing Party"),

the Receiving Party agrees that it will not reproduce, use for purposes other than those expressly permitted herein, disclose, sell, license, afford access to, distribute, or disseminate:

i) Any information obtained from the Disclosing Party in connection with the System purchase, installation or operation, and designated by it from time to time as confidential;

ii) Documentation, use and operations manuals, or output data created or compiled by the ShotSpotter Flex System;

iii) City's use of the ShotSpotter Flex System or technology, deployment methodology, results, or related facts;

iv) Contractual terms and payment terms applicable to the purchase of the ShotSpotter Flex System or technology, except as required by local law (collectively, "Confidential Information").

Unless a section of the Purchase Document(s) specifies that City's identity is Confidential Information, the fact that City is a customer of SST shall not itself be considered Confidential Information, nor shall the name of any city in which the ShotSpotter GLS System is deployed be considered confidential information.

Recipient's obligations under this section shall not apply to any of Discloser's Confidential Information that:

(a) was in the public domain at or subsequent to the time such Confidential Information was communicated to Recipient by Discloser through no fault of Recipient;

(b) was rightfully in Recipient's possession free of any obligation of confidence at or subsequent to the time such Confidential Information was communicated to Recipient by such Discloser;

(c) was developed by employees or agents of Recipient independently of and without reference to any of Discloser's Confidential Information; or

(d) was communicated by Discloser to an unaffiliated third party free of any obligation of confidence.

A disclosure by Recipient of any of Discloser's Confidential Information:

(a) in response to a valid order by a court or other governmental body;

(b) as otherwise required by law; or

(c) necessary to establish the rights of either party under this Agreement,

shall not be considered to be a breach of this Agreement by such Recipient; provided, however, such Recipient shall provide prompt prior written notice thereof to such Discloser to enable Discloser to seek a protective order or otherwise prevent such disclosure. Receiving Party shall use reasonable controls to protect the confidentiality

of and restrict access to all such Confidential Information to those persons having a specific need to know the same for purposes expressly authorized herein, and render unreadable prior to discarding, all records containing Confidential Information. In any event such controls shall not be less protective than those Receiving Party uses to secure and protect its own confidential information.

12. FORCE MAJEURE. In no event shall SST be liable for any delay or default in its performance of any obligation under this or any other agreement caused directly or indirectly by an act or omission of City, or persons acting under its direction and/or control, fire, flood, act of God, an act or omission of civil or military authority of a state or nation, strike, lockout or other labor disputes, inability to secure, delay in securing, or shortage of labor, materials, supplies, transportation, or energy, failures, outages or denial of services of wireless, power, telecommunications, or computer networks, acts of terrorism, sabotage, vandalism, hacking, natural disaster or emergency, war, riot, embargo or civil disturbance breakdown or destruction of plant or equipment, or arising from any cause whatsoever beyond SST's reasonable control. At SST's option and following notice to City, any of the foregoing causes shall be deemed to suspend such obligations of SST so long as any such cause shall prevent or delay performance, and SST agrees to make and City agrees to accept performance of such obligations whenever such cause has been remedied.

13. DEFAULT; REMEDIES. Upon the breach of City's obligations, ShotSpotter may either: (i) terminate ShotSpotter's future obligations under this agreement, and terminate City's License to use the Service and Software, or (ii) accelerate and declare immediately due and payable all remaining charges for the remainder of the agreement and proceed in any lawful manner to obtain satisfaction of the same. In either case, City shall also be responsible for paying court costs and reasonable attorneys' fees incurred by or on behalf of us, as well as applicable repossession, shipping, repair and refurbishing costs.

14. LIMITATIONS ON LIABILITY. In no event shall either party, or any of its affiliates or any of its/their respective directors, officers, members, attorneys, employees, or agents, be liable to the other party under any legal or equitable theory or claim, for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages.

In any event, except for its IP infringement indemnity obligations under section 6 hereof, SST's cumulative liability for all losses, claims, suits, controversies, breaches or damages for any cause whatsoever (including, but not limited to, those arising out of or related to this agreement) and regardless of the form of action or legal theory shall not exceed two times the amount paid to SST under this agreement, or the amount of insurance maintained by SST available to cover the loss, Whichever is greater. The foregoing limitations shall apply without regard to any failure of essential purpose of any remedies given herein.

15. GENERAL PROVISIONS.

A. FINANCIAL REPORTING, AUDITING AND DOCUMENT RETENTION. SST. shall maintain accurate, complete, orderly and separate records for the gun shot detection services. Records of SST expenses pertaining to the gun shot detection services shall be kept on a generally recognized accounting basis. All records shall be available to the City, Bureau of State and Community Corrections (BSCC), or their authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law or the Grant. In addition, all books, documents, papers, and records of SST pertaining to the gun shot detection services shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This paragraph shall survive expiration or termination of this Agreement.

B. COMPLIANCE WITH GOVERNING LAW AND GRANT

SST shall at all times comply with all applicable laws of the United States (including, but not limited to, the Health Insurance Portability and Accountability Act of 1996, or "HIPAA"), the State of California, the City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement. SST acknowledges receipt of a copy of the Grant and agrees to comply with all applicable provisions thereof and cooperate with the City in meeting the requirements there under.

Applicable, costs and expenditures must be allowable in accordance with OMB Circular A-87, *Cost principles for state, local and Indian Tribal Governments.* Grant funds are subject to the Single Audit Act Amendments of 1996 and the OMB Circular, A-133, *Audits of states, local governments and non-profit organizations.*

By signing this Agreement, SST certifies under penalty of perjury under the laws of the State of California that (i) SST INC. will comply with the Drug-Free Workplace Act of 1990 (California Government Code sections 8350-8357); and (ii) SST is not listed on any federal or state list of individuals or organization debarred from receiving a contract or grant, or having its contract or grant cancelled due to failure to comply with respective contract or grant provisions. SST shall complete and submit to the City all applicable forms required by the Grant upon notice by the City.

City shall comply with all applicable laws, statutes and regulations relating to the sale, distribution, and use of the Service and the performance of the City's duties and obligations

C. CAPACITY OF AGENCY AND SST.

In the furnishing of the services provided for herein, SST is acting solely as an independent contractor. Neither SST, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venture, partner or associate of the City for any purpose. The City shall have no right to control or supervise or direct the manner or method by which SST shall perform its work and functions. However, the City shall retain the right to administer this Agreement so as to verify that SST is performing its obligations in accordance with the terms and conditions thereof.

This Agreement does not evidence a partnership or joint venture between SST and City. SST shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this Agreement, SST shall bear its own costs and expenses in pursuit thereof.

Because of its status as an independent contractor, SST and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. SST shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, SST shall be solely responsible for, **and** indemnify, defend and hold the City harmless from all matters relating to employment and tax withholding for and payment of SST's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co- employee rights or other theory. It is acknowledged that during the term of this Agreement, SST may be providing services to others unrelated to or to this Agreement.

D. INSURANCE

1. Throughout the life of this Agreement, ShotSpotter shall pay for and maintain in full force and effect all insurance as required in **Exhibit "D"** or as may be authorized in writing by City'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated in **Exhibit "D"** shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to the City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

2. If at any time during the life of the Agreement or any extension, ShotSpotter or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to ShotSpotter shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve ShotSpotter of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

3. The fact that insurance is obtained by ShotSpotter shall not be deemed to release or diminish the liability of ShotSpotter, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by ShotSpotter. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of ShotSpotter, its principals, officers, agents, employees, persons under the supervision of ShotSpotter, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

4. Upon request of City, ShotSpotter shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

5. If ShotSpotter should subcontract all or any portion of the services to be performed under this Agreement, ShotSpotter shall require each subcontractor to provide insurance protection in favor of City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with ShotSpotter and City prior to the commencement of any services by the subcontractor.

E. INDEMNIFICATION

To the furthest extent allowed by law, ShotSpotter shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of ShotSpotter, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If ShotSpotter should subcontract all or any portion of the services to be performed under this Agreement, ShotSpotter shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

F. ATTORNEY'S FEES

If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

G. PRECEDENCE OF DOCUMENTS

In the event of any conflict between the body of this Agreement and any exhibit hereto, the terms and conditions of the body of this Agreement shall control and take precedence over terms and conditions expressed within the exhibit. Furthermore, any terms or conditions contained within any exhibit hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

H. NOTICES

Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, return receipt requested, with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth in Section 1 of this Agreement or at such other address as the parties may from time to time designate by written notice.

I. BINDING

Once this Agreement is signed by the parties, it shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

J. ASSIGNMENT

There shall be no assignment by either party of its rights or obligations under this Agreement without the prior written approval of the other party, which shall not be unreasonably withheld. Any attempted assignment by a party, its successors or assigns, shall be null and void unless approved in writing by the other party.

K. WAIVER

The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and approved by and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any provision herein.

L. GOVERNING LAW AND VENUE

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

M. HEADINGS

The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

N. SEVERABILITY

The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in the Agreement shall not affect the other provisions.

O. INTERPRETATION

The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

P. CUMULATIVE REMEDIES

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

Q. NO THIRD PARTY BENEFICIARIES

The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

R. ENTIRE AGREEMENT

It is mutually understood and agreed that the forgoing constitutes the entire AGREEMENT between the parties. Any modifications or amendments to this AGREEMENT must be in writing signed by an authorized agent of each party.

THIS AGREEMENT IS SUBJECT TO RATIFICATION BY COUNCIL ACTION.

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IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the date(s) shown below.

CITY OF FRESNO,
a California municipal corporation

By: _____ 4/8/15
JERRY P. DYER Date
Chief of Police
Fresno Police Department

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: Sherri L. Bedentocher 4/9/2015
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Amanda B. Freeman 4/3/15
AMANDA B. FREEMAN
Deputy City Attorney

ShotSpotter, Inc. dba SST, Inc.,
a Delaware corporation

By: _____ 4/2/15
(name), Ralph Clark Date
President

By: _____ 4/2/15
(name), Sonya Strickler Date
Secretary

Addresses:

CITY:
Fresno Police Department
Attention:
Lt. David Newton
2323 Mariposa Street
Fresno, CA 93721

ShotSpotter, Inc. dba SST, Inc.
Attention:
Sonya Strickler
ShotSpotter, Inc.
7979 Gateway Blvd., Suite 210
Newark, CA 94560

Attachments:
Exhibit A – Service Description
Exhibit B – Deliverables and Responsibilities
Exhibit C – Payments
Exhibit D – Insurance Requirements

EXHIBIT A
SERVICE DESCRIPTION

The ShotSpotter Flex System detects loud impulsive incidents, classifies them as gunfire, fireworks, or other, and sends them to the SST Incident Review Center. Within 15 seconds of receiving the incident audio download, SST review personnel will begin analysis of the incident, which will include observing sensor audio wave files and listening to sensor audio. The outcome of this review is intended to confirm or change the System's classification of the incident type, and, depending on the reviewer's confidence level that the incident is or may be gunfire, will result in an alert ("Reviewed Alert") sent to the City's Alert Console, based on the following criteria:

Incident Type	Action
High confidence incident is gunfire	Reviewed Gunfire Alert sent to City's Alert Console
Uncertain if incident is gunfire or not	Reviewed Possible Gunfire Alert sent to City's Alert Console
Low confidence incident is gunfire	**No alert will be sent;** incident available for customer review in the incident history available through the City's Alert Console

Reviewed Alerts are sent to the City's Alert Console. Information in a Reviewed Alert will include the location of the incident, the reviewer's qualitative assessment of the confidence level that the incident is or may be gunfire, along with other pertinent information and data.

Specifically, information provided in a Reviewed Alert may include any or all of the following:

- "Dot on the map" and closest parcel address denoting the location of the incident
- Qualitative Confidence that the incident is gunfire: High or Uncertain
- Qualitative Severity: Single shot, multiple shots, drive by shooting, full automatic
- Comments (if any)

The majority of incidents will be processed within 45 seconds of the System notifying the SST Incident Review Center of an incident and 90% of the incidents will be processed in less than 60 seconds. In the unlikely event that the review center loses connection to the hosting facility or the review center is unable to process the incident within approximately 60 seconds for some reason, the system will automatically route unreviewed incidents directly to the customer based on the systems classification of the incident. In the event the reviewed incident data reveals information that will aid in responder situational awareness, SST may (but is not obligated to) include this information as Comments in the Reviewed Alert.

During major holidays such as in the case of New Years Eve, Independence Day, and Cinco de Mayo, most communities experience a large increase in firework activity. During these periods, usually at least 48 hours in advance of the holiday, during the holiday and 48 hours following the holiday, SST will put the system into fireworks suppression mode so that the reviewers can focus their response to incidents classified as gunfire. SST will inform City prior to the system being placed in fireworks suppression mode and when fireworks suppression mode is disabled. The actual timing of fireworks suppression mode being active is determined by the review center based on the level of fireworks being discharged. While in fireworks suppression mode, fireworks incident alerts are not sent to the reviewer nor the customer alert console, however all firework incidents continue to be stored in the data base should any of this information be needed at a later time.

The purpose of the Reviewed Alert Service is to provide incident data to the City, reviewed, analyzed and classified in the manner described above, in situations where the analyst's qualitative confidence that an incident is or may be gunfire meets the criteria set forth above. However, it is the sole responsibility of the City to interpret the data provided, and to determine any appropriate follow-up reaction or response, including whether or not to dispatch emergency responder resources based on a Reviewed Alert. SST does not undertake any obligation, duty or responsibility for reaction, response, or dispatch decisions, which are solely and exclusively the responsibility of City, or for the consequences or outcomes of any decisions made or not made by City in reliance, in whole or in part, on any services provided by SST.

The Incidents & Reports Portal provides City with full and immediate access to all incident history including the same information SST uses in its internal review process. This information includes, among other things, the initial incident classification and any reclassifications of an incident, incident audio wave forms, and incident audio files. This enables City to perform its own incident reviews and run various reports. This data access is available as long as City is under active subscription.

EXHIBIT B
DELIVERABLES AND RESPONSIBILITIES

SST will deploy or have deployed a ShotSpotter Flex system over a coverage area of three square miles as determined by the City The system will be designed to detect at least 80% of the unsuppressed outdoor gunfire, with a location accuracy to the shooter's location within 25 meters, after sensor calibration. These performance levels are predicated on the deployment of sensors at all such sites, the foregoing performance levels may be compromised.

The sensors send incident information to a server in a SST hosting facility via third party cellular, wireless or wired networks. SST is not responsible for outages on the third party networks. SST will be responsible for installation and maintenance of the sensors and cost of the sensor communications to the hosted location server. The hosted server infrastructure (exclusive of communications networks) shall be maintained at 99.9% application availability exclusive of scheduled maintenance that SST will make reasonable efforts to coordinate with the customer.

The connection between the reviewer's console and the Customer's Alert Console is secured using a secure message protocol over http connection, where individual messages are encrypted using the same Public Key Infrastructure ("PKI") as a secure VPN connection.

Providing local access to the internet for the Alert Console is the responsibility of the Customer, as is providing a work station with access to the internet. The Customer may choose to set up multiple sessions of Alert Consoles as a form of redundancy.

SST shall have responsibility for:

1. Following all local, state and federal regulations, codes, rules and laws as it relates to the installation of the ShotSpotter Flex™ service;
2. Program Development and subscription orientation;
3. Conducting a Site Survey for Acoustic and sensor communications feasibility for each sensor location and proposed emplacement. Site surveys will follow contract execution; the site survey will determine the ultimate coverage area footprint and area exclusions. Actual coverage areas may vary from cursory and pre-sales discussions due to challenges that include: physical obstructions, radio or cellular reliability, availability and permissions at suitable mounting locations;
4. Providing hosted services and access for administration, alerts, and optional role-based support packages as applicable;

5. Providing secure storage of customer data (minimum of two years online, five years offline);
6. Monitoring systems for customer support and "hands off" software upgrades;
7. Installing Alert Consoles on allocated workstations with City IT assistance;
8. Configuring data communications between the Alert Console, workstation(s) and the hosted server with City IT assistance;
9. Installing and maintaining SST and CITY assets (i.e. acoustic sensors) necessary for the operation of the gunshot detection system; telecommunications lines; and/or Radio Frequency ("RF") data radios including antenna systems, all adhering to relevant electrical codes.
10. System calibration and operational validation;
11. Training City staff to use the Service (including administrative training); and
12. Providing ongoing Reviewed Alerts and customer support as described.

City shall have responsibility for:

1. Operating the SST System Profiler (a web-based analyzer) to verify system configuration and network access required for each computer (PC or MDC) to have access the ShotSpotter Flex service;
2. Providing network access required to meet SST minimum specifications and requirements for all computers (PC and MDC) accessing the ShotSpotter Flex Service; and
3. Providing GIS Data, including parcels, addresses, and beat boundaries, and clearly identifying the coverage area(s) and reporting areas; and Providing data communications to mobile computers to support Alert Consoles in patrol cars, command vans, etc.

EXHIBIT C
PAYMENTS

Pricing for the Three-Year Agreement between City and ShotSpotter:

One-time service initiation/startup fee for 3.0 SM coverage area (@$10,000/SM)	$ 30,000
One-time training fee (including Train the Trainer one--week deep dive)	$ 10,000
Annual Subscription – 3.0 SM of coverage area (@$50,000/SM)	$150,000
Discount of $30,000 for 3-year Subscription Contract	(- $ 30,000)
Discount of $10,000 on training costs	(- $ 10,000)
TOTAL (with 3-year contractual commitment)	**$ 450,000**

This Agreement will be fulfilled by the following payments upon completion of tasks and invoicing:

1. $109,005 payable within 10 days upon completion and invoicing of the following tasks:
    a. Coverage area/sensor array design;
    b. Site survey for sensor placement; and
    c. Identify and complete initial contact of property owners (with Police Department assistance)

SST will complete the above tasks in March and April of 2015. Upon execution of this Agreement and completion of the activities above, SST will invoice for this first payment. Estimated date of task completion and invoicing is **April 30, 2015**.

2. $109,006 payable within 10 days of completion and invoicing of the following tasks:
    a. Array device installation;
    b. Device Qualifying Verification;
    c. Install Alert notifications on allocated workstations (with City IT assistance);
    d. Configure data communications between the Alert Consoles, workstation(s) and the hosted server (with City IT assistance);
    e. Install necessary SST assets (i.e. sensors) and (as appropriate) telecommunications lines and/or Radio Frequency ("RF") data radios including antenna systems;
    f. Train Real Time Crime Center staff (including administrative training);
    g. Calibrate system and validate system operation.

SST will invoice the second payment once the system is live and operational, and FPD has signed its full acceptance of the system. SST estimates this will be within 120 days of execution of this Agreement. Typically, with the support of the police department in this activity, SST can shorten the time period to get the system live. SST anticipates invoicing the second payment approximately **July 31, 2015**.

3. $113,589.00 due and payable by **February 15, 2016**; and

4. $118,400.00 due and payable by **February 15, 2017**.

Payments above do not include state or local sales taxes. The City shall notify SST if the price needs to be adjusted for sales taxes.

SST understands and agrees that the availability of funds is subject to City receiving awards of funds from state and federal agencies. Should grant awards funding this Agreement be encumbered, withdrawn, or otherwise made unavailable to City, whether earned by or promised to SST, or should City in any fiscal year fail to allocate said funds to this Agreement, City shall not provide said funds unless and until they are made available for payment to City and City received and allocates said funds. No other funds owned or controlled by City shall be obligated under this Agreement. City shall provide immediate notification to ShotSpotter if such grant awards are encumbered, withdrawn, or otherwise made unavailable to City, or should City in any fiscal year fail to allocate said funds to this Agreement, at which time City shall release ShotSpotter from all obligations under this Agreement.

EXHIBIT D

INSURANCE REQUIREMENTS

SERVICE AGREEMENT BETWEEN THE CITY OF FRESNO ("CITY")

AND SST, Inc. ("ShotSpotter")

ShotSpotter shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City of Fresno's ("City") Risk Manager or his/her designee. The required policies of insurance as stated in **Exhibit D** shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to the CITY, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured. The following policies of insurance are required:

(i) PERSONAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) form CA 00 01 and shall include coverage for "owned auto" that is legally registered to Consultant with limits of liability of not less than $300,000 per accident for bodily and property damage.

(ii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

ShotSpotter shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and ShotSpotter shall also be responsible for payment of any self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar day written notice by certified mail, return receipt requested, has been given to the City. Upon issuance by the insurer, broker or agent of a notice of cancellation, non-renewal or reduction in coverage or limits, ShotSpotter shall furnish City with a new certificate and applicable endorsements for such policy(ies). **In the event any policy(ies) are due to expire during the work to be conducted for the City, ShotSpotter shall provide a new certificate and all applicable endorsements evidencing renewal of such policy(ies) not less than 15 calendar days prior to the expiration date of the expiring policy(ies).**

The Automobile Liability insurance policy shall name City of Fresno, its officers, officials, employees, agents and authorized volunteers as an additional insured. ShotSpotter's insurance shall be primary as respects to the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents and volunteers shall be excess of the Vendor's insurance and not contribute with it. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, employees, agents and authorized volunteers (Not required if Consultant is sole proprietor). ShotSpotter shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance seven (7) days prior to beginning the work for the City.

ShotSpotter shall furnish City with copies of the actual policies upon the request of City's Risk Manager or his/her designee and this requirement shall survive completion of the work required under the Emergency Purchase Order.

If at any time during the work to be conducted for the City, ShotSpotter fails to maintain the required insurance in full force and effect, the work shall be discontinued immediately until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City.

NOTE: The back of the certificate of insurance states, **"If the certificate holder is an Additional Insured, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement".** The back of the certificate of insurance also states, **"If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s)."** A certificate of insurance **must** be accompanied by the additional insured and/or waiver of subrogation endorsements.