

**AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND BAIR ANALYTICS, INC.
FOR
CRIME STATISTICS ANALYTICAL SERVICES**

This Agreement is entered into this 4th day of October, 2013, by and between the City of Rapid City, a municipal corporation organized under the laws of the State of South Dakota, of 300 Sixth Street, Rapid City, South Dakota 57701, (the "City"), and Bair Analytics, Inc., a Colorado corporation, with its principal place of business located at 640 Plaza Drive, Suite 340, Highlands Ranch, Colorado 80129 ("BAIR"). The parties agree to the following terms:

1. Specifications. BAIR agrees to perform the work and provide the services described in its September 19, 2013, Statement of Work, which is attached hereto as Exhibit A and incorporated herein by this reference. In the event any terms of this Agreement conflict with the attached Statement of Work, this Agreement shall control.

2. Effective Date. This Agreement shall be effective upon execution by both parties.

3. Notices. All notices given hereunder shall be in writing, and made by certified mail, return receipt requested, to the parties at the following addresses:

Rapid City Police Department
Attn: Chief Steve Allender
300 Kansas City Street, Suite 200
Rapid City, SD 57701

BAIR Analytics, Inc.
Attn: Sean Bair
640 Plaza Drive, Suite 340
Highlands Ranch, CO 80129

Each party shall have the right, by written notice given to the other pursuant to the provisions of this paragraph, to change from time to time the respective addresses at which notice shall be given. The parties agree that respective notification of any changes in contact information or the address of business correspondence shall be provided within thirty (30) days after said change.

4. Term and Renewal. Unless terminated pursuant to section five (5.) below, the Term of this Agreement shall be from the aforementioned effective date, and shall remain in effect until fifty-two (52) weeks after BAIR has commenced the services described in the Statement of Work, after which time this Agreement shall automatically terminate. This Agreement may be renewed only upon written agreement executed by both parties.

5. Termination for Default. The City shall have the option of terminating this Agreement immediately if any of the following instances of default occur:

- a. BAIR dissolves or is administratively dissolved;

- b. BAIR enters any type of proceedings related to its insolvency, whether bankruptcy, receivership, or otherwise;
- c. BAIR ceases its business operations.

Should the City choose to exercise its option to terminate this Agreement pursuant to this paragraph, such termination will be effective upon mailing of written notice to BAIR, at which time BAIR shall have no further rights under this Agreement, including no right to further payment.

6. Satisfaction with Services; Breach of Agreement; Remedies. BAIR agrees to perform the work and provide the services identified in Exhibit A, the Statement of Work, to the City's satisfaction. If BAIR breaches any provision of this Agreement, including any provision of the Statement of Work, City may give written notice to BAIR by certified mail detailing BAIR's violations. If such violation(s) is not corrected to the reasonable satisfaction of City within thirty (30) days after the date of notice of violation, or within such a reasonable time as may be required to cure the violation (provided the acts to cure the violation(s) are commenced within thirty (30) days and thereafter diligently pursued to completion), the City may, without further notice, declare BAIR to be in breach of this Agreement. Upon declaration of BAIR's breach, City may pursue any remedy available under local, state, or federal law, including, but not limited to, an action to enforce this Agreement by specific performance, or injunction.

Notwithstanding the foregoing, the parties agree that best efforts will be made to informally resolve identified satisfaction issues, whether those issues are identified verbally or in writing, prior to the institution of any action in law or equity. The parties agree that informal resolution efforts shall not constitute a waiver on the part of the City of the remedies provided for in this section.

7. Confidentiality. City now owns and will hereafter develop, compile and own certain confidential statistical information which has great value in carrying out and strategically planning law enforcement activities (collectively, "City Information"). City will be disclosing City Information to BAIR during BAIR's performance under this Agreement. City Information includes not only information disclosed by City, but also information developed or learned by BAIR during BAIR's performance under this Agreement. City Information is to be broadly defined and includes all information which has or could have statistical value or other utility to the City or the unauthorized disclosure of which could be detrimental to the interests of City, whether or not such information is identified by City.

BAIR agrees that at all times during or subsequent to the performance under this Agreement, BAIR will keep confidential and not divulge, communicate, or use City Information, except for BAIR's own use during the term of this Agreement to the extent necessary to perform the work and services hereunder. BAIR further agrees not to cause the transmission, removal or transport of tangible embodiments of, or electronic files containing, City Information from City's principal place of business, without prior written approval of City.

8. City Property. All materials, including without limitation documents, drawings, drafts, notes, designs, computer media, electronic files and lists, including all additions to,

deletions from, alterations of, and revisions in the foregoing (together the "Materials"), which are furnished to BAIR by City or which are developed in the process of performing the work and services under this Agreement, or embody or relate to the work and services under this Agreement, and the City Information, are the property of City, and shall be returned by BAIR to City promptly at City's request together with any copies thereof, and in any event promptly upon expiration or termination of this Agreement for any reason. BAIR is granted no rights in or to such Materials, or the City Information, except as necessary to fulfill its obligations under this Agreement. BAIR shall not use or disclose the Materials or City Information to any third party.

9. Price and Payment. BAIR agrees to perform the work described above for an amount not to exceed Seventy Thousand Dollars and Zero Cents (\$70,000.00), to be invoiced quarterly by BAIR to the City in four equal installments of Seventeen Thousand Five Hundred Dollars and Zero Cents (\$17,500.00). City shall remit payment to BAIR within forty-five (45) days of each invoice.

10. Funds Appropriation. If funds are not budgeted or appropriated for any fiscal year for services provided by the terms of this Agreement, this Agreement shall impose no obligation on the City for payment. This Agreement is null and void except as to amounts herein agreed upon for which funds have been budgeted or appropriated, and no right of action or damage shall accrue to the benefit of BAIR, its successors or assignees, for any further payments. For potential future phases of services BAIR may provide to City, services not identified within this Agreement shall not constitute an obligation by the City until funding for those services has been appropriated, and the City has agreed in writing to contract with BAIR for additional services.

11. Insurance. BAIR shall obtain and maintain at its expense the following minimum limits of occurrence-based insurance coverage for the duration of this Agreement.

<u>Type of Coverage</u>	<u>Minimum Limits of Coverage</u>
A. Workers' Compensation Employer's Liability	Statutory \$500,000
B. Comprehensive General Liability (Including Contractual Liability and Completed Operations) Bodily Injury and Property Damage General Aggregate	\$1,000,000 each occurrence \$2,000,000

Such insurance policies shall name the City of Rapid City as an additional insured with respect to all activities arising out of the performance of the work and services under this Agreement. Acceptable Certificates of Insurance and Endorsements confirming the above coverage shall be filed with the City before commencing any work or services. Such Certificates shall afford the City thirty (30) days written notice of cancellation or of a material change in coverage. The City's failure to obtain from BAIR a Certificate of Insurance conforming to the foregoing requirements shall not be deemed a waiver of any of the foregoing requirements. This paragraph shall in no way limit the provisions of the indemnity section.

12. Indemnity. BAIR agrees to indemnify, defend and hold the City harmless from and against any and all liability, losses, claims, damages, costs, and expenses including, but not limited to, costs of defense and reasonable attorney fees, which the City may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of any willful misconduct, error, omission or negligent act of BAIR, its employees, representatives, agents, assigns, consultants, any subcontractor or its employees, or any person, firm, partnership, or corporation employed or engaged by BAIR and resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by BAIR, its employees, representatives, agents, assigns, consultants, any subcontractor or its employees, or any person, firm, partnership, or corporation employed or engaged by BAIR.

13. Relationship between the Parties. BAIR is an independent contractor of the City. This Agreement does not create an employment relationship between the City of Rapid City and BAIR or BAIR's agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between BAIR and the City. No agent of BAIR shall be the agent of the City, and BAIR covenants that it will not take any action in the name of, or by holding itself out as the agent of the City of Rapid City.

14. Assignment and Subcontracting. BAIR shall not delegate, assign, or subcontract either in whole or in part any of its rights and obligations under this Agreement without prior written authority from the City.

15. Time of Essence. Time is of the essence of this Agreement.

16. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

17. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

18. Entire Agreement. This Agreement along with attached Statement of Work together constitute the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

19. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

20. Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. If any portion of this Agreement is unenforceable for any reason whatsoever, such provision shall be appropriately limited and given effect to the extent that it may be enforceable.



September 19, 2013

Chief Steve Allender
Rapid City Police Department
800 Kansas City Street, Suite 200
Rapid City, SD 57701

Introduction

The following Statement of Work (SOW) defines the principal activities and responsibilities of all parties to implement the following items for the Rapid City Police Department, South Dakota (Client). The following components and services are being proposed:

- Analytical Services

Overview

BAIR Analytics Inc. (BAIR) is an analytical software and service company dedicated to providing public safety, national security and defense entities the innovative tools and subject-matter expertise needed to identify, analyze and resolve problems created by the actions of offenders and their networks that threaten our citizens, our communities and our nation.


CLIENT is partnering with BAIR to implement analytical software and services to support the extraction, combination, cleaning, analysis and reporting of law enforcement related data. These analytical software and services combine to ensure more effective use of human resources and facilitate timely analysis and predictions.

BAIR Analytics Responsibilities

- a. Provides an embedded BAIR Crime Analyst to perform crime analysis functions
- b. The analyst will be trained in all aspects of crime analysis (operational, tactical, strategic, and administrative crime analysis)
- c. Provide reach-back support for embedded analysts in their absence (sick, vacation, training, etc.) thus providing the agency with 52-week coverage
- d. Provide resume's to Client in aiding in the selection of the embedded analyst for approval

Cost

- \$70,000 per year

By: 
BAIR Analytics, Inc.
By: Sean Bair
Title: President
Date: 7/26/2013

By: _____
Agency: _____
By: _____
Title: _____
Date: _____

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