

COPY

**AGREEMENT FOR
LAW ENFORCEMENT PARTICIPANTS
OF THE
REGIONAL AUTOMATED PROPERTY INFORMATION
DATABASE (“RAPID”)**

This Agreement (“Agreement”) is made effective on **October 1, 2015** (“Effective Date”), by and between the **City of Portland**, a municipal corporation of the State of Oregon, and its successors or assigns (hereinafter referred to as “City”) and **Newport Police Department** (hereinafter referred to as “NAMED USER”), by and through their duly authorized representatives. This Agreement may refer to the City and NAMED USER individually as a “Party” or jointly as the “Parties.”

This Agreement shall be valid for five (5) years from the Effective Date.

Authority to enter into the Agreement is pursuant to Oregon Revised Statutes (“ORS”) 190.110, Revised Code of Washington (“RCW”) 39.34.030 and applicable California Code of Regulations (“CCR”).

RECITALS

WHEREAS, in 2008 the City implemented the Regional Automated Property Information Database (“RAPID”), a cooperative multi-agency, multi-jurisdictional effort to share information regarding pawn and secondhand store transactions on a regional basis including pawned, stolen and lost property data held by Oregon State Police (OSP), specifically OSP’s Law Enforcement Data System (“LEDS”); and

WHEREAS, since 2009 the City has had a license agreement (the “License Agreement”) with Business Watch International (“BWI”) which grants the City a license to use BWI’s software in the RAPID system; and

WHEREAS, NAMED USER desires to become a Participant and obtain the right to Authorized Use and access of RAPID; and

WHEREAS, the City and NAMED USER desire to enter into this Agreement and being fully advised;

NOW THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, it is agreed as follows:

1.0 Definitions

“Amendment” means a written document, required to be signed by authorized representatives of both Parties, which alters the terms and conditions of this Agreement.

“Authorized Use” means functions and capabilities that a User is assigned and able to perform based on User ID password and rights, as requested by NAMED USER and established by the City or a RAPID administrator.

“BWI” means Business Watch International of Regina, Saskatchewan, Canada, the developer and licensor of the Software.

“Contributor” means a law enforcement agency that enters data into RAPID or has Dealers who submit current data for entry into RAPID. Contributors are required to have a Software license.

“Dealer” means a pawn shop, second-hand store or other commercial entity, such as a scrap metal dealer, engaged in the purchase or resale of goods who may encounter stolen property, and who is within the jurisdiction of a Contributor.

“Participant” means a law enforcement agency or other entity that accesses information in RAPID but does not submit current data into RAPID. Participants may search for data in the RAPID system and save search results.

“RAPID” means the Regional Automated Property Information Database, the cooperative effort of regional law enforcement agencies, initiated and managed by the City, to collect and share data on pawn, secondhand and metal recycler dealer transactions. RAPID may also refer to the Web-based information system that accesses the database.

“Software” means the proprietary or licensed computer programs, firmware, applications, or Operating System Software which are components of the RAPID System and are licensed to NAMED USER by BWI pursuant to this User Agreement, specifically BWI’s Internet-based information reporting and exchange system RPDSS and ADXStudio’s related utility software, and including, without limitation, any custom Software or customization, application software, base software, diagnostic software, updates, upgrades and any related documentation to RPDSS and ADXStudio.

“User” means a law enforcement agency, insurance company, or other entity or individual that accesses RAPID. A User may be a Contributor or a Participant.

2.0 Software License

2.1 The contract between the City and BWI requires that NAMED USER be granted a Participant Software license from BWI prior to the City issuing User IDs and passwords to NAMED USER’s members.

2.2 The City will submit this Agreement to BWI on behalf of NAMED USER for the purpose of requesting a Participant Software license. The City will issue User IDs and passwords to NAMED USER after notification from BWI that the Software license requirements have been met.

2.3 These policies may be changed by the City upon sixty (60) calendar days’ written notice to NAMED USER.

3.0 User Warranties and Obligations

3.1 NAMED USER warrants it has read and understands and is in agreement with the principles and requirements set forth herein for participation in RAPID.

3.2 NAMED USER warrants it has complied and shall comply with all applicable law, ordinances, orders, decrees, labor standards and regulations of its domicile and wherever performance occurs in connection with the execution, delivery, and performance of this Agreement and access and Authorized Use of RAPID.

3.3 NAMED USER acknowledges and agrees that NAMED USER, its employees, agents will use RAPID only by Authorized Use and only for a legitimate, official and authorized law enforcement or public safety purpose. Permission to use the information available in or through RAPID other than for Authorized Use shall be obtained in writing from the City RAPID Program Coordinator prior to any such use.

3.4 NAMED USER acknowledges and agrees that NAMED USER, its employees, and agents, will not modify or attempt to modify through computer programming, hacking, or other techniques the functions, capabilities, and operations of the Software.

3.5 NAMED USER is responsible for providing its own computers, Internet connections and any other equipment, devices or capabilities required for its Authorized Users to have use of and access to RAPID. NAMED USER is responsible for configuring and maintaining its computers and devices to conform to RAPID access and security requirements as set forth in Sections 5.0 and 6.0 of this Agreement.

4.0 Ownership, Entry, and Maintenance of Information

4.1 RAPID is not an archiving system. RAPID is populated with mirrored information derived from each User's reported stolen property. RAPID is not in any manner intended to be an official repository of original reported stolen property records, nor to be used as a substitute for an official repository of original reported stolen property records. The stolen property information in RAPID is not to be accorded any independent record system status. RAPID is merely a means to provide timely access for RAPID Users to discover stolen property information.

4.2 To the extent that any newly discovered links, matches, relationships, interpretations, etc., located in searches of RAPID may be relevant and appropriate for preservation as independent records, it will be the responsibility of the accessing User to incorporate such information in the User's own official records system(s) in accordance with that User's records management processes.

4.3 There is no obligation and there should be no assumption by NAMED USER that a particular Contributor's records housed in RAPID represent the totality of all records of that Contributor's records system for any subject or person.

5.0 Access to and Use of Information

5.1 As a Participant, NAMED USER will be able to use RAPID to search data entered by Contributors and their Dealers. Functionality available to a Participant includes but is not limited to:

- a. Searching for persons or things from transaction data in RAPID and saving those searches for automated notification.
- b. Placing possible theft-related comments on transactions that can be seen by other Participants and Contributors who view the transaction.
- c. Placing holds on transactions that contain case numbers, comments and directions to the Dealer. This information can be viewed by other Participants and Contributors.

5.2 NAMED USER shall access RAPID via a secure Internet connection.

5.3 NAMED USER shall not use information in RAPID for any non-law enforcement purpose, or to establish or verify the eligibility of applicants, recipients, beneficiaries, participants, or providers of services with respect to cash or in-kind assistance or payments under the Federal or State benefit programs.

5.4 Agencies other than those who are Contributors or Participants will not have direct access to RAPID. Requests by such agencies for copies of information contained in RAPID must be referred to the individual RAPID Contributor that owns the information, unless otherwise required by law.

5.5 NAMED USER shall not share User IDs or passwords or provide direct access to RAPID to any entity that has not executed a User agreement with the City and, if required, a license agreement with the City or BWI.

5.6 RAPID includes an audit capability that logs all User actions, including the identity of the User, time of access, queries executed, responses, alerts set, and notifications received. The log is maintained indefinitely unless periodic purging is required by law.

6.0 Security

6.1 NAMED USER will authorize specific employees to access RAPID. Access shall be granted only to those employees and agents with an official "need to know" such information. Upon request by the City, NAMED USER shall provide the City with lists of employees requiring access and list of employees no longer requiring access.

6.2 NAMED USER is responsible for training its Users who are authorized to access RAPID regarding the use and dissemination of information obtained from RAPID. NAMED USER shall ensure its authorized Users have a clear understanding of the need to verify the reliability of the information from RAPID with the User that provided the information before using the information for preparing affidavits, obtaining subpoenas and warrants, or other law enforcement purposes. Training should also ensure employees understand the restrictions on use of RAPID data and information set forth herein.

6.3 NAMED USER will ensure that its Users will not access RAPID until after successfully completing appropriate training.

6.4 NAMED USER agrees to immediately deactivate the RAPID User ID and password of any User who is no longer an employee or agent or contractor of NAMED USER, or who no

longer requires Authorized Use of RAPID by providing notification of the change to the City or the RAPID Program Coordinator.

6.5 NAMED USER shall provide immediate notification to the City of any actual or suspected unauthorized use of a User ID and password or of any security breach that affects RAPID or any other City systems. NAMED USER shall provide notification to the City of any incident relating to the integrity of the Software, such as a computer virus.

6.6 NAMED USER acknowledges that RAPID will contain Sensitive but Unclassified (SBU) information from the records systems of the Contributors. RAPID is managed by the Portland Police Bureau. NAMED USER agrees to use at least the same degree of care in protecting information accessed in RAPID that NAMED USER exercises with respect to its own sensitive information.

6.7 NAMED USER acknowledges that unauthorized disclosure of SBU information or misuse of the Software or a City computer system or network will result in irreparable harm to the City. In the event of a breach or threatened breach of this Agreement, the City may obtain equitable or injunctive relief prohibiting the breach, in addition to any other appropriate legal or equitable relief and remedies at law.

6.8 Failure to comply with the security and Authorized Use specifications contained in this Agreement may, at the sole discretion of the City, result in the suspension of NAMED USER and access to RAPID by NAMED USER and its Users until such failures are corrected to the City's satisfaction.

6.9 Both Parties hereby acknowledges that any SBU information it discloses to the other Party, or any duty of either Party to destroy records upon completion of use, is subject to the provisions of the Oregon and California Public Records laws.

7.0 Cost

7.1 NAMED USER shall bear its own costs in relation to RAPID unless otherwise provided herein or in an amendment to this Agreement.

7.2 As of the Effective Date of this Agreement, there will be no charges by the City for NAMED USER to use RAPID as a Participant.

8.0 Disclaimers, Limitation of Liability, and Indemnity

8.1 RAPID and its website, services, data, and information are supplied "as is" without warranty of any kind, whether express or implied. NAMED USER acknowledges that access to RAPID, its website, and services may be subject to delay, and the data and information may be subject to deletion, theft, errors, or omissions. The City has no responsibility for the accuracy, timeliness, or completeness of information in RAPID. To the maximum extent permitted by law, the City disclaims all warranties, including without limitation, any implied warranties of merchantability, fitness for a particular purpose, and non-infringement.

8.2 RAPID is not a separate legal entity capable of maintaining an employer-employee relationship and, as such, all personnel assigned by NAMED USER to perform RAPID-related

functions shall not be considered employees of RAPID or of any other Party for any purpose. NAMED USER remains solely responsible for the supervision, work schedules, performance appraisals, compensation, overtime, vacations, retirement, expenses, disability, and all other employment-related benefits incident to assignment of its personnel to RAPID access.

8.3 Unless specifically addressed by the terms of this Agreement, NAMED USER shall be responsible for the negligent or wrongful acts or omissions of its own respective officers and employees performing under this Agreement, but only to the extent they would be liable under the laws of the jurisdiction(s) to which they are subject.

8.4 SUBJECT TO APPLICABLE CONSTITUTIONAL AND STATUTORY LIMITATIONS AND RESTRICTIONS, NAMED USER SHALL DEFEND, SAVE, AND HOLD HARMLESS THE CITY OF PORTLAND, ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM ALL CLAIMS, DEMANDS, SUITS, AND ACTIONS, AND INDEMNIFY THE CITY OF PORTLAND, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ALL LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF WHATSOEVER NATURE (INCLUDING ALL ATTORNEYS' FEES AND COSTS) ARISING OUT OF OR RELATING TO NAMED USER'S ACTS OR OMISSIONS OR THOSE OF ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, AGENTS, OR DEALERS UNDER THE TERMS OF THIS AGREEMENT.

9.0 Term and Termination

9.1 This Agreement shall be in effect for the period of time stated on the first page unless terminated as set forth in this Section.

9.2 The following conditions apply to termination of this Agreement.

9.2.1 This Agreement may be terminated at any time by the mutual written agreement of the duly authorized representatives of the Parties.

9.2.2 Either Party may terminate this Agreement upon thirty (30) calendar days' written notice to the other Party.

9.2.3 The City may terminate the Agreement with immediate effect in the event of a breach of any provision of this Agreement by NAMED USER.

9.3 Upon termination of this Agreement all information contributed to RAPID by NAMED USER will be deleted from RAPID if so requested in writing by NAMED USER.

9.4 The rights, obligations, responsibilities, limitations, and other understandings with respect to the disclosure and use of information in RAPID shall survive any termination of this Agreement. This applies to NAMED USER's information, and to other parties' disclosure and use of NAMED USER's information.

10.0 Written Notifications

10.1 All written notifications and Amendments shall be sent to the following:

For City of Portland:	For NAMED USER:
Brent Bates, RAPID Program Coordinator	Name: Jason Malloy, Lieutenant
City of Portland - Portland Police Bureau	Newport Police Department
4735 E Burnside St	Address: 169 SW Coast Highway
Portland, OR 97214	City, State: Newport, OR 97365
e-mail: Brent.Bates@portlandoregon.gov	e-mail: jmalloy@newportpolice.net
Copy to:	Copy to:
Technology Contracts	
City of Portland - Procurement Services	
1120 SW Fifth Avenue, Room 750	
Portland OR 97204	

If either Party makes a change to the name or contact information in the table above, it shall provide written notice to the other Party within thirty (30) calendar days of such change.

11.0 General

11.1 **Assignment.** Neither Party shall assign, transfer, subcontract, or delegate all or any part of this Agreement, or any interest therein, without the other Party's prior written consent, except that the City may assign this Agreement to another law enforcement entity or organization upon thirty (30) calendar days' written notice to NAMED USER if management of RAPID is transferred to another law enforcement entity or organization. City acknowledges and agrees neither changes with regard to the governance structure of NAMED USER nor any legislative change affecting the legal status of NAMED USER shall be deemed an assignment under this Agreement.

11.2 **Governing Law and Jurisdiction.** This Agreement shall be construed according to the laws of the State of Oregon without reference to its conflict of laws' provisions. Any litigation between the City and User arising under this Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.

11.3 **Amendment.** No provision of this Agreement may be amended or modified unless such Amendment or modification is approved as to form by the City Attorney and executed in writing by authorized representatives of the Parties. All changes that would permanently change any provisions of this Agreement shall be memorialized in the form of an Amendment. If the requirements for Amendment or modification of this Agreement as described in this section are not satisfied in full, then such Amendments or modifications automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect.

11.4 **Severability.** The Parties agree that if any term or provision of this 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 the Agreement did not contain the particular term or provision held to be invalid.

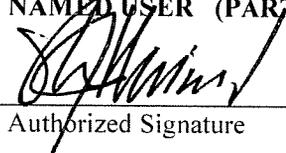
11.5 **No Waiver.** The failure of the City to enforce any provision of this Agreement shall not constitute a waiver by the City of that or any other provision.

This Agreement, together with all Exhibits, Attachments and those documents which by their reference have been incorporated herein, constitutes the entire Agreement between the City and NAMED USER and supersedes all agreements, written and oral, between the Parties on this subject.

The Parties agree that they may execute this Agreement, and any Amendments to this Agreement, by electronic means, including the use of electronic signatures.

IN WITNESS WHEREOF, the Participant hereto has caused this Agreement to be executed.

**FOR NEWPORT POLICE DEPARTMENT
NAMED USER (PARTICIPANT)**

 11-2-15
Authorized Signature Date

Mark J. Miranda, Chief of Police
Printed Name and Title

Address: 169 SW Coast Highway
Newport, OR 97365
Phone: 541-574-3348
Email: mmiranda@newportpolice.net