
CITY OF SUSANVILLE
66 North Lassen Street ♦ Susanville CA
Kevin Stafford, Mayor
Joseph Franco, Mayor pro tem
Brian Moore * Mendy Schuster * Brian R. Wilson

SUSANVILLE COMMUNITY DEVELOPMENT AGENCY SUSANVILLE MUNICIPAL ENERGY CORPORATION
SUSANVILLE PUBLIC FINANCING AUTHORITY

Susanville City Council
Regular Meeting ♦ City Council Chambers
January 2, 2019 – 7:00 p.m.

Call meeting to order

Roll call of Councilmembers present

Next Resolution No. 19-5603

Next Ordinance No. 19-1014

- 1 APPROVAL OF AGENDA:** (Additions and/or Deletions)

- 2 PUBLIC COMMENT REGARDING CLOSED SESSION ITEMS** (if any): Any person may address the Council at this time upon any subject for discussion during Closed Session.

- 3 CLOSED SESSION:** No business.

- 4 RETURN TO OPEN SESSION:** (recess if necessary)
 - *Reconvene in open session at 7:00 p.m.*
 - *Pledge of allegiance*
 - *Report any changes to agenda*
 - *Report any action out of Closed Session*
 - *Moment of Silence or Thought for the Day: Gwenna MacDonald*
 - *Proclamations, awards or presentations by the City Council:*
Officer Badge Pinning: Amanda Evans

- 5 BUSINESS FROM THE FLOOR:**

Any person may address the Council at this time upon any subject on the agenda or not on the agenda within the jurisdiction of the City Council. However, comments on items on the agenda may be reserved until the item is discussed and any matter not on the agenda that requires action will be referred to staff for a report and action at a subsequent meeting. Presentations are subject to a five-minute limit

- 6 CONSENT CALENDAR:**

All matters listed under the Consent Calendar are considered to be routine by the City Council. There will be no separate discussion on these items. Any member of the public or the City Council may request removal of an item from the Consent Calendar to be considered separately.

- 7 PUBLIC HEARINGS:** No business.

- 8 COUNCIL DISCUSSION/ANNOUNCEMENTS:**

Commission/Committee Reports:

9 **NEW BUSINESS:**

A Consider approval of **Resolution No. 19-5599** approving Body Worn Computer Agreement with Visual Labs, Inc.

10 **SUSANVILLE COMMUNITY DEVELOPMENT AGENCY:** No business.

11 **SUSANVILLE MUNICIPAL ENERGY CORPORATION:** No business.

12 **CONTINUING BUSINESS:**

A Consider Morning Glory Dairy Update

13 **CITY ADMINISTRATOR'S REPORTS:**

A Police Department Update

14 **COUNCIL ITEMS:**

A AB1234 travel reports:

15 **ADJOURNMENT:**

- ***The next regular meeting of the Susanville City Council will be held on January 16, 2019 at 6:00 p.m.***

Reports and documents relating to each agenda item are on file in the Office of the City Clerk and are available for public inspection during normal business hours and at the meeting. These reports and documents are also available at the City's website www.cityofsusanville.org, unless there were systems problems posting to the website.

Accessibility: An interpreter for the hearing-impaired may be made available upon request to the City Clerk seventy-two hours prior to a meeting. A reader for the vision-impaired for purposes of reviewing the agenda may be made available upon request to the City Clerk. The location of this meeting is wheelchair-accessible.

I, Gwenna MacDonald, certify that I caused to be posted notice of the regular meeting scheduled for January 2, 2019 in the areas designated on December 28, 2018.



Gwenna MacDonald, City Clerk

Reviewed by: D Interim City Administrator

- Motion only
- Public Hearing
- Resolution
- Ordinance
- Information

Submitted by: Kevin Jones, Police Chief

Action Date: January 2, 2019

CITY COUNCIL AGENDA ITEM

SUBJECT: Resolution No. 19-5599 approving Body Worn Computer Agreement with Visual Labs, Inc.

PRESENTED BY: Kevin Jones, Police Chief

SUMMARY: I am presenting the Visual Lab Body Computer program. This involves the purchase of (16) cellular phones through the Verizon Public Safety purchasing program. Through this program public safety is provided specific bandwidth and data when the system is overloaded and take precedent.

The Visual Lab Body Computer is an application that is installed on the cellular phone and utilizes the phone's camera for video, audio and camera function. Through a "one-touch" activation, Officers are able to activate the video camera when needed. Video, photos, recordings are then automatically uploaded to the cloud (DOJ/CJIS compliant), where it is held for specified amounts of time. Evidence techs then compile the evidence taken on a case and send a link to the DA's office for their download.

There are several benefits to this application and phone. Officers will no longer have to upload photos or recordings. They will "tag" and input an IR or CR#. The video/photo automatically generates their exact position by GPS location. Evidence Technicians will only have to compile (check boxes) for photo, video and audio evidence and send a link to the DA's office for discovery.

An additional benefit is the GPS tracking of each phone. This enables us to track specific crime trends to our patrol areas. We can use this to compare our high crime areas to our patrols and proactive enforcements.

The phones will also be equipped with Push-To-Talk features, allowing Officers to communicate clearly with each other in hard to reach areas of the City. This is especially useful for covert operations and operations where you do not want to compete with regular patrol traffic in the City and County.

Last, this device has the ability to capture actions in use of force incidents that could essentially save the City in unnecessary litigation fees.

Currently the only PRA release of footage would be subject to AB1421 – Peace Officers Release of Records Act.

The cost for this program is \$50.00 per user, per month from Visual Labs. Currently we would deploy 16 phone applications. The approximate cost for Verizon Wireless is \$42.00 per phone, per month.

OPTIONAL PLAN: Depending on the fiscal burden, it is possible to reduce the number of phones. This plan can be accomplished with the purchase of only 6-8 phones vs. 16. Officers would need to rotate the phones from shift to shift.

FISCAL IMPACT: \$2-9,000 through 2019 (\$18,000 Annually thereafter)
 \$1-4,000.00 Technology Upgrade (1x Cost)
 \$600.00 Phone case/carriers (1x Cost)

It is the intent to use a portion of Tobacco Grant funds and Traffic Safety funds to offset these figures.

ACTION

REQUESTED: Motion to approve Resolution No. 19-5599 approving Body Worn Computer Agreement with Visual Labs, Inc.

ATTACHMENTS: Resolution No. 19-5599
 Visual Lab Contract, Visual Labs Information

RESOLUTION NO. 19-5599
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUSANVILLE
APPROVING BODY WORN COMPUTER AGREEMENT WITH
VISUAL LABS, INC.

WHEREAS, the Susanville Police Department has identified an opportunity to improve the operational efficiency of the Department through the addition of Body Worn Computers; and

WHEREAS, the devices will be assigned to personnel and used by the staff on shift on a rotating basis; and

WHEREAS, Visual Labs, Inc., provides a service that incorporates all BWC functions into a cellular phone; and

WHEREAS, the current budget includes the cost of providing the devices; and

WHEREAS, it is determined that the addition of this program will provide technological improvement needed to improve operational efficiency.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Susanville authorizes the City to enter into a wireless service agreement with Visual Labs, Inc. and authorizes the Police Chief to execute the agreement.

APPROVED: _____
Kevin Stafford, Mayor

ATTEST: _____
Gwenna MacDonald, City Clerk

The foregoing Resolution was adopted at a regular meeting of the City Council of the City of Susanville, held on the 2nd day of January, 2019 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINING:

Gwenna MacDonald, City Clerk

APPROVED AS TO FORM: _____
Jessica Ryan, City Attorney

SUBSCRIPTION AGREEMENT

The documents below describe the relationship between Visual Labs, Inc. ("**Visual Labs**") and the Client identified below ("**Client**") (each of Visual Labs and Client, a "**Party**"). The documents attached to this cover page consists of the Master Terms and Conditions, which describe the general legal terms governing the relationship, and one (1) or more orders, attachments, schedules, or addenda setting forth additional details (collectively, the "**Agreement**"). This Agreement will become effective when this cover page is executed by authorized representatives of both Parties (the "**Effective Date**").

CLIENT INFORMATION:	
Name/Client: <u>Susanville, California Police Department</u>	Principal Contact Person: <u>Kevin Jones</u>
Address: <u>1801 Main Street</u>	Title: <u>Chief of Police</u>
<u>Susanville, CA 96130</u>	Phone: <u>(530) 257-5603</u>
	Email Address: <u>kjones@cityofsusanville.org</u>

The Parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

CLIENT: Susanville, California Police Department

VISUAL LABS, INC., a Delaware corporation

By (Signature): _____

By (Signature): _____

Name (Printed): _____

Name (Printed): Alexander R. Popof

Title: _____

Title: Chief Executive Officer

Date: _____

Date: _____

Master Terms and Conditions

1. DEFINITION OF TERMS

The following terms have the following meanings:

- 1.1. **"Application"** means Visual Labs' proprietary smartphone software application.
- 1.2. **"Authorized User"** means any employees, agents or representatives of Client that are authorized to use the Services by receiving usernames and passwords from Client (or from Visual Labs at Client's request), subject to any limitations or restrictions set forth in this Agreement.
- 1.3. **"Client Content"** means any information, data, text, pictures, video, audio, geographic locations, or any other content provided or recorded by Client or its Authorized Users in connection with Client's and its Authorized Users' use of the Platform.
- 1.4. **"Confidential Information"** means all confidential or proprietary information disclosed by one Party to the other in connection with this Agreement, unless it is or later becomes publicly available through no fault of the other Party or it was or later is rightfully obtained by the other Party from independent sources free from any duty of confidentiality. Confidential Information shall include the terms and pricing in this Agreement, but not the fact that this Agreement has been signed, the identity of the Parties or the nature of the Services.
- 1.5. **"Documentation"** means Visual Labs' summary of system features as well as other documentation relating to the Services and Platform, as may be provided by Visual Labs to Client and as may be updated and amended from time to time.
- 1.6. **"Feedback"** means feedback, suggestions, improvements, and recommendations regarding the Services and Platform.
- 1.7. **"Platform"** means Visual Labs' Application, web-site platform, and technology infrastructure provided by Visual Labs supporting the Services that perform functions as described in the Documentation, including but not limited to, facilitating live-streaming, recording, playback, archiving and storage of Client Content, and data analysis of such Client Content.
- 1.8. **"Proprietary Items"** means, collectively, the Services, Platform, and Documentation, the visual expressions, screen formats, interfaces, and other design features of the Services and Platform, all ideas, methods, algorithms, formulae and concepts used in developing and/or incorporated into the Services, Platform, or Documentation, all future modifications, revisions, updates, refinements, improvements and enhancements of the Services, Platform, or Documentation, all derivative works based upon any of the foregoing, and all copies of all of the foregoing.
- 1.9. **"Services"** means the services that Visual Labs provides through the Platform in accordance with the Documentation and this Agreement.
- 1.10. **"Subscription Term"** means the duration of Client's right to receive, access, and use the Services and Platform.

2. SUBSCRIPTION RIGHTS AND OBLIGATIONS

- 2.1. **Subscription Rights.** Subject to the terms and conditions of this Agreement, during the Subscription Term, Visual Labs grants to Client and its Authorized Users a non-exclusive, non-transferable license to (i) install the Application on up to the maximum number of devices owned or controlled by Client as set forth on Schedule A and (ii) use and access the Platform as required to use the Services solely in accordance with the Documentation for Client's internal business purposes in connection with Client's safety and security operations.
- 2.2. **Visual Labs Obligations.** Visual Labs shall host, operate, maintain, and support the Services and Platform. Visual Labs shall provide to Client standard support for the Services and Platform at no additional charge. From time to time in accordance with Visual Labs' generally applicable procedures, Visual Labs may at its discretion make available and implement upgrades, enhancements, and error corrections to the Platform.
- 2.3. **Usernames and Passwords.** Visual Labs will provide each Authorized User a unique username and password to enable such Authorized User to access the Platform and Service pursuant to this Agreement. Each username and password may only be used to access the Service and Platform during one (1) concurrent login session. Client will ensure that each username and password issued to an Authorized User will be used only by that Authorized User. Client is responsible for maintaining the confidentiality of all Authorized Users' usernames and passwords, and is solely responsible for all activities that occur under these usernames. Client agrees: (a) not to allow a third party to use Client's accounts, usernames or passwords at any time; and (b) to notify Visual Labs promptly of any actual or suspected unauthorized use of its account, usernames or passwords, or any other breach or suspected breach of this Agreement. Visual Labs reserves the right to terminate any accounts, usernames, or passwords that Visual Labs reasonably determines may have been used by an unauthorized third party. Authorized User accounts and their associated usernames and passwords cannot be shared or used by more than one individual Authorized User, but may be reassigned from time to time to a new Authorized

User who is replacing a former Authorized User who has terminated employment or otherwise changed job status or function and no longer uses the Service and Platform. Client is solely responsible for all access to and use of the Service and Platform by its Authorized Users and all access to and use of the Service and Platform through any Authorized User's account.

2.4. **Client Responsibilities.** Client shall (a) be responsible for Authorized Users' acts and omissions, (b) be responsible for providing, establishing, and maintaining internet connection, mobile device service, and any other necessary equipment, infrastructure, and services required to use the Services and Platform, (c) prevent unauthorized access to or use of the Services or Platform, and notify Visual Labs promptly of any such unauthorized access or use, (d) use, train Authorized Users to use, and ensure that Authorized Users use, the Services and Platform only in accordance with this Agreement, the Documentation and in compliance with all applicable laws and regulations, (e) reasonably cooperate with Visual Labs as necessary for Visual Labs to perform its obligations under this Agreement, and (f) be responsible for all Client Content and any use of Client Content by Client, Authorized Users, and any other party. Client agrees to comply with all relevant applicable laws, rules and regulations. Client represents and warrants that it has the right, and has obtained all necessary consents and authorizations, including any consents and authorizations required under any privacy or data security laws or regulations, to provide and disclose information to Visual Labs in connection with this Agreement.

2.5. **Restrictions.** Client shall not (and shall not permit any Authorized User to) (a) make the Services or Platform available to any third party other than Authorized Users, (b) resell, lease, distribute, transfer or otherwise make available the Services or Platform on a time-sharing or service bureau basis, (c) make Client Content available to any third party other than Authorized Users, Client employees, law enforcement, and government and regulatory officials who need to know such information for security, civil investigative, or judicial purposes, (d) use the Services or Platform to promote any unlicensed, unfair, or illegal activities or for deceptive or illegal purposes, (e) use the Services or Platform to store or transmit malicious code, (f) use or access the Services or Platform in any way that harms, potentially harms, or otherwise threatens the reputation, integrity, performance, or availability of Visual Labs, any Visual Labs client, the Services or Platform, (g) attempt to gain unauthorized access to the Services, Platform, other clients' content, or data stored or processed therein, (h) decompile, disassemble, or reverse engineer the Services or Platform, in whole or in part, (i) use the Service or Platform for any purposes other than the purpose specifically permitted in this Agreement, or (j) use or access the Services or Platform to create (or have created) a competing or similar service. Visual Labs may restrict or prohibit use or access to the Services and Platform or delete specific Client Content if Visual Labs suspects such use or access is in breach of this Agreement, does not comply with the Documentation, or is otherwise objectionable or threatens the reputation of Visual Labs, any Visual Labs client, the Services, or Platform.

3. CLIENT CONTENT AND PROPRIETARY ITEMS

3.1. Client Content.

- a) Client acknowledges that all Client Content is the sole responsibility of the Client. Client, and not Visual Labs, is entirely responsible for all Client Content that Client records, uploads, accesses, stores, streams, displays, or transmits through the Platform.
- b) Client acknowledges that Client Content that is more than six (6) months old, may be stored in an archival location and may only be available for access by Client upon two (2) business days' written notice to Visual Labs.
- c) Visual Labs reserves the right to take appropriate action against Client, if Client (in Visual Labs' sole judgment) violates this Agreement or violates the rights of, harms, threatens the safety of, or creates liability for, Visual Labs or any other person. Such actions may include removing Client Content, suspending Client's access to the Platform and Service, terminating Client's account, and/or reporting Client to law enforcement authorities. In order to cooperate with legitimate governmental requests, subpoenas or court orders, or to protect Visual Labs' business and customers, Visual Labs may access and disclose any information Visual Labs considers necessary or appropriate, including Client's usernames and passwords, IP address and traffic information, usage history, and Client Content, subject to all appropriate privacy laws. Client hereby provides its irrevocable consent to such disclosure.
- d) Client grants Visual Labs a fully paid, royalty-free, worldwide, non-exclusive and fully sublicensable right and license during the Subscription Term to use, reproduce, modify, adapt, perform, and display Client Content (in whole or in part) for the purposes of providing, maintaining, and supporting the Services and Platform in accordance with this Agreement.
- e) Client grants Visual Labs a fully paid, royalty-free, worldwide, non-exclusive and fully sublicensable, perpetual and irrevocable right and license to use, reproduce, modify, adapt, perform, create derivative works of and display operational data (e.g. how many hours the Application has been used, when the Application has been used, where the Application has been used) and disclose and share such operational data with third parties in an anonymous and aggregate form at its discretion.

3.2. **Enhancements.** Upon mutual written agreement of the parties, Visual Labs will provide enhancements to the Proprietary Items as may be requested by Client. Fees for any such enhancements will be determined by mutual agreement of the parties.

3.3. **Title and Ownership.** All right, title, and interest in and to the Client Content (including all related patent, copyright, trademark, trade secret, intellectual property and other ownership rights) are and will remain the sole and exclusive property of Client. All right, title, and interest in and to the Proprietary Items (including all related patent, copyright, trademark, trade secret, intellectual property and other ownership rights) are

and will remain the sole and exclusive property of Visual Labs and Visual Labs reserves all rights not expressly granted herein. Any derivative works, modifications, or enhancements relating to the Proprietary Items (whether created alone by either Party or jointly by or on behalf of both Parties) and any Feedback relating thereto will be solely and exclusively owned by Visual Labs. Client hereby assigns to Visual Labs any rights, title and interest, including all intellectual property rights, in any Feedback and acknowledges that Visual Labs will be free to use Feedback for any purposes in its sole discretion.

4. PAYMENTS

4.1. **Fees and Expenses.** In consideration for access and use of the Platform and Service, Client shall pay to Visual Labs, without offset or deduction, the fees set forth in Schedule A. Visual Labs reserves the right to increase the fees any time, but must provide notification of such increase at least sixty (60) days in advance. All fees shall be due and payable within fifteen (15) days after an invoice is issued by Visual Labs.

4.2. **Taxes.** The fees and other amounts payable by Client to Visual Labs do not include any taxes of any jurisdiction that may be assessed or imposed upon the Services, Platform, Documentation, or otherwise, including sales, use, excise, value added, personal property, export, import and withholding taxes, excluding only taxes based upon Visual Labs' net income. Client shall directly pay any such taxes assessed. Client shall promptly reimburse Visual Labs for any taxes payable or collectable by Visual Labs (other than taxes based upon Visual Labs' net income). If Client has provided Visual Labs with proof of its tax-exempt status, then, in the event that Client's tax-exempt status should become altered, Client shall be obligated to notify Visual Labs immediately of any such modification and Client shall become liable for all taxes as set forth above. In the event Client fails to notify Visual Labs of any such change, Client shall be liable for payment of any tax related penalties or interest assessed against Visual Labs or Client as a result of such Client failure.

4.3. **Payment Terms.** Visual Labs may accept and process payment (including renewals) from Client by either check, ACH credit, wire transfer, or other method as mutually agreed. Amounts owed to Visual Labs will be invoiced to Client's address for invoices as designated by Client or, if not designated, then the address printed on this Agreement. Any Client check rejected by Visual Labs' bank for any reason shall be subject to a \$25 fee. If any Client payment is more than fifteen (15) days past due, interest at the rate of twelve percent (12%) per annum (or, if lower, the maximum rate permitted by applicable law) shall accrue. Except as otherwise provided in this Agreement, all fees and other amounts paid by Client under this Agreement are non-refundable. All dollar amounts referred to in this Agreement are in United States Dollars.

4.4. **Suspension.** In the event that Client's account is more than fifteen (15) days overdue on any payment for any reason, Visual Labs shall have the right, in addition to its remedies under this Agreement or pursuant to applicable law, to suspend Client's use of the Services and Platform, without further notice to Client, until Client has paid the full balance owed, plus any fees and/or interest due.

5. WARRANTY DISCLAIMER AND LIMITATIONS

5.1. **Warranty.** Visual Labs warrants that (a) the Platform and Services will perform substantially as specified in the Documentation and (b) the implementation, support and training services will be performed in a professional manner consistent with applicable industry standards. Visual Labs' obligation with respect to any non-conformance with the foregoing warranty is for Visual Labs to use commercially reasonable efforts to correct the non-conformance. If Visual Labs is unable to correct the non-conformance despite its use of commercially reasonable efforts, then Visual Labs will notify Client and Client may terminate this Agreement and Visual Labs will refund to Client the subscription fees paid by Client to Visual Labs for the preceding thirty (30) day period or the implementation or other services fees paid by Client for the non-conforming services, as applicable. THE FOREGOING REMEDY IS CLIENT'S EXCLUSIVE REMEDY AND VISUAL LABS' SOLE LIABILITY FOR A BREACH OF THE WARRANTY SET FORTH IN THIS SECTION. THIS WARRANTY SHALL NOT APPLY IF THE NON-CONFORMANCE IS DUE TO DISRUPTION OR OUTAGE OF COMMUNICATIONS (INCLUDING THE INTERNET, MOBILE SERVICES, OR OTHER NETWORKED ENVIRONMENT), POWER, OR ANY OTHER UTILITIES, MALFUNCTION OF MOBILE DEVICES OR OTHER CLIENT EQUIPMENT, OR CLIENT'S OR ITS AUTHORIZED USERS' FAILURE TO USE THE PLATFORM OR SERVICES IN ACCORDANCE WITH THE DOCUMENTATION AND VISUAL LABS' INSTRUCTIONS.

5.2. **Warranty Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1, THE PROPRIETARY ITEMS AND ALL IMPLEMENTATION, SUPPORT, TRAINING AND OTHER SERVICES ARE PROVIDED "AS IS" AND VISUAL LABS MAKES NO REPRESENTATIONS OR WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, OR NON-INFRINGEMENT. Without limiting the generality of the foregoing, Visual Labs does not represent or warrant that: (a) the Service or Platform will meet any expectations or specifications of Client; (b) the Services or Platform will protect Client, its employees, personnel, or invitees, or Client's premises from any specific threats or increase the security of Client's premises; or (c) the operation of the Services and Platform will be uninterrupted or error-free. CLIENT ACKNOWLEDGES AND AGREES THAT CERTAIN FEATURES OF THE SERVICES AND PLATFORM MAY NOT WORK AND LOSS OF DATA MAY BE POSSIBLE UNDER CERTAIN CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO, THE LOSS OF INTERNET, MOBILE SERVICE, OR WIRELESS CONNECTION.

6. LIMITATION OF LIABILITY

IN NO EVENT WILL VISUAL LABS BE LIABLE FOR ANY LOSS OF DATA, LOST PROFITS, LOST REVENUE, OR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING IN CONNECTION WITH THIS AGREEMENT, INCLUDING THE USE OF THE SERVICES, PLATFORM, OR DOCUMENTATION, BASED ON ANY THEORY OF CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Visual Labs' total aggregate liability under this Agreement shall under no circumstances exceed the greater of \$100 or the fees actually paid by Client to Visual Labs in the six (6) months preceding the event giving rise to the claim of liability. The existence of multiple claims shall not enlarge this limitation.

7. CONFIDENTIALITY

All Confidential Information of a Party ("**Disclosing Party**") in the possession of the other ("**Receiving Party**"), whether or not authorized, shall be held in strict confidence, and the Receiving Party shall take all steps reasonably necessary to preserve the confidentiality of the Confidential Information. The Disclosing Party's Confidential Information shall not be used or disclosed by the Receiving Party for any purpose except (a) as necessary to implement or perform this Agreement, or (b) as required by law, provided that the other Party is given a reasonable opportunity to obtain a protective order. The Receiving Party shall limit its use of and access to the Disclosing Party's Confidential Information to only those of its employees or representatives whose responsibilities require such use or access and who are bound by obligations of confidentiality at least as protective as those herein. The Receiving Party shall advise all such employees and representatives, before they receive access to or possession of any of the Disclosing Party's Confidential Information, of the confidential nature of the Confidential Information and require them to abide by the terms of this Section.

8. INDEMNIFICATION

8.1. **By Visual Labs.** Visual Labs shall defend at its own expense any action against Client brought by a third party to the extent that the action is based upon a claim that (A) any use of, or access to, the Proprietary Items by Client as expressly authorized under this Agreement infringes or misappropriates, as applicable, any intellectual property rights of a third party, and Visual Labs will pay those costs and damages finally awarded against Client in any such action that are specifically attributable to such Claim or those costs and damages agreed to in a monetary settlement of such action; provided that Client gives Visual Labs (a) prompt written notice of such claim; (b) authority to control and direct the defense and/or settlement of such claim; and (c) such information and assistance as Visual Labs may reasonably request, at Visual Labs' expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, Visual Labs shall have no obligation or liability to the extent that any alleged infringement or misappropriation arises from (1) Client Content or the combination, operation, or use of the Proprietary Items with products, services, deliverables, materials, technologies, business methods or processes not furnished by Visual Labs; (2) modifications which were not made by Visual Labs; or (3) Client's breach of this Agreement or use of the Proprietary Items other than in accordance with this Agreement (collectively, "**IP Exclusions**"). Upon the occurrence of any infringement-related claim for which indemnification is or may be due under this Section, or in the event that Visual Labs believes that such a claim is likely, Visual Labs may, at its option (i) modify or replace the Proprietary Item so that it becomes non-infringing; (ii) obtain a license to the applicable third-party intellectual property; or (iii) terminate this Agreement on written notice to Client and refund to Client any pre-paid fees for Services not provided. The obligations set forth in this Section shall constitute Visual Labs' entire liability and Client's sole remedy for the claims set forth in this section.

8.2. **By Client.** Client shall indemnify, hold harmless, and, at Visual Labs' option, defend Visual Labs from and against all costs and expenses (including reasonable attorneys' fees), damages, losses, and liabilities arising out of any (a) IP Exclusions, (b) Client Content or Client's or its Authorized Users' use thereof, (c) personal injury, death, theft, or property damage arising from Client's or its Authorized Users' use of, or access to, the Proprietary Items, or (d) violations of law or breaches of this Agreement by Client or its Authorized Users. Visual Labs agrees to give Client: (i) prompt written notice of such claim; (ii) authority to control and direct the defense and/or settlement of such claim; and (iii) such information and assistance as Client may reasonably request, at Client's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, Client shall not settle any third-party claim, unless such settlement completely and forever releases Visual Labs with respect thereto or unless Visual Labs provides its prior written consent to such settlement. In any action for which Client provides defense on behalf of Visual Labs, Visual Labs may participate in such defense at its own expense by counsel of its choice.

9. TERMINATION

9.1. The initial Subscription Term shall begin on the Effective Date and shall terminate as set forth in Schedule A.

9.2. Either Party may terminate this Agreement immediately on giving notice in writing to the other Party if the other Party commits a material breach (including any non-payment of fees due) and, in the case of a material breach capable of being cured, failed to cure that breach within fifteen (15) days after the receipt of a request in writing to cure such breach.

9.3. Upon any termination or expiration of this Agreement, whether under this Section 9 or otherwise, (a) Client shall discontinue all access and use of all Proprietary Items, and promptly return to Visual Labs any Confidential Information then in Client's possession or control and (b) Client shall

uninstall the Application from any device owned or controlled by Client, and (c) Visual Labs, at its sole discretion, may block Client access to the Services and Platform and/or delete Client Content.

9.4. Client shall remain liable for all payments due to Visual Labs with respect to the period ending on the date of termination or expiration. For any termination other than a termination for good cause by Client in accordance with Section 9.2, the balance of all remaining subscription fees relating to the then current Subscription Term will be due and payable. The provisions of Sections 1, 2.4, 2.5, 3, 4.2, 4.3, 4.4, 5, 6, 7, 8, 9.3, 9.4, and 10 shall survive any termination or expiration of this Agreement.

10. OTHER PROVISIONS

10.1. **Insurance.** During the Subscription Term, Visual Labs will, at no cost to Client, maintain the following minimum insurance in full force and effect: (i) commercial general liability insurance, including contractual liability coverage and coverage for bodily injury, personal injury, and property damage in a combined single limit of not less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate, (ii) workers' compensation insurance in compliance with all statutory regulations of the nation, state, territory, or province having jurisdiction over Visual Labs' employees performing services under the Agreement with limits of not less than \$1,000,000 (or such greater amount as may be required by applicable law), and (iii) technology errors and omissions insurance in an amount not less than \$1,000,000 in the annual aggregate.

10.2. **Notice.** All notices, consents and other communications under or regarding this Agreement shall be in writing and shall be deemed to have been received on the earlier of the date of actual receipt or the first business day after being sent by a reputable overnight delivery service. Either Party may change its address for notices by giving written notice of the new address to the other Party.

10.3. **Assignment.** Client may not, without Visual Labs' prior written consent, assign, delegate, pledge, or otherwise transfer this Agreement or any of its rights or obligations under this Agreement to any party, whether voluntarily or by operation of law. A sale of assets, merger or consolidation will be deemed an assignment for the purposes of this Agreement.

10.4. **Export Laws and Use Outside of the United States.** Client shall comply with the export related laws and regulations. Client represents and warrants that (i) Client is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) Client is not listed on any U.S. Government list of prohibited or restricted parties. Client shall not export or re-export directly or indirectly (including via remote access) any Proprietary Items (or parts thereof) to any applicable jurisdiction or entity prohibited by law or to which a license is required without first obtaining a license from the applicable regulatory authority. Client will defend, indemnify and hold harmless Visual Labs from and against any violation of such laws or regulations by Client or any of its agents, officers, directors, or employees.

10.5. **Relationship.** The relationship between the Parties under this Agreement is that of independent contractors and not partners, joint venturers or agents.

10.6. **Other Limitations.** The warranties made by Visual Labs in this Agreement, and the obligations of Visual Labs under this Agreement, run only to Client and not to any Authorized User or other third party. Under no circumstances shall any Client affiliate, Client customer, contractor, personnel, invitee, or any other third party be considered a third-party beneficiary of this Agreement. No action or claim of any type relating to this Agreement may be brought or made by Client more than twelve (12) months after Client first has knowledge of the basis for the action or claim. The Client and Visual Labs have freely and openly negotiated this Agreement, including the pricing, with the knowledge that the liability is to be limited in accordance with the provisions of this Agreement.

10.7. **Entire Understanding.** This Agreement states the entire understanding between the Parties with respect to its subject matter, and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the Parties with respect to the subject matter of this Agreement. Any terms in an order or written purchase authorization that add to, or conflict with or contradict, any provisions in the Agreement will have no legal effect.

10.8. **Modification and Waiver.** No modification of this Agreement, and no waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of both Parties. This Agreement may not be modified or amended without written agreement of the Parties. No waiver of any breach of this Agreement, and no course of dealing between the Parties, shall be construed as a waiver of any subsequent breach of this Agreement.

10.9. **Severability.** If any portion of any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, (a) such unenforceable portion of the provision will be deemed severed from this Agreement, (b) the validity and enforceability of the remaining portion of the provision and the other provisions of this Agreement will not be affected or impaired, and (c) this Agreement will be amended in order to effect, to the maximum extent allowable by law, the original intent of such provision.

10.10. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

10.11. **Governing Law and Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of California excluding choice of law; provided, however, that the terms of any applicable law now or hereafter enacted that is based on or similar to the uniform computer information transactions act drafted by the national conference of commissioners on uniform state laws shall not apply. Each Party irrevocably agrees that any legal action, suit or proceeding brought by it that in any way arises out of the Agreement must be litigated exclusively in state court in San Mateo County or Santa Clara County, California or in a federal court in the Northern District of California.

10.12. **Force Majeure.** Except with respect to Client's payment obligations, neither Party shall be liable for, nor shall either Party be considered in breach of this Agreement due to any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications (including the Internet or other networked environment), power or other utility, labor problem, unavailability of supplies or any other cause which could not have been prevented by the non-performing Party with reasonable care.

10.13. **Use of Name.** Client authorizes Visual Labs to use Client's name in marketing materials and any routine list of Visual Labs clients.

10.14. **Notices, Questions, Complaints, and Claims.** Please contact us for any notices, questions, complaints, or claims at: Visual Labs, Inc., Attention: Alexander Popof, 607 Menlo Avenue, Menlo Park, CA 94025, (818) 919-9802, or team@visuallabsinc.com.

[END OF MASTER TERMS AND CONDITIONS]

Schedule A

Susanville, California Police Department

The Subscription Term shall begin on the Effective Date and shall end on December 31, 2019. Thereafter, the Subscription Term shall automatically renew for additional one (1) year periods, unless one Party provides the other Party written notice of its intent to not renew the Subscription Term at least thirty (30) days prior to the start of the upcoming renewal period.

The Services will be provided via the use of seventeen (17) smartphones (the "Devices") that will be owned by Client. The cost of the Devices and the associated cellular service, including data service, shall be the responsibility of Client. The Devices will be deployed on Client employees and will be used primarily as a body worn camera to record audio and video of interactions between Client employees and the general public. While the Visual Labs Application is engaged, the Devices will also record, and in certain cases transmit, the physical location (i.e. latitude and longitude) of the Device.

The Devices may be housed in a smartphone case or other mounting solution. It is the sole responsibility of the Client, and not Visual Labs, to verify that the Devices and the mounting solution are appropriate for their employees and that they do not interfere with the duties of, or compromise the safety of, the employees on which they are deployed. It is understood by Client that certain "real time" Services (e.g. live streaming) require a reasonably strong connection to the internet. It is further understood that certain areas in which the Devices will be used may not support the required connection to the internet for certain Services.

The default retention period for all Client footage shall be ninety (90) days. Authorized Client personnel shall have the ability to increase the retention period (if applicable) or change the retention period of any specific file to "indefinite" via the Visual Labs website. Unless the retention period has been changed to "indefinite" by Client, Visual Labs shall delete all Client footage as soon as practicable after the expiration of the applicable retention period.

Fees

Implementation and Training Fee

Visual Labs will charge a one-time implementation and training fee of five hundred dollars (\$500), which includes training via webinar. Optionally, Client may receive one full day of in-person training, in which case the one-time implementation and training fee will be two thousand five hundred dollars (\$2,500), which would include the cost of travel by Visual Labs employee(s).

Subscription Fee

Based on a minimum quantity of seventeen (17) Devices, Visual Labs will charge a subscription fee of forty-eight dollars (\$48) per Device, per month during the Subscription Term. The fee for the full initial Subscription Term shall be due thirty days after the Services are first used. Partial months shall be billed on a pro rata basis. If Client installs the Application on more than seventeen (17) Devices, Visual Labs will charge an additional fee for each additional Device on a pro rata basis.

Usage Fees

The Services shall include a monthly allowance of (i) up to one thousand (1,000) hours of video uploaded; (ii) up to one thousand (1,000) hours of audio recordings uploaded; (iii) up to two thousand five hundred (2,500) photos taken via the photo sequence function or the incident reporting function; and (iv) up to ten (10) hours of live streaming video. The above allowances are based on the use of Services on seventeen (17) Devices. If Client installs the Application on more than seventeen (17) Devices, the above usage allowances will be increased on a pro rata basis. Should Client exceed the applicable limit during any month, the excess will be charged at a rate of five dollars (\$5) per additional hour of video or audio uploaded, five cents (\$0.05) per additional photo, and twenty dollars (\$20) per additional hour of live streaming. Client shall be able to retain up to twenty-five percent (25%) of its annual footage allowance in a retention category greater than the default retention stated above. Storage above such allowance will be charged at the rates set forth in this paragraph.

Maximum Website User Limit

Client shall be able to designate up to twenty-five (25) individuals to receive login credentials and use the Visual Labs website. The designated users of the system may be changed at Client's discretion, provided that no more than the authorized number of users are designated at any one time.

Reviewed by: D Interim City Administrator

Motion only
 Public Hearing
 Resolution
 Ordinance
 Information

Submitted by: Dan Newton, Interim City Administrator

Action Date: January 2, 2019

CITY COUNCIL AGENDA ITEM

SUBJECT: Morning Glory Dairy Update

PRESENTED BY: Dan Newton, Interim City Administrator

SUMMARY: On December 5th, 2018 representatives from Morning Glory Dairy requested City Council support for assisting in a letter writing campaign to encourage the California Prison Industries Association (CALPIA) to reverse their decision to take over the milk and egg contract for High Desert State Prison and the California Correctional Center. On December 19th, the City sent letters to Governor Elect Gavin Newsom, Assemblyman Brian Dahle, Senator Ted Gaines, and the CALPIA Board.

Despite the City letters, letters from the Lassen County Board of Supervisors, and a letter from Assemblyman Dahle, it does not appear that the CALPIA will be reversing their decision and Morning Glory Dairy will not be regaining the milk and egg business.

Staff is seeking direction regarding how the Council wants to proceed.

FISCAL IMPACT: None

ACTION REQUESTED: Direction to Staff

ATTACHMENTS: Letter from Morning Glory to City
Letter of Support from City of Susanville

Morning Glory, INC.
475-020 RICHMOND ROAD
P.O. BOX 189
SUSANVILLE, CA 96130-0189
PHONE (530) 257-3515
FAX (530) 257-0739
E-Mail MorningGlory1921@gmail.com

December 5, 2018

To The Susanville City Council,

We are writing you this letter, both as constituent taxpayers, and as small California businessmen. As businessmen, our business is heavily dependent on the two prisons in our community remaining within our customer base. They are easily our two largest customers. Without their volume of business, (approximately \$1.3 million annually), we would be forced to lay off half our workforce, and severely curtail the services that we provide to the rest of the community. As taxpayers, we are vitally concerned with maximizing the utilization of our tax dollars efficiently as possible and eliminating needless waste of those precious tax resources.

We were just informed that Prison Industries Authorities (PIA) wants to acquire the milk and egg sales that we have been providing to our prisons for the last 55 years. Our current bid price for the fat free half pints is \$0.255 vs. PIA's price of \$0.288 our current bid price for eggs is thirty-seven cents lower than what PIA offers, \$1.40 per dozen vs. PIA's \$1.77. Spending an extra \$110,000 annually for food products, in a scheme, that will put working Californians out of work, and threaten the survival of a California small business really makes no sense at all. The loss of \$1.3 million annually in local revenue in a town as small as Susanville combined with the placement of half our workforce on the unemployment rolls would be a huge burden on the economy of a town as small as ours.

As taxpayers we are outraged that the prisons would be forced to pay significantly more money for their milk and eggs than necessary. As businessmen we are outraged that our employees will lose their jobs, so that convicts can do those jobs at a higher cost and with worse service, (note that we deliver three times per week and PIA only delivers twice per week). In addition, the local prisons will probably need expanded cold-storage facilities to deal with twice per week service - an unnecessary additional capital expense for our state.

When the prisons were first built in Susanville, and upon every enlargement thereof, the constituents of Susanville were always promised by the Department of Corrections that local goods and services would be utilized whenever possible in order to help mitigate the negative impacts that institutions of this size invariably have on a small community such as ours. They called this their "Good Neighbor policy". Since our prisons were built, they have followed those guidelines with but a few exceptions. Several times now, PIA has tried to take our business, and each time our elected powers-that-be have stepped up and prevented this from happening. We find it incredible that the authority to give or not to give this business to local bidders lies within the very PIA bureaucracy that seeks to gain from our loss. PIA's repeated efforts to take our business away from us are completely contrary to the "Good Neighbor" promises made to the Susanville City Council, and the Lassen County Board of Supervisors, and to all of the citizens of our small town. These promises were made and renewed every time a prison was built or enlarged in our valley.

Since we are a primary provider of eggs, milk, cheese, bread, ice, etc. within our remote area, we receive three to five truck loads a week allowing us the luxury of promising next day service to every customer within our service area at a reasonable price. Without the volume of prison product on board our truck loads, we could only afford two trips per week, which would negatively impact not only our service, but also put an upward pressure on the prices that every hospital, restaurant, school, and store in our area currently receive from us. A symbiotic relationship exists between us, our prisons, hospitals, schools, stores, and restaurants. The loss of any of that business would have an unfavorable ripple impact upon all of the others.

The state of California, through the Department of General Services, office of small and Minority Business, has issued us official "Small Business" status. This is the State's way of helping ensure the survival of small businesses like ours. To arbitrarily take business away from us, especially business that we have served faithfully for over fifty-five years, contrary to the promises so often made, would also be contrary to the avowed wishes of the State of California in regards to small businesses in general.

For any help you can provide us in addressing these issues, we and our employees will be eternally grateful.

Sincerely Yours;



Joshua McKernan, President



Mike O'Kelly, CFO



City of Susanville

(530) 257-1000 • 66 North Lassen Street • Susanville, CA 96130-3904

December 19, 2018

Ralph Diaz, CALPIA Board Chairman
560 E. Natoma Street
Folsom, CA 95630

Re: Purchasing Locally

Dear Mr. Diaz:

The Susanville City Council would like to express our concern and disappointment over the recent decision by the California Prison Industries Authority to acquire the milk and egg sales for the California Correctional Center and High Desert State prison located in Susanville, California. Morning Glory Dairy has provided milk and eggs to these facilities for several years. Morning Glory Dairy is a small but prominent long-standing business within our region and this decision will cripple their ability to continue to serve our community by providing affordable dairy products to our constituents.

The decision by PIA is one that not only affects Morning Glory Dairy, it affects our community's employment base, tax base, and costs of these products. At over 8,000 inmates, the population at High Desert State Prison and the California Correctional Center, rivals that of Susanville's nine thousand residents. This change essentially deletes a Morning Glory customer almost equal to the size of the entire City of Susanville.

This action is in direct opposition to the good neighbor practices which the Prison Cities and the California Department of Corrections have worked hard to encourage and support. Needless to say, the loss of about \$1.3 million annual revenue into our community is not minor, but a significant impact.

The Susanville City Council would greatly appreciate your support on this matter to ensure that our local businesses continue to be afforded opportunities to serve our state institutions within Lassen County and the City of Susanville.

Sincerely,

Kevin Stafford, Mayor
City of Susanville

Kevin Stafford
Mayor
Joseph Franco
Mayor pro tem

Councilmembers:
Brian Moore
Mendy Schuster
Brian Wilson

Reviewed by: Da Interim City Administrator

- Motion only
- Public Hearing
- Resolution
- Ordinance
- Information

Submitted by: Kevin Jones, Police Chief

Action Date: January 2, 2019

CITY COUNCIL AGENDA ITEM

SUBJECT: Police Department Update Report

PRESENTED BY: Kevin Jones, Police Chief

SUMMARY: The Police Chief will be providing a quarterly department report, including, but not limited to; staffing, IT improvement needs/IT provider, vehicle fleet status, SRO contract, found property/bikes, dispatch contract, neighborhood watch, community forums, SIR meetings, facility, budget/overtime.

FISCAL IMPACT: None

ACTION REQUESTED: Information only.

ATTACHMENTS: N/A