

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM: 3.48
(ID # 24993)

MEETING DATE:
Tuesday, May 21, 2024

FROM : SHERIFF-CORONER-PA:

SUBJECT: SHERIFF-CORONER-PA: Ratify and Approve Software-As-A-Service (SAAS) agreement as well as a Memorandum of Understanding (MOU) with Performa Labs to utilize their mobile application for interactive and self-study training for Riverside County Sheriff's Peace Officers. All Districts. [Total Cost \$562,600 with up to \$56,260 in additional compensation, 100% Sheriff's Pre-approved budget]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Ratify and approve the Software-As-A-Service (SAAS) agreement and Memorandum of Understanding (MOU) with Performa Labs to utilize their mobile application for interactive and self-study training for Riverside County Sheriff's Peace Officers for an aggregate amount of \$618,860 for three years through December 31, 2026 unless terminated earlier; and authorize the Chair of the Board to sign the SAAS Agreement and Memorandum of Understanding on behalf of the County; and,
2. Authorize Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding and as approved by County Counsel: (a) to sign amendments that exercise the options of the agreement including modifications of the statement of work that stay within the intent of the Agreement; (b) and sign amendments to the compensation provisions that do not exceed the sum total of ten percent (10%) of the total annual cost of the contract; and (c) to issue Purchase Orders for the services that do not exceed the approved amounts.

ACTION: Policy


David Lelevier, Assistant Sheriff 5/15/2024

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Gutierrez, seconded by Supervisor Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Gutierrez
Nays: None
Absent: None
Date: May 21, 2024
xc: Sheriff

Kimberly A. Rector
Clerk of the Board

By: 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 562,600	\$ 0	\$ 562,600	\$ 0
NET COUNTY COST	\$ 562,600	\$ 0	\$ 562,600	\$ 0
SOURCE OF FUNDS: 100% Sheriff Budget			Budget Adjustment: No	
			For Fiscal Year: 23/24 – 25/26	

C.E.O. RECOMMENDATION: Approve

BR# 24-045

BACKGROUND:

Summary

The Riverside County Sheriff's Department is seeking approval of the Software-As-A-Service (SAAS) agreement as well as a Memorandum of Understanding (MOU) with Performa Labs to utilize their mobile application which provides interactive and self-study training for Riverside County Sheriff's peace officers.

Performa Labs is a sole source provider. They have provided the Riverside County Sheriff's Department with a sole source letter confirming their product is developed, sold, and distributed exclusively by Performa. Their mobile application provides proprietary training material that is approved and recognized by the California Commission on Peace Officer Standards and Training (POST). Their product will provide our peace officers with mobile self-paced training using realistic scenarios based on actual body worn camera footage.

This mobile application is a first-of-its-kind service that allows POST training hours to be obtained via an application installed on the user's mobile device instead of attending the traditional brick-and-mortar schooling. Along with the training module, the Sheriff's Department will also be able to monitor progress and completion of training via the application.

Impact on Residents and Businesses

There is no negative impact on residents and businesses. Having the ability to obtain POST approved training in a self-paced and mobile application will facilitate continued training for patrol-level deputies while not taking them away from their primary patrol function and allowing them to stay in the field., available to answers calls-for-service.

Price Reasonableness

The cost for the Use of Force module is \$125 per license and the cost for the Strategic Communications module is \$75 per license. The Department is looking to purchase a total of 938 licenses per year. Out of the cost of the licenses, POST will reimburse the Department 100% of the Use of Force costs which totals approximately \$117,250 annually in reimbursements. The vendor is committing to provide the Department with a discount on the

SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA

Administration Dashboard and Implementation Fees as well as a Multi-Year Term discount totaling \$168,760 in discounts for a 3-year term agreement.

Attachments

Sole Source Justification

H-11/TSOC Approval

Software-As-A-Service (SAAS) agreement – Two (2) copies

Memorandum of Understanding (MOU) – Two (2) copies



Melissa Curtis, Deputy Director of Purchasing and Fleet 5/15/2024



Rebecca S Cortez, Principal Management Analyst 5/15/2024



Aaron Gettis, Chief of Deputy County Counsel 5/13/2024

PERFORMA SOFTWARE-AS-A-SERVICE AGREEMENT

THIS PERFORMA SOFTWARE-AS-A-SERVICE AGREEMENT (together with all attachments hereto, the "Agreement"), is made effective as of April 1, 2024 (the "**Effective Date**") and supersedes any previous agreements regarding PERFORMA SOFTWARE-AS-A-SERVICE, by and between PERFORMA LABS, INC., a Delaware corporation having its principal place of business at 19600 Fairchild Rd, Suite 300, Irvine, CA 92612 ("**PERFORMA**") and the Riverside County Sheriff-Coroner, a municipal corporation having its principal place of business at 4095 Lemon Street, Riverside, CA 92501 ("**Client**").

Recitals

WHEREAS, PERFORMA's App (as defined below) and proprietary training material provide to California peace officers self-study training that is approved and certified by the California Commission on Peace Officer Standards and Training ("**POST**");

WHEREAS, the California state legislature requires California peace officers to complete certain POST-certified training courses during each POST Mandate Cycle (as defined below) (completion of each such training course, "**POST Credit**");

WHEREAS, the App allows law enforcement agencies to train peace officers using realistic scenarios based on actual body worn camera footage, allows App users flexibility to complete training at their convenience and in accordance with an agency's policy, schedule, and allows agencies to monitor the progress and completion of training; and

WHEREAS, Client desires to utilize the App in conjunction with in-person and other training programs to comply with POST requirements, to simplify and decrease the effort, time, and cost of training, and to increase the efficacy of Client's training program.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, PERFORMA and Client agree as follows:

1. **Definitions.** As used in this Agreement, the following capitalized terms have the meanings set forth below:

"**Admin Console**" is a function provided in connection with the App to allow designated Client Admin(s) to access Admin Reports electronically.

“Admin Report” means data provided in electronic form created and compiled by PERFORMA for Client Admin(s) concerning the progress and completion of Modules by Users.

“Anonymized Data” means electronic data or information compiled or derived by PERFORMA based on User Data that has been deidentified, aggregated or anonymized such that it cannot reasonably be linked to Client or a particular User.

“App” means the iOS and Android mobile application that PERFORMA provides to Client Admins and Users to access the Service.

“Client Admins” means the persons employed by Client who shall be PERFORMA’s primary points of contact regarding the Service. Client shall have at least one designated Client Admin. Each Client Admin shall have access to Admin Reports.

“Module” means a proprietary self-study training module consisting of four (4) Training Courses available to authorized Users through the App.

“POST Mandate Cycle” means each two-year training period established by the California state legislature during which peace officers shall complete certain POST-certified training content for POST Credit, if applicable. A POST Mandate Cycle runs from January 1, 2021 through December 31, 2022; January 1, 2023 through December 31, 2024; and so on and so forth every two (2) calendar years thereafter.

“Seat” means access to the Service via the App by a single unique User for the completion of one (1) Training Course or Module (as set forth on Attachment A), and such Training Course’s or Module’s associated POST Credit, if applicable, during the Subscription Term or Renewal Term then in effect.

“Service” means providing (i) those Training Courses and Modules set forth on Attachment A to Users via the App and (ii) Admin Reports to Client Admins via the App or electronically. The Service includes PERFORMA’s storing, hosting, managing, maintaining, and supporting the Software, App, and Admin Console.

“Service Fees” means the total fees charged for all Seats purchased during the Term of this Agreement.

“Software” means PERFORMA’s proprietary software (including algorithms and domain expertise) and associated third-party software used by PERFORMA to provide the Service.

“**Subscription Term**” means the period during which PERFORMA shall make the Software available for use by Users as set forth on Attachment A.

“**Term of this Agreement**” means the period commencing on the Effective Date and terminating upon termination of this Agreement in accordance with Section 10 or the expiration of this Agreement. The Term of this Agreement shall include the Subscription Term together with all Renewal Terms (as defined below), if any.

“**Training Course**” means a single training course completed by a User during the Subscription Term or Renewal Term then in effect.

“**Users**” means those Client personnel authorized to use the App and the Service.

“**User Data**” means all electronic data or information submitted by Client and Users to the Service, as well as any electronic data or information generated or recorded by Performa concerning Client or Users’ use of the Service.

2. Provision of the Service. PERFORMA shall make the Service available to Client and Users during the Subscription Term pursuant to the terms and conditions set forth in this Agreement.

3. Use of the Service.

3.1 POST Reporting. When a User completes or passes a Training Course or Module eligible for POST Credit, Client authorizes PERFORMA to report to POST the name of the User and the results of the Training Course or Module.

3.2 Client Responsibilities.

3.2.1 Client Admins. Client shall notify PERFORMA in writing of the name, title, telephone number, and email address of each of its Client Admins. Client shall keep this information up to date during the Term of this Agreement. Client shall have at least one designated Client Admin at all times during the Term of this Agreement.

3.2.2 User Eligibility and Conduct. Client shall provide the names and email addresses (departmental or Client web domain email addresses only) of those persons who shall be Users of the Service. Client shall submit User information in an electronic format provided or specified by PERFORMA.

- 3.2.1.1 Client is responsible for determining the eligibility of persons who it designates as Users under this Agreement. Users shall be employees of Client, at least 18 years of age.
- 3.2.1.2 Client shall be liable for any conduct or actions of its Users that violates this Agreement.
- 3.2.1.3 Client shall notify PERFORMA within five (5) days of any User who is no longer eligible or authorized to be a User, including but not limited to ineligibility by reason of termination of employment with Client.
- 3.2.2 Client Policies. Client shall establish a training schedule and policies governing its Users' use of the Service, which policies shall not conflict with the terms set forth in this Agreement. As between Client and PERFORMA, Client shall be solely responsible for scheduling permitted times that Users may access the Service and ensuring that its Users complete all training in a timely manner (*e.g.*, prior to the termination of a POST Mandate Cycle, the Subscription Term, or a Renewal Term, as applicable).
- 3.2.3 Client-Determined Responses. From time to time Client may, in its sole and reasonable discretion, determine and assign responses to questions posed to its Users in Training Courses; provided, that Client shall ensure any such responses comply with Client policies, practices, and guidelines; provided further, that Client acknowledges PERFORMA undertakes no obligation to review or confirm the accuracy of any such responses, and disclaims all liability in connection with any such responses; and provided further, that Client shall indemnify, hold harmless, and defend PERFORMA from any liability, losses, suits, claims, damages, and expenses which arise out of any such responses.

3.3 Usage Guidelines.

- 3.3.1 Permitted Use. Client and Users shall use the Service solely for training Users and monitoring Users' training progress through the Admin Console as contemplated by this Agreement.

3.3.2 License Grant and Restrictions.

3.3.2.1 PERFORMA hereby grants a license to one (1) Seat to each User of the Service. Once a Seat is assigned to a User, (i) the User shall create a User ID and password, (ii) such Seat license may be transferred to another User, provided such Seat license has not been used for POST credit. Access to that Seat and its related training content, and the license granted thereto, shall automatically terminate upon the earlier of (A) the termination of the Subscription Term or Renewal Term then in effect, and (B) the date such User is no longer permitted to access the Service, including as a result of Client's termination of User's employment.

3.3.2.2 Upon commencement of a Renewal Term, each User shall be granted a new license to one (1) Seat to access the Service, complete the associated Training Course or Module (as set forth on Attachment A), and obtain associated POST Credit, if applicable; provided that Client shall remit to PERFORMA Service Fees for each Seat during the Renewal Term in accordance with Section 4.1.

3.3.3 Additional Seat Purchases. Client may, from time to time during the Term of this Agreement, elect to assign Seats in excess of that number of Seats purchased on Attachment A to Users through the Admin Console (such Seats, the "**Additional Seats**"). Each Additional Seat assigned to a User shall be subject to PERFORMA's prices then-prevailing rates and Client shall remit payment for all such Additional Seats upon receipt of PERFORMA's invoice therefor in accordance with Section 4. Users of Additional Seats shall be subject to those terms and conditions set forth herein that are applicable to Seats.

3.3.4 Prohibited Uses.

3.3.4.1 Client, Client Admins, and Users shall not copy, reverse engineer, license, sublicense, sell, resell, rent, transfer, lease, assign,

distribute, time share, or otherwise commercially exploit or make the Service, App, Admin Console, and Modules available to any third party. Without limiting the generality of the foregoing, Users and Client Admins may not take screenshots or screen captures or any other reproduction of the App or Modules.

3.3.4.2 Client, Client Admin(s), and Users shall not attempt to gain unauthorized access to the Service, App Modules, Admin Console, and related systems or networks.

3.3.4.3 Client, Client Admin(s), and Users shall not share their login information to access the App, including User IDs and passwords, with any other persons or display any content of the Modules to any other persons.

3.3.5 Compliance with Guidelines. Client shall be responsible for ensuring that all Client Admins and Users comply with the use guidelines set forth in this Section 3.3, as well as any additional reasonable guidelines and policies established by Client for their personnel regarding use of the App and Service as communicated to PERFORMA by Client from time to time during the Term of this Agreement. PERFORMA reserves the right to block access to the Service by any person who violates the terms of this Agreement or otherwise interferes with PERFORMA's ability to provide the Service to any Client, Client Admin, or User.

3.3.6 Accessing the App. Client, Client Admins, and Users shall download the App using a private link provided by PERFORMA. Client, Client Admins, and Users shall provide their own Internet service and mobile devices operating on either iOS or Android operating systems. No other operating systems are supported at this time. The Service is not available through a web browser.

3.3.7 Supported Software. PERFORMA supports use of the App only on devices using the most current version of the iOS or Android operating systems and the prior two versions of such operating systems. New releases of the iOS or Android operating systems may not be supported for up to three months after their public release.

4. Service Fees and Payments.

- 4.1 Minimum Purchase.** Client shall pay in advance the Service Fees specified in Attachment A based on the number of Seats purchased by Client. Client shall purchase one (1) Seat during the Subscription Term and each Renewal Term, if applicable, for each of Client's sworn peace officers and peace officer trainees or cadets. Client may purchase additional Seats for anticipated hiring during the Term of this Agreement.
- 4.2 Refunds.** Service Fees are not refundable in whole or in part in the event that Users do not use, complete, or pass the Training Course or Module for which the Seat was purchased.
- 4.3 Invoicing & Payment.** The Service Fees shall be invoiced by PERFORMA as set forth on Attachment A. Payments are due within 30 days of Client's receipt of the invoice. Any invoices unpaid after 30 days will be subject to interest at the rate of six percent (6.0%) per annum.
- 4.4 Renewal.** After expiration of the Subscription Term, this Agreement may be renewed for two (2) additional two (2)-year terms (each, a "**Renewal Term**"), pursuant to a written amendment to this Agreement executed by both parties. Client shall advise PERFORMA of changes to the aggregate number of Client's sworn peace officers and/or peace officer trainees or cadets employed by Client upon commencement of the Renewal Term and the information set forth in Section 3.2.2 so that each such person may have access to the App extended or removed as an authorized User.
- 4.5 Service Fee Adjustments.** Service Fees shall adjust upon commencement of each Renewal Term to reflect PERFORMA's then-prevailing rates. In addition, from time to time during the Term of this Agreement PERFORMA may adjust its Service Fees for all Seats purchased after the effective date of such adjustment upon written notice to Client.
- 4.6 Multi-Year Discount.** Notwithstanding the terms set forth in Section 4.5, in the event PERFORMA has agreed to a multi-year Service Fee discount in exchange for Client's agreement to commit to a Term of this Agreement in excess of one (1) year (a "**Multi-Year Discount**"), such Multi-Year Discount shall remain in effect and any Service Fee price adjustments shall not take effect until the term for which such Multi-Year Discount applies terminates (the "**Multi-Year Discount Term**"). The Multi-Year Discount and Multi-Year Discount Term, if any, shall be set forth in Attachment A. If Client terminates this

Agreement pursuant to Section 9.1 prior to termination of the Multi-Year Discount Term, PERFORMA shall be entitled to receive a true-up amount equal to the difference between (i) the Service Fees PERFORMA would have earned (including as a result of any price adjustments) had the Multi-Year Discount not been in effect, and (ii) the Service Fees subject to the Multi-Year Discount.

- 4.7 Suspension of Service.** If the Service Fees (except fees then subject to Client's good faith dispute) are 45 days or more overdue, then, in addition to any of its other rights or remedies, PERFORMA may suspend Client's access to the Service, without liability to Client, until all such amounts are paid in full.
- 4.8 Taxes.** Unless otherwise stated, PERFORMA's fees do not include any local, state, federal, or foreign taxes, levies or duties of any nature ("**Taxes**"). Client is responsible for paying all Taxes, excluding taxes based only on PERFORMA's income. If PERFORMA has the legal obligation to collect or remit Taxes for which Client is responsible under this section, the amount of such Taxes shall be invoiced to and paid by Client unless Client provides PERFORMA with a valid Tax exemption certificate authorized by the appropriate taxing authority.
- 4.9 Non-Appropriations.** The Client obligation for payment of this Agreement beyond the current fiscal year-end is contingent upon and limited by the availability of Client funding from which payment can be made. No legal liability on the part of the Client shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, Client shall immediately notify PERFORMA in writing; and this Agreement shall be deemed terminated, have no further force, and effect. The Client's staff responsible for the management of this Agreement shall use best efforts to obtain an appropriation in the full amount required under this Agreement, including the submission of budget requests each year that are sufficient to cover the Client's payment obligations hereunder.

5. Proprietary Rights.

- 5.1 Reservations of Rights.** Client acknowledges that in providing the Service, PERFORMA utilizes (i) the PERFORMA name, the PERFORMA logo, the PERFORMA-LABS.com domain name, the product and service names associated with the Service, and other registered

or unregistered trademarks and service marks; (ii) certain audio and visual information, documents, software and other works of authorship; and (iii) other technology, software, hardware, products, processes, algorithms, user interfaces, know-how, and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information (collectively, “**PERFORMA Technology**”) and that the PERFORMA Technology is covered by intellectual property rights owned or licensed by PERFORMA (collectively, “**PERFORMA IP Rights**”). Other than as expressly set forth in this Agreement, no license or other rights in or to the PERFORMA Technology or PERFORMA IP Rights are granted to Client, Client Admins, or Users, and all such licenses and rights are and shall remain with PERFORMA and its licensors and are hereby expressly reserved.

- 5.2 License Grant.** PERFORMA grants Client and its Users a worldwide, non-exclusive, non-transferable, non-sublicensable right to access and use the App and Software hosted by PERFORMA in connection with PERFORMA’s provision of the Service in accordance with the terms of this Agreement.
- 5.3 Restrictions.** Client and Users shall not (i) modify, copy, or create derivative works based on the Service or the PERFORMA Technology; (ii) create Internet “links” to or from the Service, or “frame” or “mirror” any content forming part of the Service; (iii) bypass or breach any security device or protection used by the Service or access or use the Service other than by a User through the use of his or her own then-valid access credentials; (iv) remove, delete, alter, or obscure any trademarks, specifications, documentation, end-user license agreement, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Service; or (v) disassemble, reverse engineer, decode, or decompile the Service or PERFORMA Technology, or otherwise attempt to derive or gain access to it, for any reason whatsoever, including to (A) build a competitive product or service, (B) build a product or service using similar ideas, features, functions or graphics of the Service, or (C) copy any ideas, features, functions or graphics of the Service. Client, Client Admins, and Users may not create, store, or disseminate screenshots or capture screen images from the App, Module(s), or Admin Console.
- 5.4 Suggestions.** PERFORMA shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Service any suggestions, ideas, enhancement requests, feedback,

recommendations, or other information provided by Client or its Users relating to the operation of the Service.

5.5 User Data and Anonymized Data. Client Admin(s) and User(s) may access electronically certain User Data and Anonymized Data that PERFORMA derives therefrom. The parties agree that all such User Data and Anonymized Data are the exclusive property of PERFORMA; *provided, however*, that PERFORMA shall maintain the confidentiality of all User Data and shall not disclose User Data to any third party without the written consent of Client unless required to do so in response to a subpoena, discovery request, document request, Public Records Act request, or any other valid court order, or as otherwise required by applicable law or regulation.

5.6 Compelled Disclosure. In the event PERFORMA is required by law, regulation, or a valid and effective subpoena or order issued by a court of competent jurisdiction to disclose User Data or any other information (with the exception of Anonymized Data) related to this Agreement (any such request, a “**Compelled Disclosure**”), PERFORMA shall promptly notify Client in writing of the existence, terms and circumstances surrounding such Compelled Disclosure so that Client may take any measures, at Client’s expense, that it deems appropriate to oppose or respond to the request. At Client’s request, PERFORMA shall provide all cooperation and assistance as may reasonably be requested by Client in responding to the Compelled Disclosure, or seeking a protective order or other appropriate remedy to prevent or limit the scope of any such Compelled Disclosure. Client shall promptly reimburse PERFORMA for all costs or expenses of whatever kind, including personnel-related costs, reasonable attorneys’ fees, court costs and expenses, and court sanctions or penalties, incurred by PERFORMA in responding to any Compelled Disclosure.

6. Warranties, Limitations, and Disclaimers.

6.1 PERFORMA Warranty. PERFORMA warrants that it will provide the Service in a manner substantially consistent with this Agreement and any documentation provided by PERFORMA in connection with the Service.

6.2 Sole Remedy for PERFORMA Warranty. In the event that PERFORMA provides the Service on the terms set forth in this Agreement in a manner that significantly affects the use of the Service, the App, or Admin Console and Client so notifies PERFORMA with a written

report of such failure via email to customerservice@performa-labs.com, PERFORMA's sole obligation shall be to use commercially reasonable efforts to correct such failure promptly.

- 6.3 Limitations.** Although PERFORMA has used its diligent efforts to ensure the accuracy, completeness, timeliness, and accessibility of the Service, Module(s), App, and Admin Console, Client agrees that neither PERFORMA nor PERFORMA's third-party software or service providers shall have any liability whatsoever for the accuracy, completeness, timeliness, or accessibility of the Service, Module(s), App, and Admin Console, or for any decision made or action taken by Client or Users in reliance upon information or data conveyed through the Service, Module(s), App, and Admin Console, or for interruption of any aspect of the Service, Module(s), App, and Client Console; provided, however, that PERFORMA warrants that courses eligible for POST Credit shall comply in all material respects with POST criteria necessary for the successful completion of such course. Client agrees and acknowledges that PERFORMA shall in no event be held responsible for any problems with the Service, Module(s), App or Admin Console attributable to the public or private Internet infrastructure or Client's and Users' ability to connect to the Internet.
- 6.4 Authorization.** PERFORMA is either (i) the owner of the Software, App, Admin Console, and Module(s) or (ii) authorized to provide the Service pursuant to the terms of this Agreement, and has sufficient right, title, and interest in the Software, App, Admin Console, and Module(s) to grant the license contemplated by this Agreement, and (iii) PERFORMA is not currently engaged in any litigation or legal proceeding of any kind, the subject of which is the Service, Software, App, Admin Console, and Module(s); and to the knowledge of PERFORMA, no legal action pertaining in any manner to the Service, Software, App, Admin Console, and Module(s) is threatened.
- 6.5 Open-Source Software.** The Service, Software, and App do not make use of Open-Source Software in any way that would otherwise make the Service, Software, or App Open-Source Software.
- 6.6 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1, THE SERVICES ARE PROVIDED BY PERFORMA AND ITS THIRD-PARTY SOFTWARE AND SERVICE PROVIDERS WITH NO WARRANTIES OF ANY KIND EXCEPT THOSE EXPRESSLY SET FORTH IN THIS SECTION 6, AND PERFORMA AND ITS THIRD-PARTY SOFTWARE AND SERVICE PROVIDERS

HEREBY DISCLAIM ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PERFORMA DOES NOT WARRANT THAT THE SERVICE, MODULE(S), APP, AND ADMIN CONSOLE WILL BE UNINTERRUPTED, ERROR FREE, OR COMPLETELY SECURE.

7. Limitation of Liability.

7.1 Limitation of Action. Except for actions for non-payment or breach of intellectual property rights, no action (regardless of form) arising out of this Agreement may be commenced by either party more than two (2) years after the cause of action has accrued.

7.2 Limitation of Liability. EXCEPT FOR ACTIONS FOR NON-PAYMENT, BREACH OF INTELLECTUAL PROPERTY RIGHTS, OR BREACHES OF SECTIONS 3.3 OR 5.3, IN NO EVENT SHALL EITHER PARTY BE ENTITLED TO INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR RELIANCE DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS, UNDER ANY CLAIM OR CAUSE OF ACTION, WHETHER BASED ON LEGAL OR EQUITABLE DOCTRINES. IN NO EVENT WILL PERFORMA'S LIABILITY TO CLIENT ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE ACTUAL AMOUNT PAID TO PERFORMA BY CLIENT IN THE 12 MONTHS PRECEDING THE ACCRUAL OF THE CAUSE OF ACTION THAT GIVES RISE TO THE CLAIM.

7.3 Data Charges. In no event shall PERFORMA be liable for data or connection charges incurred by Client, Client Admin(s), and Users to download, access, or use the App, Admin Console, or Service.

7.4 Basis of Bargain; Failure of Essential Purpose. Client acknowledges that PERFORMA has furnished access to the Service, App, Admin Console, and Module(s) in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties. Client agrees that the limitations and exclusions of liability and disclaimers specified herein will apply and survive termination even if found to have failed their essential purpose.

8. Indemnification.

- 8.1 Client Indemnification.** Subject to PERFORMA's indemnification obligations in Section 8.2, and in addition to Client's indemnification obligations set forth in Section 5.6, Client shall indemnify PERFORMA against, and hold PERFORMA harmless from, any claim, demand, cause of action, damage, liability, or expense, including reasonable attorneys' fees incurred by PERFORMA arising out of: (i) Client's, Client Admins' or Users' use of the Service and App, or (ii) the acts or omissions of Client and its Client Admins, Users, employees, or agents.
- 8.2 PERFORMA Indemnification.** PERFORMA expressly agrees to defend, save, hold harmless, and indemnify Client from any and all third party claims, suits, actions, losses, damages, liabilities, statutory penalties, costs and expenses of any nature whatsoever resulting from, arising out of or relating to any claims that the Service and App or use thereof infringe any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right (collectively, "**Intellectual Property Rights**") of any third party, provided that Client gives PERFORMA prompt notice of such claim, suit or proceeding, and gives PERFORMA the full information and reasonable assistance in the defense or settlement of such claim, suit, or proceeding. PERFORMA shall be entitled to direct such defense and to settle or otherwise dispose of such claim, suit or proceeding as it sees fit, provided that PERFORMA shall not be entitled to agree to any judgment or settlement that imposes any monetary obligation on Client without the prior written consent of Client. If PERFORMA believes at any time that the services infringe a third party's Intellectual Property Rights, PERFORMA may, (i) replace an infringing item with a non-infringing item that meets or exceeds the performance and functionality of the replaced item; or (ii) obtain for Client the right to continue to use the infringing item; (iii) modify the infringing item to be non-infringing, provided that, following any replacement or modification made pursuant to the foregoing, the services continue to function in conformance with this Agreement, and (iv) if (i) through (iii) are not commercially practicable, PERFORMA may terminate the Agreement and refund on a pro rata basis any unused portion of the Service Fees paid upfront.

8.2.1 Notwithstanding anything herein to the contrary, PERFORMA shall not be liable under this Article 8.2 for any claim for infringement based on the following:

8.2.1.1 Client's modification of the Service, Software, Modules, App, or Admin Console without the written permission of PERFORMA.

8.2.1.2 Use of the Service, Software, Modules, App, or Admin Console in a manner other than as contemplated by this Agreement, or as authorized in writing by PERFORMA.

9. Insurance

9.1 Without limiting or diminishing the PERFORMA'S obligation to indemnify or hold the Client harmless, PERFORMA shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the Client herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

A. Workers' Compensation:

If PERFORMA has employees as defined by the State of California, PERFORMA shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of PERFORMA'S performance of its obligations hereunder. Policy shall name the Client as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

C. Cyber Liability PERFORMA shall procure and maintain for the duration of the contract insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work hereunder by PERFORMA, its agents, representatives, or employees. PERFORMA shall procure and maintain for the duration of the contract insurance claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data. Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by PERFORMA in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. If PERFORMA maintains broader coverage and/or higher limits than the minimums shown above, the Client requires and shall be entitled to the broader coverage and/or higher limits maintained by PERFORMA. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Client. Policy shall name the Client as Additional Insureds.

D. General Insurance Provisions - All lines:

- 1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the Client Risk Manager. If the Client's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.
- 2) If PERFORMA is self-insured, then it must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the Client Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the Client, and at the election of the Client Risk Manager, PERFORMA'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the Client, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

- 3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of its waiver of subrogation and evidence of additional insured (the "Endorsements") effecting coverage as required herein, and 2) if requested to do so orally or in writing by the Client Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. PERFORMA shall not commence operations until the Client has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier shall sign the original endorsements for each policy and the Certificate of Insurance.
- 4) It is understood and agreed to by the parties hereto that the PERFORMA'S insurance shall be construed as primary insurance, and the Client's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.
- 5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the Client reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the PERFORMA has become inadequate.
- 6) PERFORMA shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- 7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the Client.

8) PERFORMA agrees to notify the Client of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

10. Termination.

10.1 Termination for Convenience. Client shall have the right to partially or completely cancel the Service upon thirty (30) days' written notice to PERFORMA. Termination for convenience does not entitle Client to a refund of any fees paid for the Service, whether or not the Service has been used in full or in part.

10.2 Termination for Cause. Either party may terminate this Agreement upon 30 days' written notice of a material breach to the other party if such breach remains uncured at the expiration of such period.

10.3 Surviving Provisions. The following provisions shall survive the termination or expiration of this Agreement for any reason and shall remain in effect after any such termination or expiration for a period of three (3) years: Sections 5 (excluding Section 5.2), 6, 7, 8, 9, 10, and 11.

10.4 User Data after Termination. PERFORMA may retain User Data after termination, subject to the provision of Section 5.5 and 5.5.1 above. Client may request to receive an electronic copy of User Data upon termination.

11. Dispute Resolution.

11.1 Negotiation. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement by negotiation directly between executives of each party who have authority to settle the controversy. Any party may give the other party written notice of any dispute that arises under this Agreement. Within 15 days after delivery of the written notice, the receiving party shall provide a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party at the negotiation and of any other person who will accompany the executive. Within 30 days after delivery of the initial written notice, the designated executives of both parties shall meet at a mutually acceptable time and place.

- 11.1.1 Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the meeting of designated executives ("**Meeting**"). Ending the Meeting without a resolution shall not preclude further negotiation or mediation, if mutually desired by the parties.
- 11.1.2 All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation and the Meeting by any of the parties, their agents, employees, experts and attorneys are confidential, privileged, and inadmissible for any purpose, including impeachment, in an arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.
- 11.1.3 At no time prior to the conclusion of the Meeting shall either side initiate a mediation or other legal proceeding related to this Agreement except to pursue a provisional remedy that is authorized by law or by the JAMS Rules or by agreement of the parties. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of Paragraph 10.1 above.
- 11.1.4 All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in Paragraphs 10.1 and 10.1.1 above are pending and for 15 calendar days thereafter. The parties will take such action, if any, required to effectuate such tolling.
- 11.1.5 If a party refuses to participate in the procedures and processes set forth in this Section 10.1, that party forfeits any right to recover prevailing party attorney's fees and costs in any subsequent arbitration or legal proceeding.

11.2 Mediation. If the procedure set out in section 10.1 above does not resolve the dispute, any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to mediate, shall be determined by mediation in Riverside County, California before one mediator. The mediation shall be administered by JAMS pursuant to its Rules and Procedures. The mediator shall issue a written decision setting forth the bases for the mediator's ruling.

12. General Provisions.

- 12.1 Records Requests; Audits.** From time to time during the Term of this Agreement, Client or its nominee, authorized agent, or representative may, in Client's reasonable discretion, (a) request documentation or records regarding Client's or its Users' use of the Service or User Data, including for Client to comply with governmental or regulatory requests or requirements (any such request, a "**Records Request**"); and (b) on at least three (3) business days' notice, inspect and audit PERFORMA's records solely as they relate to this Agreement (an "**Audit**" and, together with a Records Request, an "**Inspection**"). All Audits shall be conducted during regular business hours and no more frequently than once in any 12-month period (except as otherwise required to comply with applicable law), and in a manner that does not unreasonably interfere with PERFORMA's business operations. PERFORMA shall make available its books, records, equipment, information, and personnel as may be reasonably necessary to cooperate with any Inspection. Client shall only have access to and examine information directly related to Client's or its Users' use of the Service, and shall comply with all reasonable instruction communicated by PERFORMA in completing its Inspection. Client shall promptly reimburse PERFORMA for all expenses incurred by PERFORMA in connection with any Inspection, including but not limited to time and materials costs incurred to comply with any such request.
- 12.2 Choice of Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, exclusive of conflict or choice of law rules.
- 12.3 No Benefit to Third Parties.** The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the parties, and they are not to be construed as conferring any rights on any other persons.
- 12.4 Notices.** All notices or other written communications required or permitted to be given pursuant to this Agreement shall be sent by overnight delivery, registered, or certified U.S. mail (return receipt requested) and addressed to the parties at the addresses first set forth above (or such other address as may be specified by like notice).
- 12.5 Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

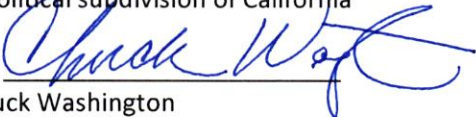
- 12.6 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objective of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 12.7 Assignment.** Neither party may assign or transfer this Agreement or any right or obligation hereunder without the other party's prior written consent; *provided*, that PERFORMA may assign this Agreement in connection with a sale or transfer of substantially all of the assets of, or a majority interest in the voting shares of, PERFORMA to, or the merger or consolidation of PERFORMA with or into, any other person or company. Any assignment made in violation of this provision shall be void. Client agrees that PERFORMA may subcontract the hosting and other services to be performed in connection with this Agreement, provided that any such subcontracting arrangement will not relieve PERFORMA of any of its obligations hereunder.
- 12.8 Subcontract for Work or Services** No contract shall be made by PERFORMA with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the Client; but this provision shall not require the approval of contracts of employment between PERFORMA and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.
- 12.9 Licensing and Permits.** PERFORMA shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the Client. PERFORMA warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.
- 12.10 Non-Discrimination.** PERFORMA shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply

with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. §1210 et seq.) and all other applicable laws or regulations.

- 12.11 Records and Documents.** PERFORMA shall make available, upon written request by any duly authorized Federal, State, or Client agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the Parties' financial commitments related to the services performed for Client. All such books, documents and records shall be maintained by PERFORMA for at least five years following termination of this Agreement and be available for audit by the Client. PERFORMA shall provide to the Client reports and information related to this Agreement as requested by Client.
- 12.12 Force Majeure.** Except for the obligation to pay money, neither party will be liable for failure or delay in performance under this Agreement due to any cause beyond its reasonable control, including act of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, civil or military authority; terrorists, civil disturbance, fire or other catastrophe, parts shortages, governmental act, or failure of the Internet, provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to correct promptly such failure or delay in performance.
- 12.13 Use of Client's Name.** Client agrees to allow PERFORMA to use Client's name on client lists used for promotional purposes. PERFORMA is permitted to issue press releases or press statements concerning Client's use of the service.
- 12.14 Entire Agreement.** This Agreement and its attachments constitute the entire agreement between the parties as to its subject matter, and supersedes all previous and contemporaneous agreements, proposals, or representations, written or oral, concerning the subject matter of this Agreement. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Client purchase order or in any other Client order documentation shall be incorporated into or form any part of this Agreement and all such terms or conditions shall be null and void.

12.15 Counterparts/ELECTRONIC SIGNATURES. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each party of this Agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act (“CUETA”) Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Agreement. The parties further agree that the electronic signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

COUNTY OF RIVERSIDE,
a political subdivision of California

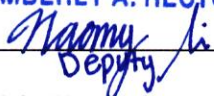
By: 
Chuck Washington
Board of Supervisors Chair
Dated: 5/21/2024

PERFORMA LABS, INC.

By: 
Andree Berengian
Chief Executive Officer
Dated: 03/26/2024


ATTEST:

Clerk of the Board
KIMBERLY A. RECTOR

By: 
Deputy

APPROVED AS TO FORM:

Minh C. Tran
County Counsel

By: 
Kristine Bell-Valdez
Supervising Deputy County Counsel

**ATTACHMENT A
PRICE LIST AND SERVICE FEE CALCULATION**

ITEM #	TRAINING MODULE DESCRIPTION	APPLICABLE YEAR	SEATS (Up to)	PRICE per SEAT	TOTAL
	Peace Officer Self-guided 1053 Training Module				
1	Use of Force PSP (up to 4 hours POST PSP-Use of Force credit)	Year 1	938	\$125.00	\$117,250.00
2	Strategic Communications (PSP) (up to 2 hours POST PSP-StratComm credit)	Year 1	938	\$75.00	\$70,350.00
3	Admin Dashboard Console	Year 1	Up to 25	\$250.00	\$6,250.00
4	Use of Force PSP (up to 4 hours POST PSP-Use of Force credit)	Year 2	938	\$180.00	\$168,840.00
5	Strategic Communications (PSP) (up to 2 hours POST PSP-StratComm credit)	Year 2	938	\$90.00	\$84,420.00
6	Admin Dashboard Console	Year 2	Up to 25	\$250.00	\$6,250.00
7	Use of Force PSP (up to 4 hours POST PSP-Use of Force credit)	Year 3	937	\$180.00	\$168,660.00
8	Strategic Communications (PSP) (up to 2 hours POST PSP-StratComm credit)	Year 3	937	\$90.00	\$84,330.00
9	Admin Dashboard Console	Year 3	Up to 25	\$250.00	\$6,250.00

NOTE:

1 Implementation Fee: Total cost to implement Items 1 & 2 in Year 1.

2 Price per Seat held constant to Year 1 levels to provide Multi-Year Term Discount.

SUBSCRIPTION TERM

Year 1 means 4/1/24 to 12/31/24

Year 2 means 1/1/25 to 12/31/25

Year 3 means 1/1/26 to 12/31/26

TOTAL SEAT LICENSING FEES \$712,600.00

IMPLEMENTATION FEE⁽¹⁾ \$18,760.00

SUBTOTAL \$731,360.00

VIP DISCOUNT (Admin + Impl.) (\$37,510.00)

MULTI-YEAR TERM DISCOUNT⁽²⁾ (\$131,250.00)

TOTAL \$562,600.00

PERFORMA PEACE OFFICER VIDEO MEMORANDUM OF UNDERSTANDING

THIS PERFORMA PEACE OFFICER MEMORANDUM OF UNDERSTANDING ("MOU") is made effective as of April 2, 2024 (the "Effective Date") by and between PERFORMA LABS, INC., a California corporation having its principal place of business at 19600 Fairchild Rd, Suite 300, Irvine, CA 92612 ("PERFORMA") and Riverside County Sheriff-Coroner, a municipal corporation having its principal place of business at 4095 Lemon Street, Riverside, CA 92501 ("Agency").

Recitals

WHEREAS, PERFORMA's mobile device application ("App") and proprietary training material provides self-study training to California peace officers that is approved and recognized by the California Commission on Peace Officer Standards and Training ("POST");

WHEREAS, the App allows law enforcement agencies to train peace officers using realistic scenarios based on actual Body Worn Camera and Police Vehicle video; allows users flexibility to train on their own schedule; and allows agencies to monitor the progress and completion of training; and

WHEREAS, the Agency may desire to or has contracted to use the App (subject to a separate agreement) in conjunction with in-person and other training programs to comply with POST requirements and to simplify and decrease the effort, time, and cost of training, and to increase the efficacy of its training program; and

WHEREAS, the Agency desires to improve and expand the availability of training Modules for use on the App by making available Peace Officer Video, including Body Worn Camera and vehicle video recordings;

WHEREAS, the Agency desires to maintain the confidentiality of its Peace Officer Video;

NOW THEREFORE, PERFORMA and the Agency agree and understand as follows:

1. **Definitions.** As used in this MOU, the following capitalized terms have the meanings set forth below:

“App” means the IOS and Android application that PERFORMA provides to Agency and Agency’s peace officer, trainee, and cadet personnel in order for Agency and Users to access the PERFORMA Service.

“Module” means a proprietary self-study training module created by PERFORMA for utilization solely by authorized users through the App.

“Peace Officer Video” means video recordings in the possession of Agency taken from peace officer Body Worn Cameras, vehicle dashcams, and vehicle video. Peace Officer Video includes the audio track associated with the Peace Officer Video.

2. **Provision of Peace Officer Video.** Agency will provide to PERFORMA electronic copies of Peace Officer Video on the following terms and conditions:

- 2.1 PERFORMA shall provide guidance to the Agency as to the type of crimes, incidents, actions, and subject matters depicted in the Peace Officer Video that PERFORMA requests.
- 2.2 To the extent necessary for Agency to comply with the request for Peace Officer Video, PERFORMA will meet and confer with Agency and answer any questions Agency may have regarding the request(s) and will review Peace Officer Video at the Agency.
- 2.3 Agency shall comply with all applicable laws in authorizing the release of Peace Officer Video to PERFORMA.
- 2.4 PERFORMA agrees to meet with the Agency at its offices to review unredacted Peace Officer Video responsive to the Request(s). PERFORMA shall inform the Agency which Peace Officer Videos that PERFORMA wants the Agency to copy and provide.
- 2.5 PERFORMA and the Agency agree to redact the Peace Officer Video to protect the privacy of officers, victims, witnesses, and third parties depicted in the Peace Officer Video.

- 2.6 PERFORMA agrees that it will only use Peace Officer Video shot in public places or open settings (such as front lawns viewable from the street) to avoid invasion of privacy in private settings such as the interiors of homes and businesses.
- 2.7 After PERFORMA has identified the Peace Officer Video that PERFORMA desires to use, Agency shall choose one of the following two redaction options:
- 2.7.1 Agency shall redact Peace Officer Video as necessary and required to protect privacy rights of victims, other parties, and minors. If Agency performs the redaction, it shall do so at its own cost; or
 - 2.7.2 Agency shall provide the unredacted Peace Officer Video to PERFORMA and PERFORMA shall perform redactions as requested by Agency pursuant to the CPRA. If the Agency elects to have PERFORMA redact the Peace Officer Video, the following additional conditions will apply:
 - 2.7.2.1 PERFORMA shall perform the redactions at PERFORMA's sole cost;
 - 2.7.2.2 PERFORMA shall temporarily store any unredacted Peace Officer Video only on a secure server in the physical possession and exclusive control of PERFORMA and accessible only to authorized PERFORMA employees. This secure server shall be used solely for the temporary storage of unredacted Peace Officer Video and it shall not be remotely accessible via the Internet or any other remote network.
 - 2.7.2.3 PERFORMA shall provide a copy of the redacted Peace Officer Video to the Agency for review and approval of the redactions.
 - 2.7.2.4 After Agency has approved the redactions made by PERFORMA, PERFORMA shall permanently delete all unredacted Peace Officer Video from its server, including

any temporary files created during the redaction process. The deletion process shall include steps to render the deleted files unrecoverable.

2.7.2.5 At no time shall PERFORMA share or display, release, or distribute unredacted Peace Officer Video to any third party.

2.7.2.6 At no time shall PERFORMA send or transmit any unredacted Peace Officer Video via email or any file transfer service.

2.7.2.7 After the Agency has approved the redactions, PERFORMA shall confirm in writing to the Agency under penalty of perjury that the unredacted Peace Officer Video has been permanently and unrecoverably deleted.

2.8 PERFORMA shall reimburse the Agency for its out-of-pocket costs of duplication of video. Unless separately agreed, the Agency will not be entitled to any other compensation for providing the Peace Officer Video or for PERFORMA's use of the Peace Officer Video in the training Modules or App.

3. Confidentiality of Peace Officer Video

3.1 Peace Officer Video shall only be used for training peace officers and peace officer trainees/cadets through the App.

3.2 PERFORMA shall take the utmost care to protect and maintain the confidentiality of Peace Officer Video. These steps include:

3.2.1 The App shall only be licensed to law enforcement agencies that have agreed to use the App and Modules for the sole purpose of training peace officers/cadets/trainees. All Agencies must agree that they will not copy, release, publish, disseminate, or display to unauthorized third parties the Peace Officer Video used in the App and Modules.

- 3.2.2 Only peace officer/cadet/trainees employed by law enforcement agencies that have entered into a Software as a Service agreement with PERFORMA shall be authorized to use the App and the Modules.
- 3.2.3 Before using the App and the Modules, a peace officer/cadet/trainee must agree that he or she will not copy, release, publish, disseminate, or display to unauthorized third parties the Peace Officer Video used in the App and Modules.
- 3.2.4 PERFORMA agrees to use its best efforts to enforce and maintain the confidentiality of Peace Officer Video.
- 3.2.5 PERFORMA shall not release, copy, publish, or display the Peace Officer Video to any third parties without the written permission of the Agency or a court order.
- 3.3 Agency acknowledges PERFORMA's right to use the Peace Officer Video released pursuant to this MOU in its training Modules and App. PERFORMA shall not without the Agency's written permission use the Peace Officer Video for any purpose other than creating and licensing training Modules for use by law enforcement agencies.
- 3.4 To the extent that the Agency has any copyright or ownership interest in the Peace Officer Video, Agency grants PERFORMA a royalty-free, perpetual, worldwide, non-exclusive, non-transferable, non- sublicensable right to use the Peace Officer Video in PERFORMA's training Modules and App.
- 3.5 The Agency agrees that providing Peace Officer Video to PERFORMA and the inclusion of the Agency's Peace Officer Video in PERFORMA's training Modules does not give the Agency any ownership right or interest in the App, training Modules, or any PERFORMA product or service.
- 3.6 The Agency acknowledges that its Peace Officer Video may be used in the Modules and App, and that these products and services will be licensed for use by other law enforcement agencies.

4. The parties to this MOU are independent contractors. This MOU does not create a joint venture or partnership between the Agency and PERFORMA.

5. Limitation of Liability.

5.1 **Limitation of Action.** No action (regardless of form) arising out of this MOU may be commenced by either party more than two (2) years after the cause of action has accrued.

5.2 **Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE ENTITLED TO INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR RELIANCE DAMAGES, INCLUDING DAMAGES FOR LOST PROFITS, UNDER ANY CLAIM OR CAUSE OF ACTION, WHETHER BASED ON LEGAL OR EQUITABLE DOCTRINES.

6. Indemnification.

6.1 **PERFORMA Indemnification of the Agency.** PERFORMA agrees to indemnify and hold harmless the Agency, its elected and appointed officials, employees, and agents from any claim, demand, cause of action, damage, liability, or expense arising out of or related to the performance of this MOU, provided that there shall be no indemnification for any claim, demand, cause of action, damage, liability, or expense arising out of or related to the sole negligence or willful misconduct of the Agency or its elected and appointed officials, employees, and agents.

6.2 **Agency Indemnification of PERFORMA.** The Agency agrees to indemnify and hold harmless PERFORMA, its officers, directors, shareholders, employees, agents, successors and assigns any claim, demand, cause of action, damage, liability, or expense arising out of or related to the performance of this MOU, provided that there shall be no indemnification for any claim, demand, cause of action, damage, liability, or expense arising out of or related to the sole negligence or willful misconduct of PERFORMA or its officers, directors, shareholders, employees, agents, successors and assigns

7. Term and Termination.

- 7.1 **Term of this MOU.** The initial term of this MOU is two year(s) from the Effective Date set out above.
- 7.2 **Termination.** Either party shall have the right to terminate this MOU upon 30 days' written notice to the other party.
- 7.3 **Surviving Provisions.** The following provisions shall survive the termination or expiration of this MOU for any reason and shall remain in effect after any such termination or expiration: Sections 3, 4, 5, 6, and 7.

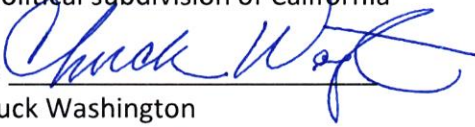
8. General Terms

- 8.1 **Severability.** If any provision of this MOU is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objective of the original provision to the fullest extent permitted by law, and the remaining provisions of this MOU shall remain in effect.
- 8.2 **Assignment.** Neither Party may assign or transfer this MOU or any right or obligation hereunder without the other party's prior written consent; provided, that PERFORMA may assign this MOU in connection with a sale or transfer of substantially all of the assets of, or a majority interest in the voting shares of, PERFORMA to, or the merger or consolidation of PERFORMA with or into, any other person or company. Any assignment made in violation of this provision shall be void.
- 8.3 If the Agency and PERFORMA have entered into a separate Software-as-a-Service Agreement for use of the App or another agreement for PERFORMA services or products:
 - 8.3.1 The terms and conditions of the Software-as-a-Service Agreement or other agreement for PERFORMA services or products shall prevail over any contrary terms in this MOU with respect to the use, licensing, and provision of the Software-as-a-Service or other PERFORMA services or products.

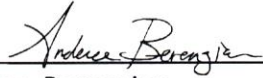
8.3.2 The terms and conditions of this MOU shall prevail over any contrary terms in the Software-as-a-Service Agreement or other agreement for PERFORMA services or products with respect to the use, licensing, and provision of Peace Officer Video.

8.4 **Counterparts.** This MOU may be executed in counterparts, which taken together shall form one legal instrument.

COUNTY OF RIVERSIDE,
a political subdivision of California

By: 
Chuck Washington
Board of Supervisors Chair
Dated: 5/21/2024

PERFORMA LABS, INC.


By: 
Andree Berengian
Chief Executive Officer
Dated: 03/26/2024

ATTEST:

Clerk of the Board
KIMBERLY A. RECTOR

By: 

APPROVED AS TO FORM:
Minh C. Tran
County Counsel

By: 
Kristine Bell-Valdez
Supervising Deputy County Counsel



Riverside County Sheriff's Office

Chad Bianco, Sheriff-Coroner

4095 Lemon Street • Riverside • California • 92501
www.riversidesheriff.org

SS-SHERIFF, PERFORMA LABS INC.

Date: March 25, 2024
From: Amanda Bennett, Deputy Director
To: Board of Supervisors/Purchasing Agent
Via: Ariana Guynes | Ben Clark Training Center (BCTC) | (951) 486-2755
Subject: Sole Source Procurement; Request for the Performa Labs Application and Licenses

The below information is provided in support of my Department requesting approval for a sole or single source. (*Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole or single source.*) **Note:** Once signed by the Department Head and PCS (Signature Line below) Email completed SSJ to: psources@rivco.org.

1. **Supplier being requested:**

2. **Vendor ID: 0000262255**

3. **Single Source** **Sole Source**

4. **Have you previously requested and received approval for a sole or single source request for this vendor for your department?** (*If yes, please provide the approved sole or single source number.*)

Yes **No**
SSJ# _____

4a. **Was the request approved for a different project?**

Yes **No**

5. **Supply/Service being requested:**

Requesting to enter into a Software-As-A-Service (SAAS) agreement as well as a Memorandum of Understanding (MOU) with Performa Labs to utilize their mobile application which provides interactive and self-study training for Riverside County Sheriff's peace officers.



Riverside County Sheriff's Office

Chad Bianco, Sheriff-Coroner

4095 Lemon Street • Riverside • California • 92501
 www.riversidesheriff.org

SS-SHERIFF, PERFORMA LABS INC.

This mobile application is a first-of-its-kind service that allows POST training hours to be obtained via an application installed on the user's mobile device instead of attending the traditional brick-and-mortar schooling. The application will provide peace officer training using realistic scenarios based on actual body worn camera footage. The department will also be able to monitor progress and completion of training via the application.

7. Reasons why my department requires these unique features from the vendor and what benefit will accrue to the county:

This will facilitate continued training for patrol-level deputies while not taking them away from their primary patrol function by allowing them to stay in the field, available to answer calls-for-service. It also alleviates station overtime when the deputy is required to attend mandatory training at an off-site location, making it necessary to backfill that position with an overtime staff member. Our peace officers will have the flexibility to train on their own schedule via this mobile application that provides proprietary training material that is approved and recognized by the California Commission on Peace Officer Standards and Training (POST).

8. Period of Performance: From: April 1, 2024 to December 31, 2026
 (3 years)

Is this an annually renewable contract? No Yes
 Is this a fixed-term agreement: No Yes

9. Identify all costs for this requested purchase. In addition, please include any single or sole source amounts previously approved and related to this project and vendor in the section designated below for current and future fiscal years. If annual increases apply to ongoing costs such as CPI or other contract increases, provide the estimated annual cost for each consecutive year. If the annual increase may exceed the Purchasing Agent's authority, Board approval must be obtained. (Note: ongoing costs may include but are not limited to subscriptions, licenses, maintenance, support, etc.)

Description:	FY 23/24	FY 24/25	FY 25/26	Total
One-time Costs: Training Module License Fees	\$693,850			\$693,850
One-time Costs: Admin Dashboard Console	\$18,750			\$18,750
One-time Costs: Implementation Fees	\$18,760			\$18,760
VIP Discount (Admin. & Implementation Fees)	(\$37,510)			(\$37,510)
Multi-Year Term Discount	(\$131,250)			(\$131,250)
10% additional compensation				\$56,260
Total Costs	\$562,600	\$0	\$0	\$618,860



Riverside County Sheriff's Office

Chad Bianco, Sheriff-Coroner

4095 Lemon Street • Riverside • California • 92501
www.riversidesheriff.org

SS-SHERIFF, PERFORMA LABS INC.

Description:	FY 23/24	FY 24/25	FY 25/26	Total
One-time Costs: Training Module License Fees	\$693,850			\$693,850
One-time Costs: Admin Dashboard Console	\$18,750			\$18,750
One-time Costs: Implementation Fees	\$18,760			\$18,760
VIP Discount (Admin. & Implementation Fees)	(\$37,510)			(\$37,510)
Multi-Year Term Discount	(\$131,250)			(\$131,250)
10% additional compensation				\$56,260
Total Costs	\$562,600	\$0	\$0	\$618,860

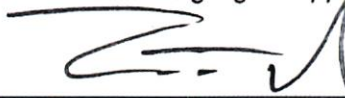
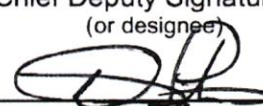

Note: Insert additional rows as needed

10. Price Reasonableness:

The cost for the Use of Force module is \$125 per license and the cost for the Strategic Communications module is \$75 per license. The Department is looking to purchase a total of 938 licenses per year. Out of the cost of the licenses, POST will reimburse the Department 100% of the Use of Force costs which totals approximately \$117,250 in annual reimbursements. The vendor is committing to provide the Department with a discount on the Administration Dashboard and Implementation Fees as well as a Multi-Year Term discount totaling \$168,760 in discounts for a 3-year term agreement.

11. Projected Board of Supervisor Date (if applicable): May 21, 2024

(Draft Form 11s, service agreement and or quotes must accompany the sole source request for Purchasing Agent approval.)

 Chief Deputy Signature <small>(or designee)</small>	<u>ZACH HALL</u> Print Name	<u>5/1/24</u> Date
 Assistant Sheriff Signature <small>(or designee)</small>	<u>Dawn Lovison</u> Print Name	<u>5/2/24</u> Date
 Department Head Signature <small>(or designee)</small>	<u>Claudia Preciado-Arroyo</u> Print Name	<u>5/1/2024</u> Date



Riverside County Sheriff's Office
Chad Bianco, Sheriff-Coroner

4095 Lemon Street • Riverside • California • 92501
www.riversidesheriff.org

SS-SHERIFF, PERFORMA LABS INC.

The section below is to be completed by the Purchasing Agent or designee.

Purchasing Department Comments:

Approve

Approve with Condition/s

Disapprove

Condition/s:

By signing above, department attests all legal and contractual requirements have been met by the selected supplier. Cost includes multi-year discounts for services provided through 12/31/2026

Not to exceed:

One-time \$

Annual Amount \$ / per fiscal year through (date)

(If Annual Amount Varies each FY)

FY 23/24 : \$ 562,600 with up to \$56,260 in contingency

FY : \$

FY : \$

FY : \$

FY : \$

Reviewed by Procurement Contract Specialist (PCS):

Signature: [Handwritten Signature]

Date: 5/1/24

Melissa Curtis

Purchasing Agent

5/7/2024

Date

24-241

Approval Number

(Reference on Purchasing Documents)

Requested Item

Manage Attachments (2): 03 26 24 Peace Officer Video MOU Riverside PD - Partially Executed.pdf [rename] [view] 03 26

Pending	Open	Work in Progress	Complete
Number	RITM0331049	Opened	04-16-2024 01:49:28 PM
Item	Policy H-11, Technology Pro	Opened by	Teresa McGuire
Request	REQ0312337	Stage	Completed
Requested for	Adam Ball	State	Closed Complete
Department	SHERIFF	Priority	4 - Low
Description:			
Due date	04-16-2024 01:49:28 PM		
Configuration item			
Watch list			

Variables

Requested for:

Adam Ball

Department:

SHERIFF

Approving Supervisor/Manager:

Michael Thompson

Alternate Contact:

Ariana Guynes

Purchase Details:**Category:**

- Hardware
- Professional Services
- Software
- Other

Purchase Requested:

New

Procurement Status:

Bid Complete

Terms

Is this a multi-year contract?

Requested Purchase:

Performa Software As-A-Service

Describe Requested Purchase:

This is a mobile application which provides interactive and self-study study POST certified training for Riverside County Sheriff's peace officers. POST training hours will be obtained via the application installed on the user's mobile device instead of attending the traditional brick-and-mortar schooling. This mobile application will decrease the effort, time, and cost of training by allowing the users flexibility to complete training at their convenience.

Business Criticality

- Run the Business
- Grow the Business
- Transform the Business

Business Impact

- Reduce Expenses
- Support Current Operations
- Improve Customer Service
- Improve Operational Efficiencies

Start Date:

Yes

04-01-2024

Length of Contract (In Years) :

End Date:

3

12-31-2026

Special Terms and Conditions:

See "Attachment A" Price List & Service Fee Calculation

Transaction

Is this Purchase or Lease?

Purchase

Estimated Amount:

562600.00

Notes:

Confirmed with Teresa McGuire in SSO. JP

Requested Items - Non Standard

Item Description	Purchase Type	Vendor	Quantity	Unit Cost	Sub Total	Item Tax	Total Cost
No data to display							

RCIT Bureau Approval/Rejection

Activity

04-30-2024 04:14:12 PM Richard Torres Jr. - Changed: State

State: Closed Complete was: Work in Progress

04-17-2024 09:36:12 AM John Pantoja - Changed: State

State: Work in Progress was: Open

04-16-2024 01:49:28 PM Teresa McGuire - Changed: Impact, Opened by, Priority, State

Impact: 3 - Low

Opened by: Teresa McGuire

Priority: 4 - Low

State: Open

Catalog Tasks Request item = RITM0331049

7 Catalog Tasks

Number	Assignment group	Assigned to	Short description	Actual start	Actual end	Work notes	Order	Priority	Approval history	Work notes list
TASK0780074	RCIT TSOC H-11		Policy H-11 Technology Procurement for SHERIFF greater than 100k	04-26-2024 02:18:42 PM	04-30-2024 04:14:11 PM			4 - Low		
TASK0777543	RCIT EAB H-11	Kelly Hartmann	Policy H-11 Technology Procurement for SHERIFF	04-22-2024 10:03:05 AM	04-22-2024 10:07:32 AM			4 - Low		
TASK0777542	RCIT TSB H-11	Sean Adams	Policy H-11 Technology Procurement for SHERIFF	04-22-2024 10:03:05 AM	04-26-2024 02:18:42 PM	04-26-2024 02:18:42 PM - Sean Adams (Work notes) NA		4 - Low		
TASK0777546	RCIT ISO H-11	Alfred Yang	Policy H-11 Technology Procurement for SHERIFF	04-22-2024 10:03:05 AM	04-22-2024 01:30:34 PM			4 - Low		
TASK0775707	RCIT BRMs		Policy H-11 Technology Procurement for SHERIFF - REVIEW	04-17-2024 11:00:43 AM	04-22-2024 10:03:04 AM			4 - Low		
TASK0777544	RCIT SAM H-11	Melissa Palma	Policy H-11 Technology Procurement for SHERIFF	04-22-2024 10:03:05 AM	04-22-2024 04:35:01 PM			4 - Low		
TASK0777545	RCIT CCB H-11		Policy H-11 Technology Procurement for SHERIFF	04-22-2024 10:03:05 AM	04-22-2024 11:30:30 AM			4 - Low		

Approvers Approval for = RITM0331049

1 Approvals

State	Approver	Comments	Description Created
Approved	Michael Thompson	04-17-2024 11:00:42 AM - Michael Thompson (Comments) reply from: mthompson@riversidesheriff.org	04-16-2024 01:49:28 PM

Approved.
Mike

Ref:MSG16562090

Group approvals Parent = RITM0331049

0 Group approvals

Approval	Assignment group	Approval user	Short description
No records to display			

Assets Request line = RITM0331049

0 Assets

Asset tag	Display name	Manufacturer	Model number	Assigned to	Employee number	Title Company	State	Substate	Cost	Configuration Item
No records to display										

Wm Orders Parent = RITM0331049

0 Wm Orders

Number	Priority	State	Short description
No records to display			

Asset Tasks Parent = RITM0331049

0 Asset Tasks

Number	Priority	State	Short description	Assignment group	Assigned to	Task type
No records to display						