

**CONTRACT
BY AND BETWEEN
THE COUNTY OF CUYAHOGA
AND
GEOFEEDIA, INC**

THIS CONTRACT ("Contract") made and entered into this _____ day of _____ 2013 by and between the County of Cuyahoga, Ohio (the "County") on behalf of the Department of Public Safety and Justice Services and Geofeedia, Inc., a corporation with principle offices located at 820 Davis Street, Suite 408, Evanston, IL 60201 (the "Provider").

WITNESSETH THAT:

WHEREAS, the County and Provider desire to enter into a contract in order for the County to receive social media search and monitoring services for the Northeast Ohio Regional Fusion Center for the period commencing August 1, 2013 and ending no later than April 1, 2014.

NOW THEREFORE, the parties hereby agree as follows:

I SCOPE OF SERVICES

The Provider shall provide all services ("Services") as set forth in the attached Statement of Work ("Attachment I).

II COMPENSATION – METHOD OF PAYMENT

The County shall pay the Provider for Services and allowable expenses incurred in providing the Services as described in the Statement of Work. Payment shall be made by the County to the Provider based upon successful completion of the Services. Payment shall be made within thirty (30) days following the County's receipt and approval of a detailed, documented invoice of Services from the Provider. **Compensation shall not exceed Ten Thousand Eight Hundred Dollars and No Cents (\$10,800.00) for the Services.**

The County may withhold payment, if the Provider is determined to be in non-compliance status with Federal, State and /or County requirements, regulations and conditions and written notification of this non-compliance is submitted to the Provider.

III SUBCONTRACTOR

None of the Services covered by this Contract shall be subcontracted without prior written approval of the County.

IV TERM

This Contract will enter into effect as of **August 1, 2013**, and unless sooner terminated for convenience and will terminate on **April 1, 2014**, unless otherwise extended and approved in writing by the COUNTY.

V TERMINATION FOR CONVENIENCE

This Contract shall terminate on the date stated in Section IV above. The County may terminate this Contract without cause upon thirty (30) days prior written notice to Provider. In the event the Contract is so terminated by County, County shall pay Provider for all Services rendered up to the effective date of termination.

VI MODIFICATIONS

By mutual written consent of the County and the Provider, this Contract may be modified whenever such modifications are deemed necessary. Any such modification to this Contract shall be reduced to writing and signed by both parties.

VII NOTICES

Any reports, notices, invoices or communications required in this Contract shall be sufficient if sent by the parties in the United States Mail, postage paid, to the addresses noted below:

County:

Jerry Mullins
Cuyahoga County
Department of Public Safety and Justice Services
310 W. Lakeside Ave., Suite 300
Cleveland, Ohio 44113
Telephone: (216) 698-6462

Provider:

Phil Harris
Geofeedia, Inc.
820 Davis Street, Suite 408
Evanston, IL 60201
Telephone: (847) 250-6857

or at such other address as may be designated by written notice.

VIII NON-DISCRIMINATION

The Provider agrees to provide the Services without discrimination on account of race, sex, color, religion, national origin, age, occupation, physical or mental disability or veteran status, the extent required by law. The parties agree that discrimination and affirmation action clauses contained in Executive Order 11246, as amended by Executive Order 11375, relative to Equal Employment Opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations prescribed by the Secretary of the Labor in Title 41, Part 60 of the Code of Federal regulations, are incorporated herein the extent binding upon the Provider.

IX INDEMNIFICATION

The Provider agrees to indemnify and hold harmless and defend Cuyahoga County, and its officials, officers, employees, agents, representatives, departments, agencies, boards, commissions, and other authorities, and their employees, agents, and officers (each of which persons and organizations in hereinafter called an "indemnity") from and against any and all claims, loss, damages, liability, costs, expense, judgment or obligation whatsoever, for or in connection with bodily injury (including death) or damage to any real or tangible property resulting from, or in any way connected with the performance or failure to perform obligations hereunder by the Provider, and applies without limitation to injury or damage to third parties and the County and its respective property.

Provider acknowledges that as an Ohio political subdivision, the County is prohibited by law from agreeing to indemnify any person or entity, and agrees that no provision of this Contract or any other contract or agreement between Provider and County may be interpreted to obligate County to indemnify or defend Provider or any other party.

X TRADE SECRETS; CONFIDENTIALITY

- a. Trade Secrets. Provider shall take all steps necessary to protect the County's trade secrets. All data dictionaries, entity relationships, database configurations, encryption passwords, forms, automated reports, or other artifacts used to access the data shall belong to County and shall be treated as a trade secret of the County.
- b. Confidential Information. Provider shall treat as proprietary and confidential any and all information belonging to the County, which is disclosed to Provider in the course of performance of Services under this Contract (the "Confidential Information"). Confidential Information shall include, but not limited to any device, data, database, files, data stores, process, method or technique originated by or peculiarly within the knowledge of the County and its representatives, employees, and those in privy with

it, which is not available to the public and is subject to protection as property under recognized principles. All Confidential Information of the County supplied to Provider by the County are and shall remain the sole property of County. Provider shall not, without the County's written consent, copy or use such records except to carry out the services, and will not transfer such records to any other party not involved in the performance of this Contract.

Provider shall only use Confidential Information for the purposes of this Contract. Provider agrees not to disclose or reveal to any outside party or use for its own benefit, either directly or indirectly, any information which it may acquire or develop or, has acquired or developed concerning the technical or business affairs or other private or confidential matters, information, or data of County without prior written permission of the County. Confidential Information shall not include information that is in the public domain. The County will abide by law in granting or denying any permission for disclosure.

If Provider fails to meet its obligations to protect the Confidential Information, the County may seek equitable relief.

- c. Survival of this Article. This entire Article shall survive the completion of the Services hereunder and the termination of this Contract unless the County releases Provider of its obligations through a written signed communication from the County's Director of Law at an earlier date.

XI PUBLIC RECORDS

Provider acknowledges and agrees that as a political subdivision, the County is subject to the requirements of the Ohio Public Records Law. When the Provider submits documents and/or information that properly and legally qualifies as a trade secret under Ohio law, Provider must segregate all protected information and/or documents submitted to County and conspicuously mark each page as "CONFIDENTIAL - TRADE SECRET." Provider may not take advantage of this process to mark information/documents that it wishes to keep confidential, but doesn't qualify legally as a trade secret under Ohio law. By taking advantage of this process, Provider certifies that it only marked information/documents that legally qualify as a trade secret under Ohio law as "CONFIDENTIAL - TRADE SECRET."

XII GOOD STANDING

Provider has been duly organized and is a validly existing corporation under the laws of the State of ^{Delaware} ~~Illinois~~, is in good standing and qualified to do business in the State of Ohio as a foreign corporation, has the full legal authority to enter into this Contract and perform its obligations hereunder, and has all requisite power, corporate or otherwise, to conduct its business, as presently conducted and will remain so qualified and in good standing during the term of this Contract.

XIII COMPLIANCE WITH THE LAW

The Provider agrees to provide the Services in compliance with all applicable Federal, State and County laws, rules, regulations and ordinances.

XIV ENTIRE CONTRACT

This Contract constitutes the full and complete expression of the agreement between the parties and supersedes any prior contemporaneous oral or written agreements. This Contract shall not be amended, except by a written instrument signed by both parties.

XV INSURANCE REQUIREMENTS

Provider shall procure, maintain and pay premiums for the insurance coverage and limits of liability indicated below with respect to products, services, work and/or operations performed in connection with this Contract.

1. Mandatory Insurance Requirements

The following three items (Worker's Compensation Insurance, Commercial General Liability Insurance, and Business Automobile Liability Insurance) are all mandatory requirements unless otherwise specified.

(a) **Worker's Compensation Insurance** as required by the State of Ohio. Such insurance requirement may be met by either purchasing coverage from the Ohio State Insurance Fund or by maintaining Qualified Self-Insurer status as granted by the Ohio Bureau of Workers Compensation (BWC).

For Providers with employees working outside of Ohio, Worker's Compensation Insurance as required by the various state and Federal laws as applicable including Employers' Liability coverage with limits of liability not less than:

\$1,000,000 each accident for bodily injury by accident;
\$1,000,000 each employee for bodily injury by disease;
\$1,000,000 policy limit for bodily injury by disease.

Such insurance shall be written on the National Council on Compensation Insurance (NCCI) form or its equivalent.

(b) **Commercial General Liability Insurance** with limits of liability not less than:

\$1,000,000 each occurrence bodily injury & property damage;
\$1,000,000 personal & advertising injury;
\$2,000,000 general aggregate;
\$2,000,000 products/completed operations aggregate.

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

(c) **Business Automobile Liability Insurance** covering all owned, non-owned, hired, and leased vehicles. Such insurance shall provide a limit of not less than \$1,000,000 combined single limit (bodily injury & property damage) each accident;

Such insurance shall be written on an occurrence basis on the Insurance Services Office (ISO) form or its equivalent.

Insurance Coverage Terms and Conditions

1. The insurance policies of the Provider required for this contract, with the exception of the All Risk Equipment Insurance and Errors & Omissions Insurance, shall each name the "County of Cuyahoga, Ohio and its employees" as an Additional Insured and shall contain the following provisions:

- (i) Thirty (30) days prior notice of cancellation or material change;
- (ii) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the County.

2. The insurance required for this contract shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above.

3. These insurance provisions shall not affect or limit the liability of the Provider stated elsewhere in this Contract or as provided by law.

4. Provider shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverages and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.

5. The County reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the County.

XVI LIMITATIONS ON LIABILITY

In no event will either party be liable to the other, under or in connection with this Contract, for any consequential, indirect, special, incidental, exemplary or punitive damages, even if the liable party has been advised of the possibility of such damages and even if the remedies have been found to fail of their essential purpose. Except as expressly provided in Section IX, in no

event will either party have any liability for claims asserted against the other party by third parties as a result of or in connection with the parties' activities under or pursuant to this Contract. In no event will the total liability of either party in the aggregate over the term of this Contract for all claims, causes of action or liability arising under or in any way related to this Contract and/or the Services provided hereunder, whether sounding in contract, tort (including negligence) or otherwise, exceed the greater of: (a) the direct damages actually incurred by the injured party up to an amount equal to the fees paid by the County to Provider in the most recent twelve (12) month period preceding the occurrence of the last event giving rise to liability, or (b) an amount equal to \$10,000.

XVII MISCELLANEOUS

A. County Agent and Liaison. For the purpose of this Contract, the agent for the County and liaison officer on the matter contained herein shall be the Director of the Department of Public Safety and Justice Services and/or such members of her/his staff as designated; and

B. Contract to Remain in Compliance with Certifications, Representations, and Warranties as Continuing Commitments or Verification. Provider shall ensure that all of its certifications, representations, and warranties under this Contract shall remain true throughout the duration of the Contract as if they are continuing commitments, and it shall immediately notify the County in writing in the event that any of the certifications, representations, and warranties ceases to be true. At its sole discretion, County has the unequivocal right to review and audit Provider's continuing certifications, representations, and warranties.

Provider warrants and represents that it has not employed or retained any company, firm or person, other than a bona fide employee working for the Provider, to solicit or secure this Contract, and that it has not paid or agreed to pay any company, firm or person, other than a bona fide employee working for Provider, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, County shall have the right to annul this Contract without liability or in its discretion to deduct from the contract fee or consideration, or otherwise recover, the full amount of such fee, commission, gift, percentage, or contingent fee.

B. Independent Contractor. Provider, its employees and subcontractors shall perform all work pursuant to this Contract as independent contractors and not as employees of the County or PSJ.

C. Prohibition on Assignment. Provider may not assign, directly or indirectly, all or part of its rights or obligations under this Contract without the prior written consent of the County.

F. Findings for Recovery. Provider represents and warrants that it is not subject to an "unresolved" finding for recovery under the Ohio Revised Code Section 9.24. If this representation and warranty is deemed to be false, this Contract is void ab

initio, and Provider must immediately repay to the County any funds paid under this Contract and must make the County whole for any damages sustained by the County.

- G. **Entire Contract.** This Contract constitutes the entire Contract between the parties, either express or implied, with respect to the subject matter hereof. No modification of this Contract shall be binding upon the parties unless set forth in writing and signed by both parties, or their respective successors or assigns.
- H. **No Apparent Authority.** Provider recognizes and agrees that no public official or employee of the County may be deemed to have apparent authority to bind the County to any contractual obligations not properly authorized pursuant to the County's Contracting and Purchasing Procedures.
- I. **Parties Bound and Benefitted.** This Contract shall bind and benefit the parties hereto and, as applicable, their respective owners, members, directors, officers, representatives, successors, and assigns.
- J. **Non-waiver.** Either party's failure to require performance of any Section of this Contract, or if it requires performance and does not follow through, shall not affect the non-defaulting party's right to require performance at any time thereafter. Additionally, either party's waiver of any breach or default of this Contract shall not constitute a waiver of any subsequent breach or default or a waiver of the provision itself or any other provision.
- K. **Contract Interpretation and Construction.** In the event an ambiguity or question of intent or interpretation arises, this Contract shall be construed as though drafted by both parties, and no presumption or burden of proof shall arise favoring or disfavoring one party by virtue of the authorship of any of the Sections of this Contract.
- L. **Counterparts.** This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Contract (and each amendment, modification and waiver in respect of it) by facsimile or other electronic transmission, including email, shall be as effective as delivery of a manually executed original counterpart of each such instrument.
- M. **Severability.** If any Section of this Contract is invalid or unenforceable for any reason, this Contract shall be divisible as to such Section and the remainder of this Contract shall be and remain valid and binding as though such Section was not included herein.

XVIII ELECTRONIC SIGNATURE

By entering into this Contract Provider agrees on behalf of the contracting or submitting business entity, its officers, employees subcontractors, sub grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring

County signatures may be executed by electronic means, and that the electronic signature affixed by the County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. Provider also agrees on behalf of the aforementioned entities and persons, to be bounded by the provisions of chapter 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.

IN WITNESS WHEREOF, the County and Provider have executed and delivered this Contract as of the date first written above.

COUNTY OF CUYAHOGA, OHIO

GEOFEEDIA, INC.

Edward FitzGerald, County Executive

By: _____

Edward FitzGerald, County Executive
2013-11-26 11:54:49

By: _____

Name: _____

Title: _____

The legal form and correctness
of this Contract is hereby approved:
Law Department
County of Cuyahoga, Ohio
Majeed G. Makhoul, Director of Law

By: _____

MICHAEL KING, ASSISTANT LAW DIRECTOR

Name: _____

2013-11-25 15:47:08

Date: _____