

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

KATIE J. NIEBUHR, as
Personal Representative of the
Estate of JOHN JAY NIEBUHR,
deceased,

Plaintiff,

v.

Case No.: 6:26-cv-01406-PGB-DCI

SHERIF BROWN, individually;
RAYNISHA WHEELER, individually;
MELBOURNE AIRPORT AUTHORITY;
CITY OF MELBOURNE;
CITY OF PALM BAY; and
FLOCK GROUP, INC.,

Defendants.

_____/

**PLAINTIFF'S FIRST AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiff, KATIE J. NIEBUHR, as Personal Representative of the Estate of JOHN JAY NIEBUHR, by and through undersigned counsel, hereby files this First Amended Complaint against Defendants, SHERIF BROWN, individually; RAYNISHA WHEELER, individually; MELBOURNE AIRPORT AUTHORITY; CITY OF MELBOURNE; CITY OF PALM BAY; and FLOCK GROUP, INC., and demands a jury trial on all issues so triable. In support thereof, Plaintiff states:

1. This is an action under federal and state law by KATIE J. NIEBUHR, as Personal Representative of the Estate of JOHN JAY NIEBUHR, arising from the fatal shooting of her brother, John Jay NIEBUHR, by Melbourne-Orlando International Airport Police Department ("MAPD") Officer SHERIF

BROWN on June 28, 2024, at the Melbourne-Orlando International Airport, Melbourne, Brevard County, Florida.

2. Plaintiff brings the following claims, in sum:

COUNT I: OBJECTIVELY UNREASONABLE DEADLY FORCE, as to BROWN (Individual Capacity), in violation of Fourth and Fourteenth Amendments and pursuant to 42 U.S.C. § 1983.

COUNT II: FAILURE TO INTERVENE, as to WHEELER (Individual Capacity), in violation of Fourth and Fourteenth Amendments and pursuant to 42 U.S.C. § 1983.

COUNT III: DELIBERATE INDIFFERENCE / *MONELL* LIABILITY — FAILURE TO TRAIN, as to Melbourne Airport Authority and City of Melbourne, pursuant to 42 U.S.C. § 1983.

COUNT IV: DELIBERATE INDIFFERENCE / *MONELL* LIABILITY — FAILURE TO SUPERVISE, as to Melbourne Airport Authority and City of Melbourne, pursuant to 42 U.S.C. § 1983.

COUNT V: WRONGFUL DEATH — NEGLIGENCE, as to Melbourne Airport Authority, Fla. Stat. §§ 768.16–768.26.

COUNT VI: WRONGFUL DEATH — NEGLIGENT TRAINING, as to Melbourne Airport Authority and City of Melbourne, Fla. Stat. §§ 768.16–768.26.

COUNT VII: WRONGFUL DEATH — NEGLIGENT HIRING, RETENTION, AND SUPERVISION, as to Melbourne Airport Authority and City of Melbourne, Fla. Stat. § 768.28.

COUNT VIII: WRONGFUL DEATH — BATTERY (WANTON AND WILLFUL), as to BROWN (Individual Capacity), Fla. Stat. §§ 784.03, 768.28(9). Pleaded in the alternative to Count IX.

COUNT IX: WRONGFUL DEATH — BATTERY (BY AGENT IN SCOPE OF EMPLOYMENT), as to Melbourne Airport Authority and City of Melbourne, Fla. Stat. §§ 784.03, 768.28(1). Pleaded in the alternative to Count VIII.

COUNT X: WRONGFUL DEATH — NEGLIGENCE (UNWARRANTED SITUATIONAL AWARENESS BULLETIN), as to City of Palm Bay, Fla. Stat. §§ 768.16–768.26, 768.28.

COUNT XI: 42 U.S.C. § 1983 — MUNICIPAL LIABILITY (POLICY, CUSTOM, FAILURE TO SUPERVISE, AND RATIFICATION), as to City of Palm Bay, Fourth and Fourteenth Amendments.

COUNT XII: 42 U.S.C. § 1983 — PRIVATE ACTOR LIABILITY (JOINT ACTION, NEXUS, AND ENTWINEMENT), as to Flock Group, Inc., Fourth and Fourteenth Amendments.

COUNT XIII: 42 U.S.C. § 1983 — FIRST AMENDMENT RETALIATION (PETITION AND SPEECH), as to City of Palm Bay, First and Fourteenth Amendments.

JURISDICTION AND VENUE

3. Plaintiff's claims are predicated, in part, upon 42 U.S.C. § 1983, authorizing actions to redress deprivation, under color of state law, of rights, privileges, and immunities secured by the Constitution and laws of the United States, and upon 42 U.S.C. § 1988, which authorizes the award of attorneys' fees and costs to prevailing plaintiffs in actions under 42 U.S.C. § 1983.
4. Jurisdiction is founded upon 28 U.S.C. § 1331, as this is a civil action arising under the Constitution, laws, and/or treaties of the United States; and 28 U.S.C. § 1343, as this is a civil action seeking to redress deprivation, under color of any State law, statute, ordinance, regulation, custom and/or usage, of a right, privilege, or immunity secured by the Constitution of the United States.
5. Plaintiff further invokes the supplemental jurisdiction of this Court, pursuant to 28 U.S.C. § 1367, to consider the state law claims alleged herein.

6. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1391(c), as the events sued upon occurred in this judicial district. Pursuant to Local Rule 1.04, this action is properly assigned to the Orlando Division.
7. NIEBUHR died on June 28, 2024. The two-year limitations period governing this wrongful death action expired on June 28, 2026. This action was commenced on June 26, 2026, within that period.
8. Written notice of claim pursuant to Fla. Stat. § 768.28(6) was presented to each governmental Defendant on June 27, 2026. Pursuant to Fla. Stat. § 768.28(6)(a), claims against a municipality are excepted from the requirement of presentment to the Florida Department of Financial Services.
9. Pursuant to Fla. Stat. § 768.28(6)(d), the failure of the appropriate agency to make final disposition of a claim in a wrongful death action within 90 days after it is filed is deemed a final denial of the claim. That period expires on or about September 25, 2026. Plaintiff will file a notice of compliance upon written denial of the claim or upon the expiration of that period.
10. Pursuant to Fla. Stat. § 768.28(6)(b), the requirements of notice to the agency and denial of the claim are conditions precedent to maintaining an action, are not elements of the cause of action, and do not affect the date on which the cause of action accrued. To the extent any Defendant contends that the state-law counts were prematurely maintained, Plaintiff

requests that those counts be abated pending expiration of the statutory period rather than dismissed, so that a timely-accrued claim is not extinguished by a curable sequencing defect. The limitations period governing a wrongful death action is further tolled for the period of time taken by the appropriate agency to deny the claim. Fla. Stat. § 768.28(6)(d).

PARTIES

11. Decedent JOHN JAY NIEBUHR was forty years old at the time of his death (date of birth May 4, 1984), and a resident of Brevard County, Florida.
12. Plaintiff KATIE J. NIEBUHR is the duly appointed Personal Representative of the Estate of John Jay NIEBUHR, deceased, in Brevard County Probate Case No. 05-2026-CP-035220-XXCP-BC. Plaintiff brings this action on behalf of the Estate and on behalf of the statutory next of kin survivors of the decedent, including the decedent's father, John R. Niebuhr, and mother, Sharon LaVallie.
13. At all times material hereto, Defendant SHERIF BROWN was a sworn probationary law-enforcement officer employed by the Melbourne Airport Authority and assigned to MAPD. BROWN is sued in his individual capacity.
14. At all times material hereto, Defendant RAYNISHA WHEELER was a sworn sergeant employed by the Melbourne Airport Authority and assigned to MAPD as the on-scene supervisor. WHEELER is sued in her individual capacity.

15. At all times material hereto, Defendant MELBOURNE AIRPORT AUTHORITY (the “Authority”) is a public body and instrumentality of the City of Melbourne, established pursuant to § 12-138 of the Melbourne City Code. Pursuant to § 12-227 of the Melbourne City Code, the Authority holds direct supervision and control over MAPD and its officers, including BROWN and WHEELER. The Authority is a “person” subject to suit under 42 U.S.C. § 1983 and is a proper defendant under Fla. Stat. § 768.28.
16. At all times material hereto, Defendant CITY OF MELBOURNE is a Florida municipality. Pursuant to § 12-144 of the Melbourne City Code, MAPD officers “shall be deemed employees of the city to the same extent as all other employees of the city,” making the City the ultimate municipal employer of BROWN and WHEELER. The City of Melbourne is a proper defendant under 42 U.S.C. § 1983 and Fla. Stat. § 768.28.
17. At all times material hereto, Defendant CITY OF PALM BAY is a Florida municipality and the governmental employer of the Palm Bay Police Department (“PBPD”) and its officers. PBPD officers acted under color of state law, within the course and scope of their employment, and pursuant to the policies, customs, and practices of the City of Palm Bay. The City of Palm Bay is a proper defendant under Fla. Stat. § 768.28 and 42 U.S.C. § 1983.
18. Defendant FLOCK GROUP, INC. (“Flock”) is a private corporation organized under the laws of the State of Delaware, with its principal place of business in Atlanta, Georgia, and authorized to conduct business in the

State of Florida. Flock designs, manufactures, markets, and operates automated license plate reader (“ALPR”) surveillance systems, including the Flock Safety ALPR platform, under contract with governmental law-enforcement agencies, including PBPD. At all times material hereto, Flock operated its ALPR surveillance infrastructure pursuant to a contract with the City of Palm Bay/PBPD to provide law-enforcement officers with the technological capability and operational tools to conduct the warrantless, suspicionless automated tracking of NIEBUHR’s vehicle alleged herein. Flock is a proper defendant under 42 U.S.C. § 1983 as a private actor that acted jointly with, and was a willful participant in joint activity with, governmental actors in the deprivation of NIEBUHR’s constitutional rights.

19. At all times relevant hereto, all Defendants acted under color of law or acted jointly with other Defendants acting under color of law.

FACTS

A. The Decedent and His Lawful Status

20. At the time of his death on June 28, 2024, NIEBUHR’s Florida driver’s license, vehicle registration, tag, plates, and insurance were all current and valid, and he maintained a Safe Driver designation issued by the Florida Department of Highway Safety and Motor Vehicles.
21. On June 28, 2024, NIEBUHR was lawfully in possession of a firearm in his vehicle pursuant to Fla. Stat. § 790.25(5). NIEBUHR was born in the United States of America, and at all relevant times, was an American citizen. On June 28, 2024, NIEBUHR was not committing any crime.

B. Palm Bay Police Department's Targeting Campaign — Situational Awareness/BOLO Bulletin ("the Bulletin")

22. Before the shooting on June 28, 2024, the Palm Bay Police Department (PBPD) issued a Situational Awareness or Be On the Look Out (BOLO) Bulletin ("the Bulletin") identifying NIEBUHR as a subject of interest.
23. The Bulletin bears a date of on or about June 4, 2024 — twenty-four days before the shooting. However, the Bulletin includes facts from a June 17, 2024 encounter between NIEBUHR and the PBPD on Kirkland Road. Pleading in the alternative pursuant to Rule 8(d)(2), Plaintiff alleges that the Bulletin was either (a) correctly dated June 4, 2024 and thereafter updated with material drawn from the June 17, 2024 Kirkland Road encounter; (b) incorrectly dated; or (c) created after June 17, 2024 and post-dated. The document reflects content from the June 17, 2024 encounter, and Plaintiff is presently aware of no documented contact between NIEBUHR and PBPD before that encounter.
24. The Bulletin itself identified no active criminal offense or case number.
25. The Bulletin identified NIEBUHR by full name, date of birth, height, weight, and eye color. The Bulletin included his last known address in Palm Bay. It identified his vehicle type, make, year, model, color, Florida license plate tag, and included a photograph of his truck taken from a Flock camera. It listed prior criminal history from when he was approximately twenty years old, nearly twenty years prior, which consisted primarily of a few minor drinking-related citations. The Bulletin alerted officers he had (lawful) access to firearms.

26. The PBPD Chief of Police, Mariano (Mario) Augello, was identified at the top of the Bulletin, indicating his official association with, and apparent agency authorization or oversight of, its issuance.
27. Upon information and belief, the Bulletin, or information derived from or contained in it, was also circulated to area law-enforcement agencies, including the Melbourne Airport Police Department (“MAPD”) and the Melbourne Police Department (“MPD”).
28. Melbourne Mayor Paul Alfrey publicly described a citywide “Be On the Lookout” (“BOLO”) alert for NIEBUHR, and MAPD publicly stated that the BOLO on NIEBUHR was issued due to recent interactions with PBPD.
29. No criminal case was open against NIEBUHR at the time of the Bulletin’s issuance. No probable cause, reasonable articulable suspicion, judicial authorization, or other lawful predicate supported the Bulletin, and the Bulletin did not identify any specific active criminal offense.

C. The Kirkland Road Encounter on June 17, 2024

30. On the Monday morning of June 17, 2024, PBPD officers Matthew Boggess, Jake Dalton, and Anthony Sacco confronted NIEBUHR near Kirkland Road while he was engaged in lawful activity on private property with the owner’s permission, and activated their body-worn cameras (“BWC”).
31. The 911 complainant, Janice Sowers, a resident of Palm Bay, stated, “There’s no reason for him to be here” and “he needs to go,” after reporting

that the sound of the truck traveling on the public roadway had awakened her. Sowers was identified as a retired frequent complainant.

32. Before any officer arrived, NIEBUHR had contacted the PBPD non-emergency communications line at approximately 6:52 a.m., identified himself by name, provided his telephone number, and advised that he was present on private property for a legitimate business purpose. He further stated that the complaining neighbor did not own the property yet had contacted the emergency line and identified him as a “suspicious person.”
33. The location was approximately 0.3 miles down the road from NIEBUHR’s residence, near Castaways Point Park.
34. NIEBUHR had been present on only a few other occasions, to inspect the property for a potential purchase.
35. Officer Boggess responded and told Ms. Sowers that the reported incident did not constitute a crime and that it was a public road, but said that he would talk to him and see what he could do.
36. NIEBUHR exited his truck to meet with the officer, joking and smiling. NIEBUHR advised the officer that he was not reporting anything and had permission to be there, yet Boggess requested identification and the owner’s name and contact information. NIEBUHR advised that this was not necessary; it was early, and the owner did not need the drama. NIEBUHR provided the owner’s name anyway, as the officer turned to walk away and abandon the interaction after only a few minutes.

37. Despite the absence of any criminal conduct, Boggess requested backup after only a few minutes of conversation. Boggess told the backup unit that NIEBUHR reminded him of another man and then mentioned “the shooting.” Boggess was referring to Brandon “Kapas,” who was shot and killed by probationary PBPB Officer Sean Rollins on January 28, 2024 — approximately five months before this encounter. NIEBUHR and Kapas had no association or relation.
38. The following occurred in response to the Kapas shooting of January 28, 2024:
- a. City officials exhibited a pattern of publicly presenting inaccurate details regarding the shooting. At the initial press conference, Chief Augello misidentified Kapas by a different name, “Pappas.” At a later date, Palm Bay Mayor Rob Medina misidentified another victim as the man’s father, when he was instead his grandfather, and publicly broadcast that misstatement at a city council meeting as a stated matter of fact.
 - b. Brevard police culture, including that of the Palm Bay and Melbourne Police Departments, exhibited a pattern of reward, ratification, and celebration of officers involved in shootings. Rollins was publicly recognized at the Palm Bay Blue Police Foundation banquet approximately thirty-three days after the Kapas shooting, with MAPD Chief of Police Renee Purden also shown in attendance. Mayor Medina, in a subsequent public statement, characterized the

officer's elimination of the threat as an "outstanding job," thereby publicly commending the use of deadly force. Augello granted Rollins a special waiver of half the repayment obligation on his incentive signing bonus for fulfilling only half of the thirty-six-month requirement. Augello specifically documented the January 28, 2024 event as an exception, declaring that Rollins was compelled to neutralize an active threat.

- c. PBPD exhibited hiring and retention practices that raised serious concerns regarding institutional oversight, accountability, and standards. PBPD hired Rollins in 2023 despite documented allegations and sustained findings of excessive force, and despite recurring violations that were not policy-compliant, arising from his prior employment with multiple law-enforcement agencies. Several reports concerning Rollins documented, among others, excessive and unnecessary force; willful violation of policies and procedures endangering persons or property; failure to comply promptly with the direct order of a superior; abuse of process; discourtesy; and physical and psychological abuse of prisoners. PBPD knowingly exposed its personnel and members of the public to an unreasonable risk of harm and demonstrated deliberate indifference to that known risk.
- d. The City of Palm Bay was officially put on notice in May of 2024, when PBPD Deputy Chief Lance Fisher reported misconduct

concerns within the PBPD agency — over a month before the Kirkland encounter with NIEBUHR. Instead of addressing the repeated concerns, city officials defended, endorsed, and condoned officers in their hiring, retention, use-of-force, and policing practices. City officials continually dismissed warnings raised from within PBPD, including from one of the agency's own top senior officials and from residents of the community, as shown repeatedly at publicized city council meetings with detailed presentations on specific misconduct cases. Mayor Medina publicly defended the officers and said that “there is an evil that's out there,” and city councilman Chandler Langevin likewise stated that PBPD is “protecting those of us from evil . . .” and called for officers to “be aggressive as war fighters,” in response to repeated officer complaints regarding force and misconduct, under the agency leadership at that time of PBPD Chief Augello.

39. At the Kirkland Road encounter, Boggess made several appearance-based observations of NIEBUHR that were not connected to any legal violation. Boggess commented on NIEBUHR's jewelry, saying, “. . . he's rocking all the gems . . .,” and then stated that he was explicitly “. . . done with this.”
40. At approximately 7:22 a.m., backup Officer Dalton arrived. NIEBUHR immediately informed him that he knew the owner, and the officer told him that he had to prove he was allowed to be there. NIEBUHR reminded the officer of his civic duty as a public servant and that it was private

property. Dalton responded, “. . . you’re going to leave or we’re going to make you leave.” NIEBUHR advised the officer that it was actually the officer who was trespassing on private property. Dalton responded by stating that he would have the vehicle towed, “I’ll call the tow truck. I’ll call the tow truck.”

41. Dalton was shown as a new PBPD academy graduate — approximately fifteen months prior to this encounter.
42. NIEBUHR contacted dispatch again and requested that a supervisor arrive, based on the officer’s interactions and stated intention to tow his truck.
43. Dalton contacted the property owner and advised, “He’s literally just sitting in his truck on the property.” Indeed, when officers arrived, NIEBUHR was simply sitting in his truck, overlooking the water as the sun rose on the undeveloped property. The officers continued to push for trespass charges even after the owner advised them to just send whoever it was out of there. The owner stated that he was unclear, at that time, who the visitor was, given the volume of his business transactions. The owner asked, “. . . is he the type of person that we should trespass? I’m asking you.” Dalton responded, “Yes. Yeah, you should.”
44. BWC next reflected NIEBUHR telling the property owner on speakerphone that the officers were harassing him, while Dalton and Boggess stood near his truck. The landowner confirmed to the officers that NIEBUHR had permission to be on the property.

45. Around 7:41 a.m., PBPD Supervisor Sacco arrived at the scene. Dalton used a derogatory term to describe his interaction with NIEBUHR. The call was closed at approximately 8:15 a.m., resulting in a nearly one-hour investigation conducted by three officers into NIEBUHR's presence on private property. The investigation confirmed that no legal violation had occurred, and that the property owner had not contacted law enforcement to report or to request enforcement regarding any alleged disturbance involving NIEBUHR.
46. Either the Bulletin was created after this interaction and post-dated, or PBPD added the June 17, 2024 encounter to the Bulletin — eleven days before the shooting.
47. A screenshot photograph of NIEBUHR from Officer Boggess's BWC was used for the Bulletin. The Bulletin documented NIEBUHR sitting in his truck, driving back and forth, and allegedly becoming non-friendly with PBPD officers. The Bulletin told other law enforcement to contact the PBPD Intel Unit if there was any additional information or any similar incident.
48. Based on the Kirkland Road encounter, PBPD officers internally characterized NIEBUHR as "sovereign-like," without any evidentiary basis and without any statement by NIEBUHR invoking sovereign citizen status.

D. Flock Surveillance System and Tracking

49. On June 19, 2024 — nine days before the shooting — PBPD Crime Analyst Jessica Welzenbach, Flock operator “J. WEL,” initiated Flock ALPR surveillance of NIEBUHR’s vehicle under the stated reason “Intel.”
50. Flock’s platform requires the user to initiate a search by entering a stated reason for that search, which Flock records. Flock designed that requirement, Flock controls it, and Flock represents publicly that every search on its system requires a search reason. The reason recorded for the surveillance of NIEBUHR was “Intel,” which identified no crime, no case number, no offense, no suspect status, and no legal predicate of any kind. Flock’s system accepted that reason and executed the search. Flock did not require, and its system did not verify, any lawful predicate before doing so. The Flock Agreement between Flock and the City of Palm Bay, described in paragraph 52 below, confined use of the Flock Services to gathering evidence for use in a lawful criminal investigation and reserved to Flock the right to monitor the City’s use and to prohibit or suspend any use outside that purpose. Flock’s system executed the search whose only recorded purpose was “Intel” notwithstanding those provisions.
51. Flock’s system logged, processed, and made available to PBPD the location and movement data associated with NIEBUHR’s vehicle, Florida tag KPQQ61. No open criminal case, warrant, or other lawful basis supported the surveillance or the searches conducted through it.

52. Flock contracted with PBPD to provide, install, and operate its ALPR surveillance platform within the City of Palm Bay's law-enforcement network. Under that contract, Flock made its ALPR infrastructure available for use in law-enforcement operations, including its "Hot List" targeting capability, automated real-time vehicle-detection alerts, and cross-agency data-sharing architecture. Flock's platform is designed specifically for law-enforcement targeting purposes and is not a neutral public utility. That contract is the Flock Group Inc. Services Agreement between Flock and the City of Palm Bay for the Palm Bay Police Department, consisting of an Order Form dated August 19, 2021, executed by Flock's Chief Revenue Officer on August 20, 2021 and by the City's Chief Procurement Officer on August 26, 2021, together with the incorporated Government Agency Customer Agreement and Customer Implementation Guide (collectively, the "Flock Agreement"). (Exhibit A.) The Flock Agreement identifies Lance Fisher as PBPD's contact, provides for seventeen Flock Falcon cameras at an annual recurring charge of \$42,500, and carries an initial term of sixty months, so that it governed the relationship between Flock and PBPD at all times material, including June 2024. Among other things, the Flock Agreement provides:
- a. Flock agreed to provide the Flock Service "solely for the purpose of crime awareness and prevention by police departments and archiving for evidence gathering," and defined the sole "Permitted Purpose" of the system as "to facilitate gathering evidence that could

be used in a lawful criminal investigation by the appropriate government agency and not for tracking activities that the system is not designed to capture.” The City covenanted not to use the system “for anything other than the Permitted Purpose.” Flock Agreement, Recitals & § 2.4.

- b. The “Flock Services” are defined as “the provision, via the Web Interface, of Flock’s software application for automatic license plate detection, searching image records, and sharing Footage.” Access is through a Web Interface that Flock or its host operates; Flock retains all right, title, and interest in the platform and “the right to use the foregoing for any purpose in Flock’s sole discretion”; the cameras “shall remain the personal property of Flock”; and Flock may change the platform in its sole discretion. *Id.* §§ 1.10, 2.1, 2.5, 2.7.4, 2.11.
- c. Flock reserved the right to monitor and to police the City’s use: “Although Flock has no obligation to monitor Agency’s use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation” of the Agreement, and Flock may suspend access if the City is “using the Flock IP for fraudulent or illegal activities” or “utilizing the Flock Services for anything other than the Permitted Purpose.” *Id.* §§ 2.6(c), (f), 3.2, 8.4.
- d. Flock stores Footage for thirty days and “will automatically delete Footage older than thirty (30) days.” *Id.* Recitals & § 4.2. The May

20 through June 19, 2024 search of NIEBUHR's movements alleged in paragraph 58 therefore reached the entire retention window then held on Flock's servers.

- e. The data Flock collects includes "the Footage and geolocation information and environmental data collected by sensors built into the Units," and Flock reserved a license to "disclose the Agency Data and Non-Agency End User Data (both inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes." Non-Agency End Users — "schools, neighborhood homeowners associations, businesses, and individual users" — may give an agency access to their cameras' data, and Flock's Customer Implementation Guide describes a "National Lookup," a "network of law enforcement agencies that have opted to allow their Flock cameras to be used for searches," and instructs agencies how to add a vehicle to a "Hot List" and how to "request camera access from other nearby agencies." *Id.* Recitals, §§ 1.2, 1.11, 4.4; Customer Implementation Guide (Help Center).
- f. Flock's role is continuing rather than transactional: Flock "will continue to monitor the performance of the Units for the length of the Term," provides ongoing Monitoring Services and On-Site Services, and assigns each agency a Customer Success Manager described as "your strategic partner for your lifetime as a Flock

customer,” who will “help you understand how best to leverage the Flock Safety tool to solve crime,” under Flock’s slogan, “Let’s defeat crime together.” *Id.* §§ 2.7.3, 2.9; Customer Implementation Guide.

g. Flock itself describes the Flock Service as one that “creates images and recordings of suspect vehicles.” *Id.* Recitals.

53. Therefore, Flock does not sell a camera and withdraw. Flock operates the platform as a hosted service that it administers on a continuing basis: the images and associated metadata captured by Flock cameras are transmitted to and stored on infrastructure Flock operates; Flock indexes that material and makes it searchable; searches are executed by Flock’s software running on Flock’s infrastructure; and Flock returns the assembled results to the requesting agency. An agency using the platform does not itself store, index, or search the underlying data. The Flock Agreement confirms that structure. ¶ 52(b), (f).

54. Upon information and belief, the Flock network extends far beyond the cameras owned by any single agency. Flock aggregates the captures of cameras owned and operated by many separate participating agencies and private customers into a single searchable index that only Flock maintains, and a search run by one agency reaches captures made by cameras that agency does not own, did not install, and does not control. PBPD does not own or operate thousands of cameras. The approximately

4,760 devices¹ reflected in the searches of NIEBUHR's movements were devices of the Flock network, not devices of the Palm Bay Police Department. Without Flock's aggregation of those captures, no record of NIEBUHR's movements across that period could have been assembled by PBPD or by any other single agency. The Flock Agreement provides for that cross-agency sharing. ¶ 52(e).

55. Flock's implementation in the City of Palm Bay was authorized under a city council consent agenda in 2021, bypassing public readings, community awareness, and open council debate before its deployment into the city as a force multiplier.
56. According to PBPD Intel Unit Head of General Crimes Sergeant Tasha Grey, the Flock system is integrated with PBPD's Computer-Aided Dispatch ("CAD") calls-for-service reporting program. In the 2026 State of the City address, Mayor Medina described Flock activity as providing real-time intelligence used to create an approach plan, paired with investigative work. PBPD Crime Analyst Welzenbach was recognized by PBPD in 2025 for her efforts in turning raw data into actionable insight to locate and identify subjects and had the agency's highest Flock usage at the time.
57. Flock's ALPR system passively reads license plates to scan, detect, and identify vehicles appearing on BOLO hotlists, and sends real-time alert notifications to officers. Each agency controls its own data and its sharing

¹ A search of NIEBUHR's tag (KPQQ61) on <https://havebeenflocked.com> produces the result: "Devices searched: 4,760 (4,760 networks)."

settings. Flock offers agency-initiated proactive alerts and, at the time relevant here, a default thirty-day retroactive search capability that permitted searching by vehicle characteristics and contextual information even without a license plate number. The thirty-day period corresponds to the retention term of the Flock Agreement. ¶ 52(d).

58. The surveillance of NIEBUHR was not a single photograph of a plate on a public road. One Flock record search conducted on NIEBUHR's movements reflected a surveillance period of location data extending from May 20, 2024 through June 19, 2024 — a span of thirty days — and scanned approximately 4,760 devices in connection with activity associated with NIEBUHR's vehicle. The search was retrospective: it reached backward in time to reconstruct where NIEBUHR's vehicle had been before any PBPD officer entered his tag into the system.
59. The product of that search was not a photograph and was not a single observation. It was a chronological record of the times and places at which NIEBUHR's vehicle had been observed across a thirty-day period, assembled from captures made at thousands of separate camera locations, from which NIEBUHR's daily routine, his regular routes, the hours he kept, and the places and persons he visited could be reconstructed. No single capture in that record was itself concealed from public view. The record as a whole revealed what no single capture could — a comprehensive and retrospective account of NIEBUHR's movements over time. That record did not exist anywhere until Flock's system assembled

it in response to the query, and NIEBUHR could not have avoided its creation by any choice available to him short of abandoning the use of a vehicle.

60. Flock claims its cameras are designed to detect only vehicles associated with a crime, thereby removing subjective judgment and providing an unbiased tool for policing that may help prevent disproportionate stops and harmful interactions. Despite its stated law-enforcement-only purpose, Flock's system collects vehicle images and associated metadata for every vehicle that passes a participating camera, not only vehicles associated with a crime.
61. PBPD's first General Order governing Flock is dated May 21, 2026, and followed recurring citizen complaints about the system's use. No formal written PBPD policy governing Flock usage could be located before that Order, which is inconsistent with Flock's own published guidance on national best practices. PBPD adopted and deployed Flock without meaningful public process or written governance, thereby exposing members of the public, including NIEBUHR, to potential warrantless surveillance and infringement of their constitutional rights and liberties.
62. On May 21, 2026, PBPD Chief Jeffrey Spears confirmed at a city council presentation on Flock that the system was "not even being used for crimes," but rather for other purposes including helping "identify and gather intel." The deployment of Flock increased the surveillance of law-abiding citizens without individualized suspicion.

63. Real-time alert reports generated through Flock have resulted in investigative stops or encounters involving individuals who had not committed any criminal offense. PBPD has also used Flock technology as a common practice for traffic enforcement. In June of 2025, PBPD conducted a Flock ALPR-based traffic stop of Tamara Hatcher, who was not the owner of the vehicle that the system alerted on. The use of ALPR information to initiate the stop set in motion a chain of events, with Officer Rollins on scene, that escalated from a minor traffic-related matter into a physical confrontation, property damage, and criminal charges. The resulting incident illustrates the significant consequences that followed from an ALPR-based traffic enforcement stop subjecting motorists to public-safety investigations without independent reasonable suspicion of criminal activity.
64. Since acquiring Flock, and despite its stated purpose of supporting lawful investigations and identifying criminal suspects, PBPD has used Flock-generated data to identify, track, investigate, and initiate law-enforcement action against individuals not suspected of any crime. The former PBPD Deputy Chief Lance Fisher, who assisted in acquiring and initializing the Flock system in Palm Bay, reported officer misconduct and system access, including that the PBPD Crime Suppression Team had used Flock to conduct surveillance on an outspoken, law-abiding resident who was not committing any crime.

65. Internal departmental audits of PBPD Flock usage for improper or unauthorized use of the system were unable to be located prior to 2026. Flock has since introduced optional proactive auditing that allows an agency to audit its own personnel's use. Police misuse of the Flock system for personal reasons and to target law-abiding citizens has occurred. Additional safeguards governing the use of Flock's surveillance system were announced in August 2026 in response to reported widespread misuse of the system by law-enforcement personnel, underscoring the serious concerns surrounding the system's oversight.
66. In July 2026, Flock Chief Executive Officer Garrett Langley publicly commented on misuse by law enforcement: "The abuse is a problem. We need to continue to get that down to zero. Any level of abuse is unacceptable." Asked about Flock's culpability and fault, Langley responded, "I think it's a shared responsibility."
67. In August 2026, PBPD Chief Spears claimed, "We've had no misuse," and that Flock was used for official police business only. That same month, the City Council agreed to an immediate Flock suspension to investigate installation and permits, and cameras throughout the city were physically hooded. Three months after reporting that Flock was "not even being used for crimes" and was used for intelligence gathering, Spears told the news in late August 2026 that Flock was "strictly locating vehicles involved in a crime," after the city unhooded the cameras following an administrative review.

E. Law Enforcement Investigations – Profiling Persons of Interest

68. Multiple Florida Driver and Vehicle Information Database (“DAVID”) records checks were conducted on NIEBUHR. On June 18, 2024, the Brevard County Sheriff’s Office (“BCSO”) searched under the stated purpose “Verify Identity.” On June 20, 24, and 25, 2024, the Florida Department of Law Enforcement (“FDLE”) searched under the stated purpose “Criminal Investigation.”
69. No criminal charges were pending or filed against NIEBUHR. A review of the DAVID records would have shown that his documented law-enforcement contacts were largely minor and mostly historical. Apart from the unwarranted Bulletin, there was no valid reason to verify his identity in DAVID, to track NIEBUHR’s movements through Flock, or to engage in any other law-enforcement targeting.
70. On June 24, 2024, NIEBUHR went to the Palm Bay Police Department lobby to meet with the on-duty sergeant and reported — accurately — that the government was watching and tracking him.
71. On the same day, he went next door to Palm Bay City Hall to speak with city officials.
72. Instead of addressing his valid concerns, PBPD dispatch notations labeled the report as S20 or Signal 20, classified as mental illness or mental health incident, without any clinical basis, assessment, or referral for mental health evaluation.

73. On June 25, 2024 — three days before the airport encounter — NIEBUHR telephoned PBPD requesting a callback. The communications event report lists the prime unit officer as Boggess.
74. On June 26, 2024, NIEBUHR called PBPD and insisted on speaking only to a supervisor — two days before the airport shooting. PBPD linked NIEBUHR's complaints to the officer-safety Bulletin. The callback request was assigned to Boggess. NIEBUHR's continued requests for supervisor assistance were dismissed, and the matter continued to be assigned to Boggess.
75. NIEBUHR requested that the matter be reassigned to an officer he perceived to be free of any conflict, so that it would be reviewed and handled fairly and free from any appearance of bias.
76. PBPD's bias-based profiling policy is to enforce the law in a fair and impartial manner, protecting the rights of all persons. The Constitution of the United States guarantees the fundamental right of equal protection to all who live in this nation. Citizens are free to walk and drive streets, highways, and other public places without police interference so long as they obey the law. PBPD is charged with protecting these rights regardless of beliefs. Citizens are encouraged to report any incident to a shift supervisor as soon as possible — which NIEBUHR repeatedly attempted to do in the days preceding his death.

77. According to the Bulletin, PBPD instead characterized NIEBUHR's concerns for his privacy and safety — which were factually accurate — as “paranoid” and as “sovereign citizen behaviors.”
78. During another PBPD traffic stop of another citizen involving Officer Boggess in 2025, the driver was asked whether she was a sovereign citizen.
79. PBPD used the Bulletin, governmental surveillance tools including Flock, and access to protected DAVID information to target, profile, and gather intelligence on NIEBUHR. The Bulletin, together with the law-enforcement databases, resources, and surveillance tools deployed alongside it, foreseeably shaped how officers would approach NIEBUHR — as a pre-identified threat subject to be acted upon without independent assessment of his actual conduct or of any crime.
80. On June 27, 2024 — the day before the airport encounter — NIEBUHR telephoned the United States Department of Defense.

F. The Airport Encounter on June 28, 2024

81. On June 28, 2024, NIEBUHR was in his red Dodge Ram 1500 Hemi lifted, tinted truck with his small dog, three cats, and dry cleaning.
82. On the morning of June 28, 2024, NIEBUHR's travels took him to the unsecured and publicly accessible areas of the Melbourne-Orlando International Airport (“MLB”) in Brevard County, Florida.
83. MLB operates as a public airport serving the surrounding communities. The cities of Melbourne and Palm Bay are adjacent and approximately six miles apart.

84. NIEBUHR made a few business calls while he sat parked at MLB, including to his bank. NIEBUHR's first phone call of the day was to a body spa located in Melbourne.
85. NIEBUHR was lawfully present in the area. No crime had been reported.
86. Teagan Frawley and Travis McNeely, airport maintenance employees, were in a white airport van. Frawley's affidavit states that he spoke to NIEBUHR and asked his intentions because there was a gate nearby. NIEBUHR advised that he was "trying to meet with somebody" and asked about STS Aviation Services nearby. Frawley responded that he was uncertain. NIEBUHR said he was going to call the number on the gate, and Frawley encouraged him to do so and said that it was the airport police number.
87. Before any police contact, NIEBUHR's phone records show that he called MAPD multiple times from his cell phone — at approximately 8:58 a.m., 9:01 a.m., and 9:11 a.m.
88. MAPD probationary Officer Sherif BROWN would later admit, during the FDLE investigation, that he spoke with NIEBUHR on the duty phone for at least one of these calls and that NIEBUHR asked for directions to a location on or near airport property. BROWN would later claim, after the shooting, that he approached the scene with a preconceived belief, based on one of these phone calls, that the caller might have a mental-health condition, despite the absence of any qualified medical assessment or dispatch of crisis services.

89. Frawley's report, also made after the shooting, states, "he seemed suspicious to me for some reason," and "I had that feeling again that something's not right." Frawley began to observe, watch, and follow NIEBUHR in the van. The affidavit report states that McNeely, the van passenger, contacted BROWN by phone and advised that "something wasn't right with this person or vehicle." BROWN said he was on perimeter patrol and would check it out.
90. After the shooting, McNeely reported that NIEBUHR had very "conspicuous" large gold and silver rings on almost every finger, and "discerning" marks about the vehicle, notably a golden Eye of Osiris decal on the back window and an American flag and eagle wrap on the tailgate. The only rings recovered on NIEBUHR's person after the incident were all silver in color, as shown in evidentiary photographs.
91. NIEBUHR left that area to park his vehicle in another lot. Frawley, driving the van, followed NIEBUHR's truck en route.
92. Seth Barber, an airport-operations employee, signed an affidavit after the shooting stating that around 9:00 a.m. he noticed the parked truck. Barber reported, "I decided to challenge him," while NIEBUHR was parked in another parking lot. NIEBUHR told Barber that he was in an area of public property.
93. Barber's MAPD affidavit claims that NIEBUHR had "a dark cap on his head," and in a sworn statement to FDLE and MPD he reported that

NIEBUHR was “wearing a dark cap.” No cap or hat was located on NIEBUHR’s person or in his vehicle during evidence collection.

94. Frawley’s account states that NIEBUHR and Barber spoke for a few minutes and concluded their conversation with a fist bump.
95. According to a report, Barber reported his suspicions to Frawley and McNeely after his conversation with NIEBUHR. Following Barber’s interaction, the van continued to trail behind NIEBUHR and follow his movements.
96. Both Barber and McNeely claimed they called and spoke with BROWN on the airport police duty phone at 9:09 a.m. Barber reported that he also sent BROWN a text message with NIEBUHR’s location.
97. Barber reported NIEBUHR as a “suspicious” encounter and claimed that NIEBUHR may have been attempting to access secure areas.
98. Stephanie Betts, Airport Assistant Director of Operations, advised that she first became aware of NIEBUHR through information provided by Barber. In a statement made after the shooting, she described an “uneasy feeling,” described NIEBUHR as “suspicious,” and said he raised “red flags,” but her statement does not identify which, if any, of those conclusions rested on her own observations rather than on information related by others.
99. In Betts’s statement to FDLE, she stated that she believed someone had told her BROWN waited for backup before contacting NIEBUHR. After the incident and before providing her MAPD affidavit, Betts spoke with Frawley and McNeely, who advised that BROWN spent time speaking with

NIEBUHR before WHEELER arrived. Betts then revised her account to match theirs.

100. The timing of, and discrepancies among, the MLB employees' statements, which occurred across multiple accounts rather than in a single statement, raise questions as to the accuracy and reliability of those accounts.
101. The statements of MLB employees following the incident indicate that they characterized NIEBUHR as suspicious because his truck was parked near an airport gate and in proximity to secure areas, and that they believed he might attempt unauthorized access. Those statements further indicate that their suspicions rested in part on NIEBUHR's mere presence in the area and on the truck and its decorative accessories, rather than on any unlawful conduct. No physical evidence was located or presented showing that NIEBUHR attempted to access any secure area of the airport or to breach any fence or gate.

G. The Final Encounter on June 28, 2024

102. NIEBUHR reparked at the South Brevard Aviation parking lot to the left of airport mechanic Christopher Friedle, who was present at the scene in a white avionics van. Friedle had exited his vehicle to talk to and hear NIEBUHR. Friedle advised that he was waiting on a man named Dave (Zabinski). NIEBUHR said he was also waiting on Dave. Friedle called Dave and said there was a person in a red truck waiting on him.

103. According to the MPD report on the surveillance video collected after the incident from the nearby Harris Corporation, NIEBUHR had been parked at the lot at 750 Harry Sutton Road for only a few minutes when an airport authority police truck pulled in. MAPD probationary Officer Sherif BROWN positioned his marked patrol unit directly behind NIEBUHR's vehicle, blocking it in, with the intent to conduct an investigation according to the MPD preliminary report.
104. At approximately 9:22 a.m., BROWN activated his BWC. NIEBUHR sat in the driver's seat of his idling parked truck and greeted the officer with a friendly "aloha" sign.
105. NIEBUHR told BROWN he was "waiting for Dave," with his hands on the steering wheel in a nonthreatening manner. BROWN said, "Yeah, I don't know a Dave, but ah . . . if" NIEBUHR responded, "He does," and pointed toward Friedle. NIEBUHR asked, "What are you doing?" BROWN responded, "Hold up."
106. BROWN then made calls on his cellular phone and radio. He contacted dispatch and reported that he was out with a "suspicious vehicle." BROWN ran NIEBUHR's plate KPQQ61, and dispatch provided vehicle registration information.
107. The incident details report reflects that at 9:24:25 an alerts retrieval was successfully gathered for the location at 750 Harry Sutton Road, after the result was returned for reading the license plate KPQQ61. This alert was

provided by the “system” and identified as a machine-generated alert rather than one produced or entered by a human operator.

108. BROWN telephoned his commanding officer, Sergeant WHEELER, numerous times throughout the encounter while NIEBUHR waited. BROWN informed WHEELER that he was with a suspicious person and vehicle. WHEELER stated that she had also seen the red pickup truck earlier and instructed BROWN, “you can tell him where to go,” suggesting that he provide directions. Instead, BROWN told WHEELER that he was going to ask NIEBUHR more questions and said that NIEBUHR was talking weird in response to his questions.
109. STS Aviation Services is located on the east end of the airport, where NIEBUHR was initially reported as seen. Frawley and Barber had directed NIEBUHR to move when he was lawfully parked in public areas. NIEBUHR complied, moved to the west end of the airport terminal, and was waiting in the parking lot at 750 Harry Sutton Road.
110. BROWN’s BWC shows the airport maintenance van blocking the only entrance and exit to the small fence-enclosed parking lot.
111. At approximately 9:26:27, NIEBUHR attempted to leave and started to back up around BROWN’s vehicle, after several minutes of no further response from the officer. BROWN’s BWC shows BROWN holding his cell phone in his left hand to talk to WHEELER, but using his right hand to direct NIEBUHR back to the parking spot. NIEBUHR complied.

112. As NIEBUHR reparked, BROWN said he had forgotten NIEBUHR's name and called him "Neil," and continued to refer to him by that name throughout the encounter.
113. BROWN then positioned himself on the driver's side of NIEBUHR's truck. At approximately 9:26:41, NIEBUHR said, ". . . don't need anything." BROWN responded, "What? I can't hear you." The engine noise of the Dodge Ram interfered with the ability to hear conversation.
114. Upon approach, BROWN indicated that he had researched NIEBUHR before his arrival, because he informed NIEBUHR that he was aware he had a motorcycle and that he was motorcycle endorsed.
115. BROWN then asked NIEBUHR what it was that he needed. NIEBUHR responded, "I don't need anything, man. Everything I need is provided by above" BROWN continued to ask additional questions.
116. At approximately 9:27:26, BROWN's cell phone rang and he answered it beside the truck — the second call while NIEBUHR waited, and from a different number than the one on which WHEELER had spoken earlier. BROWN introduced himself to the caller. Contrary to policy, the BWC does not capture BROWN introducing himself or his department to NIEBUHR.
117. BROWN finished the second call and again asked NIEBUHR who he was trying to contact. At approximately 9:27 a.m., BROWN asked, "You mention somebody?" NIEBUHR responded inaudibly. BROWN then said, "Yeah, so, I don't think they're here," and continued asking a series of questions.

118. At approximately 9:28 a.m., BROWN said, “I would hate to trespass you for, for, for, for, no reason, right?” This was approximately three minutes after NIEBUHR had already attempted to leave and had been directed to re-park and stay while the officer asked more questions, as he had stated his intent to his superior.
119. BROWN’s BWC captured the continued conversation. BROWN stated, “I would hate to trespass you for no reason and then if you refuse and then I will, I will, I will have to take you in,” followed by, “You don’t have to answer any questions,” and then asked NIEBUHR to leave. BROWN added, “If not, then we got to take another measure.” The airport van continued to block the only exit. These statements were made approximately twenty-four minutes before the shooting, after NIEBUHR had already attempted to leave of his own accord, had been blocked, and had been directed to pull back in.
120. NIEBUHR responded, “Am I waking people up?” and told BROWN, who had already made several phone calls, to do what he needed to do and to “call your people.” NIEBUHR’s comment followed the Kirkland Road encounter of the week before, which began with a noise complaint and ended with officers calling in more units until NIEBUHR left private property where he had legitimate business. BROWN laughed in response.
121. At approximately 9:29:19, NIEBUHR attempted to open his truck door to get out. BROWN used his hand to hold the door shut and advised, “Hold

up.” NIEBUHR said, “Hey, I have my cats and my dog in here.” BROWN responded, “I don’t, I can care less.”

122. At approximately 9:29:52, BROWN advised that NIEBUHR did not have permission to go inside the perimeter gates. At 9:29:53, NIEBUHR responded, “I’m not.”

123. BROWN then provided the STS address and directions — nearly ten minutes after the initial encounter, with the expectation of a five-to-seven-minute drive on the other side of the airport. NIEBUHR and BROWN then exchanged a fist bump.

124. At approximately 9:30:38, dispatch called BROWN and he responded, “10-4 you can clear me.” Dispatch responded, “Careful.”

125. At 9:31:38, NIEBUHR said, “This guy said he was waiting for Dave.” BROWN responded, “Yeah, he’s probably not waiting for Dave. He probably don’t even know. I don’t even know a Dave. Um and I know who works there.”

126. NIEBUHR expressed his intent to wait on public property. He asked BROWN whether he was on public property, whether he was all right where he was, and asked him to clarify where the public property was for him to wait. BROWN responded, “Actually, this is airport property, so if I trespass you, you will have to leave.” BROWN did not state that he was issuing a trespass warning, only that he had the ability to do so.

127. NIEBUHR said, “Okay,” began backing up the truck again, and said he would go wait outside the airport instead. BROWN provided instructions for waiting outside the airport.
128. At 9:32:14, NIEBUHR backed up his truck a second time in order to leave. He paused, braked, and looked at the airport van, which remained fully blocking the only exit. Unable to leave, NIEBUHR drove back into the parking spot and said, “Or I can wait here, right?”
129. At approximately 9:33:46, BROWN made his second call to WHEELER — his third phone call on scene. BROWN advised that he had no trespass slips and asked WHEELER to bring one to the scene. BROWN told WHEELER that NIEBUHR wanted to wait in public parking and claimed, “He’s not talking correctly,” in response to the officer’s interrogating questions.
130. At approximately 9:36 a.m., BROWN motioned with both hands for the van to move from blocking the entrance.
131. At approximately 9:38:05, WHEELER called BROWN back. This was his fourth phone call on the scene. WHEELER instructed BROWN to check whether the visitor was a private investigator, since the airport had been notified of someone and she did not have the information as to who it was without logging in to look it up. WHEELER instructed BROWN to check his identification to see whether he was a private investigator and whether he was the person they had been notified of. WHEELER told BROWN she would run a trespass slip over to him.

132. At approximately 9:38:06, BROWN motioned again to the employee van to signal it to move from blocking the only exit so that WHEELER could arrive. Frawley said to BROWN, "I'm your back-up before your back-up gets here," and "I will keep that blocked." Frawley's MAPD affidavit claimed, "I pulled up to block the entrance just in case." Frawley later declined to be interviewed for the FDLE investigation as an alleged witness to the shooting.
133. At approximately 9:39:46, BROWN reapproached NIEBUHR's truck on the passenger side. NIEBUHR was listening to music. BROWN knocked on the window and NIEBUHR lowered it. BROWN asked whether he was a private investigator and asked for identification. NIEBUHR told BROWN to "Ask God."
134. BROWN responded by confirming that he already had NIEBUHR's name: "I already got your name, yeah. I ran your vehicle. I got your name and stuff like that so."
135. Several conditions obstructed the ability to see the inside of the truck: the lifted height of the vehicle, which required a running board to enter or exit and limited the ability to see through or around the vehicle; an elevated center console limiting the line of sight from the front passenger side to the driver's side; dark window tint reducing visibility inside; and personal belongings, including dry cleaning and NIEBUHR's four pets.

H. The Last Moments of Life and Circumstances Surrounding Death

136. BROWN then began asking probing questions about firearms. At 9:40:58, BROWN asked NIEBUHR, “You got a permit to carry, license to carry?” BROWN then said, “You don’t need it, but . . .” and again, “You don’t need it.” At 9:41:09, BROWN asked, “Are you currently carrying?” NIEBUHR’s response was not clearly audible. BROWN responded, “Make sure you keep your hands away from it.” BROWN would later claim that he became aware of the firearm when he approached the passenger side of the truck and saw it holstered on NIEBUHR’s side.
137. BROWN indicated that he was also carrying, saying, “Always, yeah always.” At approximately 9:41:23, NIEBUHR asked BROWN directly, “You going to shoot me with it?” BROWN responded, “No, no, no, nah, I’m not. This is not that type of call,” and repeated, “It’s not that type of call.” This exchange occurred more than ten minutes before the shooting. BROWN then began to handle the belt area of his uniform, and Friedle started to walk away.
138. Although this appeared to satisfy BROWN that NIEBUHR’s firearm did not present an immediate concern, BROWN began preparing his own weapon out of NIEBUHR’s view, without expressing that he perceived any threat.
139. BROWN told NIEBUHR that he had someone coming to talk to him and that she was going to ask more questions. BROWN stated, “. . . we can see where we can help you out . . .” BROWN physically looked at his department-issued firearm while making that statement, which was by

then fully removed from BROWN's holster. BROWN continued to handle his service pistol outside of NIEBUHR's view, without any verbal warning that he was preparing his gun for use.

140. Despite his representation that NIEBUHR's firearm was not an issue, the video shows BROWN pulled his gun out to his side and turned off the safety at 9:42:13 — approximately ten minutes before the shooting.
141. The BWC shows Friedle in the truck's reflection walking away. Zabinski later said on the BWC that Friedle called him on the phone during the encounter and advised there was a "kid in a red Dodge" and that he [Zabinski] should hurry to get there because "there is a cop talking to the guy in the red truck and he's [BROWN] got his hand, he's [BROWN] tapping his gun right now" — indicating premeditated intent. Zabinski made a motion of tapping his finger on a gun at the side of his body while giving that account.
142. At approximately 9:42:29 — nearly twenty minutes after his BWC began — BROWN told NIEBUHR, "You are detained." He repeated, "No, for real. For real. For real. You are detained," and added, "I already called it in. You are detained. However, you're not, I'm not trying to put you in cuffs or anything like that. It's not that type of rodeo." BROWN told NIEBUHR that he had called it in as a suspicious vehicle. BROWN had cleared the radio dispatch nearly twelve minutes earlier and is not shown contacting dispatch again on scene to advise of any imminent threat or dangerous

encounter, despite being shown preparing and handling his department-issued weapon for use.

143. At 9:43:12, WHEELER called BROWN again. This was the fifth phone call BROWN had on scene, four of them with WHEELER either giving or receiving directions. Before her arrival, BROWN told WHEELER that NIEBUHR had a firearm, saying, "He also is carrying so, but he's, he's not . . ." and again, ". . . he's also carrying as well," before completing the call. Despite that notification, no dispatch broadcast of a visitor with a weapon was made until WHEELER made one minutes before the shooting.
144. After telling WHEELER that NIEBUHR was carrying, BROWN returned to the conversation with NIEBUHR and said, "No, no I don't need that." The BWC video is pointed at the truck door.
145. BROWN informed NIEBUHR that the sergeant was coming to speak with him because she was more knowledgeable, told NIEBUHR that he was not in any trouble, and said that he was not there to judge.
146. Although BROWN stated that he already had all the identification he needed, he nonetheless requested identification again and then confirmed again that he already had everything he needed. BROWN nevertheless continued to direct NIEBUHR and issued conflicting commands requiring additional movement, instructing him to keep his hands away from his lawful firearm while also asking him to look around for identification, after NIEBUHR had already been identified and after BROWN had stated that the purpose of identification had been satisfied.

147. The white airport employee van moved to allow WHEELER into the area. WHEELER parked her vehicle so that it also blocked NIEBUHR's truck from leaving. She arrived approximately six minutes before the shooting.
148. WHEELER's BWC begins at 9:46:18, on scene behind NIEBUHR's truck. She approached the truck on the driver's side. The window was all the way down and NIEBUHR's left hand was outside it. NIEBUHR was seated in the driver's seat and looked at WHEELER as she approached.
149. WHEELER radioed dispatch, stating that she was out with BROWN on the suspicious call. Dispatch advised that BROWN had already cleared the suspicious call and that they were not aware he was on another call. WHEELER told dispatch they were still out with the visitor. The dispatcher told WHEELER, "Careful." Although WHEELER had been informed before her arrival that the visitor was carrying a weapon, she did not tell dispatch upon arrival that the visitor had a weapon or that he posed any potential threat. Frawley can be seen in the background standing outside the van.
150. The MPD report states, after the shooting, that BROWN motioned to WHEELER indicating that NIEBUHR had a firearm, although the lifted height of the truck obstructed that viewpoint and BROWN had already informed her verbally twice by phone before her arrival. Despite the notification that the visitor was carrying, WHEELER did not draw her weapon or otherwise prepare her firearm.
151. WHEELER then walked to the passenger side of the truck. Once the camera viewpoint shifted, BROWN is clearly shown with his right hand on

his gun, holding it out of NIEBUHR's sight — nearly five minutes before the fatal use-of-force.

152. At 9:47:22, NIEBUHR was heard yawning while BROWN moved his fingers on his pistol up, then down, lifting the gun from his holster and repositioning his fingers on the weapon. WHEELER stood behind BROWN with no weapon drawn.
153. The CAD (Computer-Aided Dispatch) report shows that NIEBUHR's plate history results were found and generated in two system "alerts retrieval." At approximately 9:24 (BROWN's arrival) and 9:47 (WHEELER's arrival and five minutes before the shooting) the system reported "alerts were successfully gathered" for the location of 750 Harry Sutton Road which, upon information and belief, would include the Bulletin or information contained or derived from the Bulletin.
154. WHEELER asked NIEBUHR if there was anything they could help with. Directly after that question, at 9:48:06, BROWN removed his gun from the holster and held it near his chest in front of the truck door, out of NIEBUHR's sight — approximately four minutes before the shooting.
155. NIEBUHR advised that he did not need the officers' help and asked what his options were. He informed the officers that he was being harassed and explained how his activities had lately been obstructed and interfered with. WHEELER told him that no one was coming to mess with him, even though MLB employees had questioned him and obstructed his movements. WHEELER claimed that they were there to help him, while at her side

BROWN held his gun out of NIEBUHR's view on the other side of the truck door. At 9:48:57, BROWN laughed — approximately four minutes before the shooting.

156. At 9:49:22 — approximately three minutes before the shooting — the dispatch incident report shows that the license plate history for tag KPQQ61 was found. After the license plate was read, the report instructs, "Call 8770 - 13 - Suspicious Vehicle." The MPD incident details report contains a redaction covering that dispatch entry of the license plate read results and the instruction that followed.
157. WHEELER offered assistance and NIEBUHR advised that he did not need anything from them. NIEBUHR explained that he had driven all over, that he had already been where he needed to be earlier, and that they had made him move several times before this location. He stated his intention to wait there, after several earlier attempts to leave, being blocked, and then being asked to stay. At 9:49:42, BROWN laughed again at their conversation while continuing to hold his service handgun out of NIEBUHR's view.
158. BROWN then requested STS identification, although he had earlier instructed NIEBUHR to keep his hands visible while still holding his gun on NIEBUHR out of sight on the other side of the truck door. BROWN had held his pistol at his right side, then moved it to his chest area, and then positioned it in a low-ready position below the passenger window — all out of NIEBUHR's sight and knowledge. At approximately 9:51:28, as he

repeated his request for identification, he also repeatedly said, “Don’t play,” and held his gun at the passenger side window below the glass and then raised it further into viewpoint.

159. The MPD report advises that BROWN drew his firearm, maintaining it in a low-ready position, while continuing to instruct NIEBUHR not to reach for his weapon. FDLE also reported that BROWN kept his firearm out of NIEBUHR’s view in prior preparation. The reports omit the conflicting requests to search for identification that were repeated, and state that NIEBUHR refused to provide identification, even though NIEBUHR is clearly shown attempting to hand BROWN an identification card after BROWN had already said that he had been identified.
160. WHEELER and BROWN insisted that NIEBUHR provide his name and different forms of identification to show whether he was a private investigator or a mechanic at STS, although BROWN had already acknowledged several times that he had reviewed NIEBUHR’s information, knew his name, and had everything he needed to identify him.
161. At 9:51:53, BROWN opened the passenger door of NIEBUHR’s truck. NIEBUHR is shown with his empty hands raised high. BROWN pushed down the dry cleaning draped over the passenger seat, pointed his firearm directly at NIEBUHR, and said, “I’m not playing.”
162. WHEELER did not draw her firearm. Instead, she walked away from the truck toward the rear and radioed for an extra unit. She then

reapproached the truck — without her gun drawn — before walking away again.

163. A tone alert was issued for MPD radio dispatch for an area alert emergency standby, for what officers described in reports as a man with a weapon, a subject with a firearm, a person on airport property with a gun, and an armed disturbance.
164. BROWN kept NIEBUHR at gunpoint and told him he had “a zero,” which, upon information and belief, is law-enforcement terminology referring to a weapon. While maintaining his firearm pointed at NIEBUHR, BROWN again issued conflicting commands, first ordering NIEBUHR to keep his hands up and then demanding identification. After NIEBUHR attempted to comply, BROWN stated, “I’m not here for that.”
165. At approximately 9:52:15, NIEBUHR said to BROWN, “Getting my identification,” and was shown attempting to hand BROWN his identification. BROWN responded, “No,” to the identification NIEBUHR was handing him, while remaining fixated instead on the whereabouts of any weapon that was not within viewpoint.
166. At 9:52:24, BROWN directed NIEBUHR to “Just hold it up.”
167. At 9:52:48, NIEBUHR complied by raising his pistol with one hand and pointing it upward — not toward BROWN or any other officer.
168. BROWN then fatally shot NIEBUHR.
169. WHEELER heard the shots while she was at the back of the truck and — without having eyes on the incident, as confirmed by BWC — radioed

“SHOTS FIRED” and alleged NIEBUHR had made movement towards his gun.

170. The BWC also shows that WHEELER did not draw her firearm, contrary to the eyewitness account of McNeely, who later claimed that WHEELER had drawn her weapon as she approached the driver’s door after the shots were fired.

171. NIEBUHR did not fire his weapon.

I. Critical Post-Incident Response on June 28, 2024 Following the Fateful Encounter — Declaration of Death

172. Approximately five minutes after the deadly gunfire, around 9:57 a.m., Dave Zabinski arrived at the scene. He told the responding MPD officers his name, said that it was his hangar, and stated that he was with that guy, and pointed toward the scene.

173. The incident details report states that NIEBUHR was designated medical Code 99 — a death-related emergency — nearly six minutes after the gunfire.

174. The substantial number of officers and vehicles that responded created physical barriers that obstructed access to critical, life-saving medical care. The medical services vehicle drove onto the grass around the obstructions before reaching the gated entrance at approximately 10:04 a.m. — approximately twelve minutes after the shooting.

175. At approximately 10:14:51, Brevard County Fire Rescue vehicle 67 left Harry Sutton Road for the hospital — nearly twenty-two minutes after the deadly gunfire — on a route that averages a six-minute drive. Reporters

were already on scene and captured NIEBUHR's departure. NIEBUHR was transported to Holmes Regional Medical Center.

176. Dr. Mark Pessa pronounced the victim deceased at 10:23 a.m. The Medical Examiner reported that he succumbed to gunshot injuries — three minutes after arrival at the hospital. The gunshot victim was identified as John Jay NIEBUHR (May 4, 1984 – June 28, 2024).
177. At approximately 10:46 a.m., MPD Sergeant David Helms removed NIEBUHR's small white dog from the truck. Her name was "Beautiful," and she was located on the driver's side floorboard. Helms handled the dog and stated, "Oh sorry John, I kicked it." The report states that the decision to remove the dog was made due to extreme heat. BCSO Animal Services was shown retrieving the dog on the news.
178. Pursuant to MPD protocol governing officer-involved shooting investigations, BROWN was not interviewed on the date of the incident and was provided with and received direction from legal counsel before disclosing any statement. Officers were overheard on scene arranging legal counsel prior to medical services leaving with the gunshot victim.
179. BROWN remained on scene for nearly eight minutes after the shooting. He was then escorted to air conditioning, where his stated concern was to request that his BWC be turned off. Approximately ten minutes after the shooting, BROWN was allowed to turn off his BWC, was provided water, and was allowed to make personal calls on scene before the gunshot victim was transported to the hospital.

180. BROWN was photographed smiling at MPD headquarters during the photographic documentation collection of his person, after the death was officially declared. It would be nearly a month later, on July 23, 2024, before FDLE conducted his sworn interview.
181. The media press conference was performed by MAPD Chief of Police Renee Purden, who addressed reporters late that Friday morning. Purden reported that “the individual was deemed suspicious” and that “shots were fired.” Purden stated that the condition of the “unidentified” man was unknown. She advised that he was transported to the hospital and that was all she had at the time. There was no mention of loss of life. Multiple “Signal 7” calls were declared and broadcast over dispatch prior to the press conference. The first radio dispatch call declaring the deceased included NIEBUHR’s driver license identification number.
182. Purden stated that it was uncertain whether officers had little time to assess the situation, when in fact the containment of NIEBUHR lasted over thirty minutes, during which he made multiple attempts to leave.
183. A reporter asked Purden whether there was any indication that the individual was local. Purden responded that she did not have his address. MAPD then publicly released the Bulletin, and the media broadcast and circulated it with the inclusion of NIEBUHR’s home address and photograph.
184. The public disclosure of the decedent’s identifying information and residential address by law enforcement acting under color of state law

- served no legitimate law-enforcement objective and exposed the decedent's estate and surviving family members to privacy, security, and theft risks.
185. FDLE Special Agent Christopher Imel later acknowledged, in reference to the Bulletin, "It was something they never should have released," after it had already been disseminated to the media and publicly circulated. Multiple requests were made to remove it from MAPD's social media account, and Agent Imel later assisted in coordinating its removal from MAPD's Facebook page; by that time the information had been widely circulated.
186. According to Melbourne Mayor Paul Alfrey, a statement was released to the media confirming that a citywide "Be On the Lookout" alert had been issued for NIEBUHR. Alfrey was observed near the scene speaking with officers. MAPD also released a public statement that there was a BOLO on NIEBUHR due to recent interactions with PBPD.
187. Public statements thus indicate that MAPD had access to the Bulletin and that it likely influenced the posture with which MAPD officers approached, contained, detained, and ultimately shot NIEBUHR.
188. Chief Purden confirmed that the incident occurred outside the secure area, on the outer perimeter of airport property. Mayor Alfrey also confirmed that NIEBUHR did not enter the secured airport area.
189. Purden reported that there was "an animal" and that the dog was doing fine.

190. At 4:17 p.m., CAD dispatch records document that BCSO Animal Control picked up the cats. The MPD report states that the cats did not appear to be in extreme distress; however, it was a hot day, and they did not have access to food or water. Animal Control returned to the scene in the afternoon, around the time the truck was moved into the hangar, more than six hours after their owner was killed. The Brevard County Animal Services report advised that they were called to assist another agency in retrieving the three felines, and that all appeared to be undergoing signs of heat stress, such as panting. Supervisor approval was received to take the animals to Rockledge Animal Specialty and Emergency Hospital. The three cats, named “Pearl,” “Galaxy,” and “Opal,” survived the incident.
191. On the same day of the incident of June 28, 2024, before the completion of any investigation, Mayor Alfrey issued a statement to the media: “I want to commend our Melbourne Airport Police team for their handling of the shooting incident.” Alfrey shared his account from the scene on his personal social media pages and on the Facebook page of We Back Our Blue.
192. When asked by a reporter to explain the dangers associated with the job, Purden referenced another recent incident. This was the second officer-involved shooting fatality in Melbourne within two days. On June 26, 2024, William Banks, Jr., a middle-aged man with a military background, was fatally shot approximately 2.5 miles from the airport. The following occurred in connection with the June 26, 2024 shooting:

- a. Banks contacted MPD in crisis and was killed with SWAT on scene.
- b. MPD Chief David Gillespie advised in a reporter interview that “they didn’t have the opportunity to knock on the door,” while the MPD press release states that “As two officers arrived, they knocked on the front door”
- c. Gillespie commented on the loss of life to the media by saying “the threat has been neutralized.” Mayor Alfrey told the news, “. . . it was part of the job . . . I guess this could be the best outcome you could ask for,” and “I think looking at this scene everything turned out well cause the officers are going home.”
- d. MAPD did not release any of NIEBUHR’s phone calls from June 28, 2024 showing that he asked for directions, looked for public parking, or noted that he was traveling with his four animals at the time of the incident. Instead, the news inserted an excerpt of Banks’s crisis phone call of June 26 to emergency services, specifically the part, “. . . I declare war against the United States of America.”
- e. The incident details report for June 26, 2024 was released within a few days. The June 28, 2024 incident details report would not be released to the decedent’s representatives until nearly a year later.
- f. The PBPD event report for NIEBUHR’s June 26, 2024 complaint and request for a supervisor callback includes notes regarding the Banks call-for-service event ID to assist another agency — two days before

the June 28 shooting. Banks and NIEBUHR had no association or relation.

g. The emergency communications dispatcher in the Banks incident was later awarded for efforts assisting to save the officers' lives that day, not for saving the life of a resident of the community.

193. CSI crime scene photographs available on Evidence.com disclosed property damage to the Dodge Ram truck. The back driver's side window is shown shattered in photographs taken later, after the vehicle had been processed and handled; the window glass is not shown shattered in the earlier crime scene photographs.

194. According to the MPD case report, PBPD was requested to assist in conducting a "Safety Sweep" of NIEBUHR's home as a precautionary measure — over eight hours after the fatal incident. The report reflects that at or around 6:18 p.m., PBPD cleared the search of NIEBUHR's residence. The available case files do not reflect any search warrant or other documented judicial authorization for that entry. The police communications event report regarding the entry lists PBPD Officer Derrick Mitchell.

195. On June 28, 2024, two deaths resulted from policing practices in Brevard County arising from reported concerns of loitering. After the shooting of NIEBUHR, Thomas Farley sustained injuries from a PBPD use of force from which he later died. *Farley v. City of Palm Bay*, No. 6:26-cv-01270-CEM-DCI. The following occurred in connection with that use of force:

- a. PABPD Officer Mitchell tased Farley with six taser darts, off an approximately six-foot fence, while Farley was fleeing on foot, causing immediate paralysis and rendering him a quadriplegic for nearly a year, until he died from complications of those injuries on June 19, 2025.
 - b. Farley was loitering and was not committing any crime. He was overheard at the scene saying, "I can't move," and "What did I do wrong, Sir?" His life-saving medical care was delayed due to criminal charges assigned after the incident.
 - c. Prior use-of-force misconduct that violated PABPD policy involving Mitchell had been reported before, including a 2023 incident in which a man was tased off a moving dirt bike during a minor traffic-violation stop, resulting in bodily harm and a violation of department policy. After review, PABPD Deputy Chief Fisher recommended Mitchell's termination. Instead, the officer received a merit-based pay raise.
196. On or about May 10, 2024, PABPD Deputy Chief Lance Fisher submitted a written complaint by email to the Palm Bay City Attorney, the Human Resources Director, and the City Manager concerning PABPD's abuse of authority, misuse of official position, selective enforcement practices, misconduct, and other matters of public concern. Following Fisher's complaints of discrimination, retaliation, and misconduct, retaliatory conduct intensified and ultimately concluded in his termination. *Fisher v.*

City of Palm Bay, No. 6:26-cv-01304-CEM-CAB. Fisher's complaints and others were reported to PBPD Chief Augello, but PBPD failed to adequately investigate, address, or take corrective action. Approximately one month after Fisher formally raised his complaint, PBPD used its substantial police resources to locate and target NIEBUHR into an encounter that ultimately ended with his death.

197. After his death, the news broadcast that NIEBUHR had reported that "the government was watching and tracking him." Investigators reported that he went into the local police department to report it just four days before his death, while displaying in the background the Bulletin that law enforcement was actually using to target NIEBUHR — including the BOLO, a BWC photograph of him on private property conducting lawful business near Kirkland Road, a Flock photograph of his truck, and his home address — all without reference to any active criminal activity. The news media broadcast that he appeared to be paranoid for accurately reporting that the government was watching, tracking, and investigating him.
198. The news media also repeated the inaccurate claim that NIEBUHR was attempting to access secure areas of the airport. Published headlines and reports stated variously that NIEBUHR "allegedly" tried to gain access to the city's airport through a secure gate; that he tried to break through a gate and, failing that, went to another entry point a few blocks away; that he tried to breach a fence at an aircraft maintenance facility; that he tried to enter the airport in order to board a flight; and that witnesses at a

neighboring hotel saw a high-speed chase and watched officers abandon their cars and pursue the driver on foot with weapons drawn. None of these accounts were supported by the recovered evidence.

199. News accounts also imported the sovereign citizens' movement into the reporting of NIEBUHR's death, describing him as a "self-declared sovereign man" who "tried to barge onto a flight." The Bulletin stated that he had been demonstrating sovereign citizen behaviors, which itself is not a criminal offense, and belief is not conduct.
200. The media also broadcast accounts of the earlier encounters, reporting that on June 17 police were called to a suspicious person on Kirkland Road who had been sitting in his truck for hours, driving back and forth, and removing stakes along a property line; that PBPD said he had been seen driving his red pick-up around the city, in the City Hall and Police Department parking lots; and that he was armed when he tried to break into the airport through a maintenance gate. Those accounts omitted that NIEBUHR had legitimate business and the owner's permission at Kirkland Road, that PBPD had placed his lawful driving on public roads into an awareness Bulletin, that PBPD used Flock to track his vehicle's movements without any crime, and that his contacts with the City included complaints about law enforcement.
201. "We are all here to do our jobs and we do it safely and so that everyone can go home," Chief Purden said, yet NIEBUHR never went home again.

J. The Investigative Reports — Following the Fatality

202. On June 29, 2024, the day after the fatal event, the homeowner of the decedent's residence initiated contact with PBPD, after officers had already entered the residence. The report was assigned to Officer Boggess. Nothing in the report indicates that PBPD contacted or notified the homeowner before entry or explains how officers gained entry.
203. An autopsy was performed on July 2, 2024 by Associate Medical Examiner Dr. Matrina Schmidt of the Brevard County Medical Examiner's Office. The autopsy documented nine external gunshot-wound defects produced by four fired bullets, with trajectories directed from right to left. The Medical Examiner classified the manner of death as homicide caused by multiple gunshot wounds.
204. Toxicological testing detected caffeine, consistent with the CSI crime scene photograph of NIEBUHR's morning coffee, which was shown with visible condensation in the center console next to the driver's seat.
205. The Melbourne Police Department case report (Case No. 2024-00120121) lists the incident type as "Murder."
206. Upon information and belief, MAPD's chain of command reviewed and approved BROWN's training and deemed his use of force compliant with MAPD policy. That ratification is additional evidence that the constitutional violation was the product of official policy and custom.
207. The names of the officers involved in the incident were not publicly released at the time. The decedent's representatives did not receive any report identifying the officer who shot him for nearly a year and did not

receive the body-worn camera footage of the June 28, 2024 encounter until August 2025.

208. On June 18, 2024 — ten days before the fatality — BROWN was publicly featured on the FlyMLB social media account, recognized as new to the MAPD force. On June 28, 2024, it was Sherif BROWN whose actions led to the traumatic death of John Jay NIEBUHR, only forty years of age.
209. On July 8, 2024, the week after the decedent's mother identified the body, BROWN publicly stated on his social media, “. . . I'm going to enjoy the month lol,” while on paid administrative leave.
210. FDLE conducted BROWN's sworn statement on July 23, 2024 — nearly one month after the use of deadly force. The FDLE report indicated that BROWN had approximately nine months of employment with MAPD. At the time of the deadly-force incident approximately one month earlier, BROWN had approximately eight months of service with MAPD.
211. During the sworn statement concerning his use of deadly force resulting in death, the Police Benevolent Association attorney assigned to represent BROWN specifically commented on BROWN's handling and use of his firearm, stating that BROWN “tops off the magazine after chambering a round.” That statement is significant because it was made during an investigation into BROWN's use of fatal force and reflects a level of familiarity with, and attention to, maintaining his firearm in a ready state. In the context of a fatal use-of-force incident, BROWN's demonstrated firearm practices and the circumstances surrounding his decision to

employ deadly force warrant examination as to his training, judgment, mindset, and preparedness to use lethal force. BROWN's BWC footage further reflects his preparation for and handling of his firearm in preparation prior to the incident.

~~212.~~ Reviewing the totality of the circumstances at the scene, the BWC reflects that it was BROWN who repeatedly asked NIEBUHR to look for identification after advising multiple times that he already had all of NIEBUHR's information, and who then gave conflicting commands about where to keep his hands. NIEBUHR had both hands up and empty, complying at gunpoint. When NIEBUHR attempted to hand BROWN an identification card, BROWN refused, kept him at gunpoint, and said he was not there for that. It was BROWN who commanded NIEBUHR at gunpoint at 9:52:24 to "Just hold it up," before NIEBUHR lifted the weapon — not pointed at any officer, as he had been ordered to do.

213. FDLE Special Agent Christopher Imel was assigned to the case. Imel advised the decedent's family that he was "not affiliated with any police department," and did not disclose that he had previously served over twenty years with PBPD. Asked whether he was investigating the case, he responded, "Yes. Only the portion involving the actions of the Airport Police Department." The Bulletin and the actions of PBPD were not included in the FDLE report received from MAPD or in any report received from MPD. FDLE public records requests were repeatedly delayed despite numerous requests for release.

214. MPD Detective Thomas Calahan delayed the return of NIEBUHR's truck and belongings after multiple requests from the decedent's family. FDLE ultimately assisted in notifying MPD to return the essential property.
215. Additional property from NIEBUHR's truck was never returned. More than a year later, NIEBUHR's representatives contacted MPD about belongings discovered not to have been returned. A few remaining items were returned at that time, and MPD notified the representatives that all other unaccounted-for belongings had been destroyed. No full inventory of NIEBUHR's property was ever produced.
216. On October 2, 2024, MLB began its public promotional campaign of BROWN — before any incident details were released or provided to the decedent's representatives. BROWN was shown publicly recognized while serving donuts to kids at Coffee with a Cop at the MLB airport. On November 18, 2024, MLB began promoting BROWN as part of its recruitment efforts — all prior to the release of the Florida State Attorney's review and findings on the use of deadly force.
217. On November 19, 2024, Florida State Attorney Phil Archer reported, "I find the summary, report, and evidence to be complete and thorough," listed the use of force as lawful, and advised that "no further actions will be taken by this office as to this case."
218. The investigation consisted largely of witness statements from MLB employees taken on June 28, 2024 or during the following week. According to the FDLE report, the officer who shot NIEBUHR was not

officially interviewed and provided no statement or explanation for nearly a month. The case files received did not mention or include the Bulletin, the Florida DAVID searches for criminal investigation that were conducted on NIEBUHR in the days before his death, the officer's training or service records, or any reports NIEBUHR submitted to local law enforcement or his continued requests for a supervisor.

219. BROWN's service history, use-of-force incidents, academy training, psychological evaluation, and citizen complaints are unknown to Plaintiff at this time. BROWN's initial police experience was at PBPD, beginning around October 2022.

220. PBPD experienced the following officer-involved incidents during late 2022 and 2023, the period in which BROWN began his police officer employment service:

- a. In September of 2022, a PBPD probationary officer was arrested by FDLE on two felony counts for on-duty conduct. In November 2022, an incident involving a PBPD officer was reported to have occurred, resulting in a civilian's request for an injunction for protection. In December 2022, multiple excessive-force cases resulted in hospitalization and bodily injury. *MacIntyre v. City of Palm Bay*, No. 6:24-cv-00988, also involving PBPD Officer Mitchell.
- b. In 2023, additional concerning PBPD officer-involved shootings occurred. In February 2023, an internal review determined that a PBPD SWAT officer utilized a training rifle not authorized for duty at

the scene of the fatality. In July 2023, PBPB SWAT shot over twenty times at another fatality during a family member wellness call. PBPB had three officer-involved shootings, including multiple lethal force incidents involving members of the same tactical team, over a five-month span.

221. BROWN's public social posts contain recurring themes depicting and promoting violence, guns, and conduct unbecoming of an officer. Approximately one year prior to the shooting, BROWN posted a photograph of himself pointing and holding a long gun in the air, while off duty and in his personal capacity. BROWN has a social media account and its URL tagline is "007," a reference to an agent with a license to kill, and a further tagline promotes, "Fighting is required." BROWN's social media account publicly posted memes depicting violence and pointing and shooting of firearms, including posts from 2020 with a female senior citizen holding a long gun, captioned, ". . . I put the AR in Arthritis," as well as a cartoon depicting a man shooting a woman in the head with a rifle, which BROWN shared from a "Jokes and Humor" page prior to becoming a police officer.
222. On December 24, 2024, BROWN was shown publicly celebrating at the City of Melbourne Holiday Party with MPD Chief Gillespie, of the "sister city" agency that assisted with the deadly force investigation.
223. MAPD recruitment promotions featuring BROWN were released in 2025 on January 8, February 13, and July 24.

224. On April 16, 2025, the Brevard County Association of Chiefs of Police held its annual Law Enforcement Officer of the Year ceremony and presented awards. At the ceremony,

- a. FDLE Special Agent Imel was awarded special recognition.
- b. MAPD Officer BROWN received the 2024 Brevard County Law Enforcement Officer of the year award, marking the first time an MAPD officer had received that recognition.
- c. In her nomination, Chief Purden wrote, “Officer BROWN has been with our department only a short time but his professionalism, integrity, and commitment to public safety far exceed his years of service. He is a role model for his peers and valued member of our team.”²
- d. At the ceremony, BROWN said, “I’m inspired to go beyond boundaries and strive to make a lasting difference.” BROWN added a quotation attributed to Edmund Burke: “The only thing necessary for the triumph of evil is for good men to do nothing.”
- e. Greg Donovan, A.A.E., Executive Director of MLB, also praised BROWN:

Officer BROWN exemplifies the courage, professionalism, and integrity that our airport community relies on. His bravery and commitment to public safety reflect the highest standards of law

² [Officer Sherif Brown Named 2024 Brevard County Law Enforcement Officer of the Year by Brevard County Association Chiefs of Police | News | Melbourne Orlando International Airport](#), Melbourne Orlando International Airport (April 18, 2025),

enforcement. We are proud to have him protecting passengers, employees, and facilities every day.

The entire airport is very proud of Officer BROWN and the recognition he has received from his law enforcement peers. He is an incredible police officer who exhibits the highest levels of professionalism while in uniform.

225. MAPD acknowledged BROWN's award by issuing a public statement that contradicted the BWC video in that it inaccurately claimed that NIEBUHR was trying to access the airfield by driving through security gates:

BROWN demonstrated exceptional bravery, professionalism, and decisive action during a critical incident.

On June 28, 2024, he received several reports of a suspicious individual attempting to access the airfield by driving through different security gates. He proceeded to the location where the individual was last seen and alerted Melbourne dispatch.

Acting with commendable composure and adherence to department training, he assessed the threat and engaged the subject, neutralizing the danger while maintaining public safety.

- ~~226.~~ BROWN's award included a plaque, a Kel-Tec 5.7 rifle, and a certificate confirming he was given the award for the June 28, 2024 shooting.
227. The award ceremony and MAPD statement occurred prior to the release of the June 28, 2024 BWC and of any of the investigative files on the deadly use-of-force incident to NIEBUHR's representatives.

COUNT I
OBJECTIVELY UNREASONABLE DEADLY FORCE
as to BROWN (Individual Capacity)
In Violation of the Fourth and Fourteenth Amendments and
pursuant to 42 U.S.C. § 1983

228. Plaintiff re-alleges paragraphs 1 through 21 (nature of the action, jurisdiction, venue, conditions precedent, parties, and the decedent's lawful status), 81 through 171 (the airport encounter, the containment and detention of NIEBUHR, and the shooting), and 203 through 212 (the autopsy and medical examiner findings, the investigative record, and BROWN's conduct and statements) as though fully set forth herein.
229. At all material times, BROWN acted under color of state law within the meaning of 42 U.S.C. § 1983.
230. NIEBUHR had a clearly established right to be free from objectively unreasonable deadly force. *Graham v. Connor*, 490 U.S. 386 (1989).
231. NIEBUHR had a clearly established right under the Second Amendment and Fla. Stat. § 790.25(5) to possess a firearm in his vehicle. A citizen does not lose the right to be free from excessive force merely because he is lawfully armed.
232. BROWN intentionally used force against NIEBUHR:
- a. BROWN opened the passenger door of NIEBUHR's vehicle, eliminating the only protective barrier between himself and NIEBUHR. ¶ 161.

- b. BROWN drew his service pistol and pointed it at NIEBUHR at close range, creating an unwarranted exigent circumstance. ¶¶ 158–159, 161.
 - c. BROWN fired four rounds at NIEBUHR, who was seated in his vehicle. NIEBUHR did not fire. ¶¶ 168, 171.
233. The force used by BROWN was objectively unreasonable for each of the following reasons, pleaded independently and in the alternative pursuant to Rule 8(d)(2):
- a. NIEBUHR had committed no crime. ¶¶ 21, 29.
 - b. NIEBUHR was seated in his vehicle throughout the encounter and had not made any threatening movement toward any officer during the approximately thirty minutes of contact that preceded the shooting. ¶¶ 104–166.
 - c. NIEBUHR was lawfully carrying his firearm under Fla. Stat. § 790.25(5). That lawful act cannot serve as justification for deadly force. ¶ 21.
 - d. BROWN drew his weapon and disengaged its safety approximately ten minutes before the shooting, out of NIEBUHR’s view and without expressing that he perceived any threat. ¶¶ 138, 140.
 - e. BROWN created the close-range confrontation by affirmatively opening the passenger door, eliminating the protective barrier and the reactionary gap. ¶ 161.

- f. Under the ability-opportunity-jeopardy framework, while NIEBUHR had the ability to use deadly force, the opportunity and jeopardy were created by BROWN's own tactical decisions. ¶ 161.
- g. While NIEBUHR raised his firearm with one hand, he pointed it upward and not toward any officer.
- h. In the moments prior, BROWN had given contradictory commands, and NIEBUHR had attempted to hand BROWN his identification card. ¶¶ 165–167.
- i. A reasonable officer would not have opened the passenger door on an armed subject who had not pointed his weapon at anyone, and would instead have maintained distance, repositioned, removed the vehicle keys, and summoned crisis-intervention resources.
- j. BROWN failed to employ de-escalation, containment, and crisis-intervention practices that a reasonable officer would have used.
- k. BROWN directed NIEBUHR to raise the pistol, having prepared his own service weapon for use in advance. ¶¶ 140, 166.
- l. Viewed in the totality of the circumstances, including the thirty minutes of contact that preceded the shooting, NIEBUHR was lawfully present, compliant, and non-threatening, and at the moment BROWN fired he posed no immediate threat of serious physical harm to BROWN or to anyone else. He was seated in his own vehicle with the door BROWN had opened between them, he had raised his hands when ordered, he had attempted to hand over

identification when ordered, and he had raised his pistol skyward — not at any person — when ordered to “hold it up.” ¶¶ 104–167.

- m. It was clearly established on June 28, 2024, that an officer may not use deadly force against a person who is not resisting, is complying with the officer’s commands, and poses no immediate threat to the officer or others, and that deadly force may not be used in a situation that is not itself deadly. A reasonable officer in BROWN’s position would have known that shooting a seated, compliant, lawfully armed man who had raised his pistol upward at the officer’s own direction violated the Fourth Amendment. Plaintiff pleads that right at that level of specificity, and pleads the tactical grounds stated above as additional and alternative grounds of unreasonableness.
234. BROWN’s conduct was undertaken knowingly, willfully, maliciously, and with reckless or callous indifference to NIEBUHR’s federally protected rights, entitling Plaintiff to punitive damages.
235. As a direct and proximate result of BROWN’s conduct, NIEBUHR suffered death.
236. Plaintiff is entitled to all relief available under 42 U.S.C. § 1983, including compensatory damages, punitive damages to the extent permitted by law, and attorneys’ fees and costs pursuant to 42 U.S.C. § 1988, as Plaintiff has been obligated to retain legal counsel.

COUNT II
FAILURE TO INTERVENE
as to WHEELER (Individual Capacity)
In Violation of the Fourth and Fourteenth Amendments and
pursuant to 42 U.S.C. § 1983

237. Plaintiff re-alleges paragraphs 1 through 21 (nature of the action, jurisdiction, venue, conditions precedent, parties, and the decedent's lawful status), 81 through 171 (the airport encounter, WHEELER's arrival and conduct on scene, and the shooting), and 203 through 212 (the investigative record) as though fully set forth herein.
238. At all material times, WHEELER acted under color of state law and was the supervising sergeant present at the scene.
239. WHEELER owed NIEBUHR a duty to intervene to stop a fellow officer's unlawful use of force when she had the opportunity and ability to do so.
240. WHEELER arrived approximately six minutes before the shooting, and before BROWN opened the truck's passenger door. ¶¶ 147, 161.
241. During that window, WHEELER had the authority and realistic opportunity to direct BROWN to maintain distance and cover, to slow the encounter, and to refrain from opening the door.
242. Instead, WHEELER walked away from the truck toward the rear and radioed for an extra unit, then reapproached the truck without her firearm drawn, and then walked away again — leaving BROWN without active supervisory oversight after he had opened the door and was holding NIEBUHR at gunpoint. ¶¶ 161–162.

243. WHEELER had a realistic opportunity to intervene and failed to do so, including by failing to:

- a. Direct BROWN to maintain cover and distance.
- b. Exercise her supervisory authority to direct or countermand BROWN's decision to open the passenger door.
- c. Deploy crisis-intervention resources or a CIT-trained officer, despite BROWN's communications to her that NIEBUHR was armed and was not, in BROWN's words, "talking correctly." ¶¶ 129, 143.

244. Instead, WHEELER turned away and began broadcasting into her radio at the critical moment. The shooting occurred approximately fifty-five seconds after the door was opened — the door was opened at 9:51:53 and the shots were fired at 9:52:48. ¶¶ 161, 167–168.

245. WHEELER's conduct was undertaken with reckless or callous indifference to NIEBUHR's federally protected rights, entitling Plaintiff to punitive damages.

246. As a direct and proximate result of WHEELER's failure to intervene, NIEBUHR suffered death.

247. Plaintiff is entitled to all relief available under 42 U.S.C. § 1983, including compensatory damages, punitive damages to the extent permitted by law, and attorneys' fees and costs pursuant to 42 U.S.C. § 1988, as Plaintiff has been obligated to retain legal counsel.

COUNT III
DELIBERATE INDIFFERENCE / MONELL LIABILITY
FAILURE TO TRAIN
as to Melbourne Airport Authority and City of Melbourne
pursuant to 42 U.S.C. § 1983

248. Plaintiff re-alleges paragraphs 1 through 21 (nature of the action, jurisdiction, venue, conditions precedent, parties, and the decedent's lawful status), 81 through 171 (the airport encounter and the shooting), and 203 through 227 (the investigative record, BROWN's training, service history and probationary status, and the Authority's and the City's post-incident review, commendation, and award of BROWN) as though fully set forth herein.
249. Municipal liability for failure to train under 42 U.S.C. § 1983 exists where: (1) the municipality inadequately trained its employees; (2) that failure constitutes a deliberate policy; and (3) that policy caused employees to violate a citizen's constitutional rights.
250. The Authority and the City, as MAPD's policymakers, know to a certainty that their officers will be required to confront potentially armed subjects. The need to train officers in the constitutional limits on the use of deadly force is so obvious that failure to do so constitutes deliberate indifference.
251. The Authority and the City each failed to adequately train BROWN and other MAPD officers in the constitutional limits on deadly force; de-escalation and tactical patience; the ability-opportunity-jeopardy framework; maintenance of the reactionary gap; and heightened

supervision requirements for probationary officers in high-risk encounters.

252. These deficiencies are programmatic failures in MAPD's training curriculum as a whole, and not merely the shortcomings of BROWN individually.

253. Each training deficiency bore a direct causal relationship to NIEBUHR's death:

- a. The failure to train in the ability-opportunity-jeopardy framework led to BROWN's failure to distinguish between ability — NIEBUHR being armed — and the opportunity and jeopardy that BROWN himself created by opening the door.
- b. The failure to train in de-escalation caused BROWN to abandon a successful thirty-minute containment posture and to close distance.
- c. The failure to train in reactionary gap doctrine caused BROWN to open the passenger door, compressing the decision window to approximately fifty-five seconds.
- d. The failure to require a field training officer to supervise a probationary officer in a high-risk encounter caused BROWN to manage the confrontation without any qualified oversight.

254. The need to train MAPD officers in these areas was obvious. The Authority and the City knew to a certainty that their officers would encounter citizens who were lawfully armed, and that a probationary officer who had not completed field training would be required to make deadly-force

judgments. Assigning such an officer to conduct solo contact with an armed individual, without a field training officer present and without training in the ability-opportunity-jeopardy framework, in de-escalation, or in the reactionary gap, made the violation of constitutional rights a highly predictable consequence of the training program as it existed.

255. Separately and in addition, on information and belief, prior use-of-force incidents and citizen complaints within MAPD placed the Authority and the City on actual or constructive notice of these training deficiencies. Plaintiff pleads this allegation on information and belief pursuant to Rule 11(b)(3): BROWN's service history, use-of-force incidents, academy training records, psychological evaluation, and citizen complaints are in Defendants' exclusive possession and were not included in the investigative file produced. ¶¶ 218–219.

256. Separately and in addition, the Authority and the City ratified BROWN's conduct and the stated basis for it. MAPD's chain of command reviewed and approved BROWN's training and deemed his use of deadly force compliant with MAPD policy. ¶ 206. MAPD's Chief of Police nominated BROWN for the 2024 Brevard County Law Enforcement Officer of the Year award, writing that his "professionalism, integrity, and commitment to public safety far exceed his years of service" and that he "is a role model for his peers." ¶ 224. BROWN received that award for the June 28, 2024 shooting of NIEBUHR, accompanied by a certificate confirming the shooting as the basis for it. ¶ 226. MAPD then issued its own public

statement praising BROWN’s “commendable composure and adherence to department training” and describing him as having “assessed the threat and engaged the subject, neutralizing the danger,” while attributing to NIEBUHR conduct — attempting to access the airfield by driving through security gates — that the body-worn camera footage does not show. ¶ 225. The nomination, the ceremony, and MAPD’s statement all preceded the release of the body-worn camera footage and the investigative files to NIEBUHR’s family. ¶ 227. The Authority holds direct supervision and control over MAPD and its officers, ¶ 15, and, upon information and belief, MAPD’s Chief of Police — the official who nominated BROWN — is the official with final policymaking authority over MAPD’s training, supervision, and use-of-force practices, subject to that supervision and control.

257. That approval is pleaded for two purposes, in the alternative pursuant to Rule 8(d)(2). First, and principally, it is evidence that the training and supervision practices described above were the Authority’s and the City’s actual policy rather than a departure from it: a municipality whose chain of command reviews a probationary officer’s use of deadly force, finds it compliant with its own policy, and whose chief nominates him for recognition on that basis has identified the conduct as what its training was designed to produce. Second, and in addition, the Authority and the City are liable on a ratification theory, having approved both BROWN’s decision and the stated basis for it through officials with final authority

over MAPD policy, and having done so in terms that endorse the very tactical choices that caused the death. Plaintiff does not plead that the post-incident approval caused NIEBUHR's death; the deliberate indifference that caused his death is pleaded above. The ratification is what establishes that the indifference was the Authority's and the City's policy and not BROWN's departure from it.

258. As a direct and proximate result of the Authority's and the City's deliberate indifference in failing to train, NIEBUHR was deprived of his Fourth and Fourteenth Amendment rights and suffered death.
259. Plaintiff is entitled to all relief available under 42 U.S.C. § 1983, including compensatory damages, punitive damages to the extent permitted by law, and attorneys' fees and costs pursuant to 42 U.S.C. § 1988, as Plaintiff has been obligated to retain legal counsel.

COUNT IV
DELIBERATE INDIFFERENCE / MONELL LIABILITY
FAILURE TO SUPERVISE
as to Melbourne Airport Authority and City of Melbourne
pursuant to 42 U.S.C. § 1983

260. Plaintiff re-alleges paragraphs 1 through 21 (nature of the action, jurisdiction, venue, conditions precedent, parties, and the decedent's lawful status), 81 through 171 (the airport encounter and the shooting), and 203 through 227 (the investigative record, BROWN's training, service history and probationary status, and the Authority's and the City's post-incident review, commendation, and award of BROWN) as though fully set forth herein.

261. The Authority and the City each failed to adequately supervise BROWN:

- a. By permitting a probationary officer who had not completed his field training to conduct solo initial contact with an armed individual without a qualified field training officer present.
- b. By failing to ensure that WHEELER exercised active supervisory command over BROWN's tactical decision-making.
- c. By failing to deploy crisis-intervention resources despite actual notice that NIEBUHR was armed and that BROWN had reported concerns about his manner of speaking. ¶¶ 129, 143.
- d. By failing to review, audit, or correct BROWN's training deficiencies during his probationary period.

262. The Authority's and the City's failure to supervise was the moving force behind NIEBUHR's death. The need for supervision was obvious: BROWN was a probationary officer who had not completed field training; he was permitted to conduct solo contact with an individual he had reported to his supervisor as armed; no field training officer was assigned; and his supervisor, once on scene, left him without active oversight at the moment he opened the door. ¶¶ 143, 158, 161–162. On information and belief, no supervisory review, audit, or corrective action was undertaken during BROWN's probationary period. ¶ 219.

263. As a direct and proximate result of the Authority's and the City's deliberate indifference in failing to supervise, NIEBUHR was deprived of his Fourth and Fourteenth Amendment rights and suffered death.

264. Plaintiff is entitled to all relief available under 42 U.S.C. § 1983, including compensatory damages, punitive damages to the extent permitted by law, and attorneys' fees and costs pursuant to 42 U.S.C. § 1988, as Plaintiff has been obligated to retain legal counsel.

COUNT V
WRONGFUL DEATH — NEGLIGENCE
as to Melbourne Airport Authority
Fla. Stat. §§ 768.16–768.26

265. Plaintiff re-alleges paragraphs 1 through 21 (nature of the action, jurisdiction, venue, conditions precedent, parties, and the decedent's lawful status), 81 through 171 (the airport encounter and the shooting), and 203 through 212 (the investigative record) as though fully set forth herein.

266. This Count is brought under Florida's Wrongful Death Act, Fla. Stat. §§ 768.16–768.26. The Authority's sovereign immunity is waived pursuant to Fla. Stat. § 768.28 for negligent acts of its officers within the scope of their employment.

267. BROWN and WHEELER were employees of the Authority acting within the scope of their employment. The Authority, through its officers, owed NIEBUHR a duty to use reasonable care in the operational handling of the encounter.

268. The Authority, through its officers, breached that duty by failing to use time, distance, cover, and containment; by failing to summon crisis-intervention resources; and by opening the passenger door of an armed

subject's vehicle, thereby creating the close-range confrontation that caused NIEBUHR's death.

269. As a direct and proximate result of the Authority's negligence, NIEBUHR suffered fatal gunshot wounds and died.

270. The Estate and statutory survivors sustained the damages recoverable under the Wrongful Death Act, including loss of support and services, loss of companionship and protection, mental pain and suffering, medical and funeral expenses, and lost net accumulations, as set forth in Fla. Stat. § 768.21, and, if allowed, punitive damages.

COUNT VI
WRONGFUL DEATH — NEGLIGENT TRAINING
as to Melbourne Airport Authority and City of Melbourne
Fla. Stat. §§ 768.16–768.26

271. Plaintiff re-alleges paragraphs 1 through 21 (nature of the action, jurisdiction, venue, conditions precedent, parties, and the decedent's lawful status), 81 through 171 (the airport encounter and the shooting), and 203 through 227 (the investigative record, BROWN's training, service history and probationary status, and the Authority's and the City's post-incident review, commendation, and award of BROWN) as though fully set forth herein.

272. This Count asserts a claim of negligent training under Florida's Wrongful Death Act. Sovereign immunity is waived pursuant to Fla. Stat. § 768.28.

273. The Authority and the City undertook to train their law-enforcement officers and owed a duty to exercise reasonable care to provide BROWN and WHEELER with adequate training to perform their duties safely.

274. The Authority and the City breached that duty by negligently failing to provide adequate training in the constitutional limits on deadly force, de-escalation, the ability-opportunity-jeopardy framework, and crisis-intervention principles.
275. That negligent training was a direct and proximate cause of the close-range deadly confrontation and of NIEBUHR's death. This Count does not challenge any discretionary, planning-level judgment about what training program to adopt or how to allocate training resources. It challenges the failure of the Authority and the City to implement and carry out training and field-training requirements they had already adopted, including the requirement that a probationary officer who has not completed field training be supervised by a field training officer. That failure was operational in character, and sovereign immunity is waived as to it. Fla. Stat. § 768.28(1).
276. The Estate and statutory survivors sustained the damages recoverable under the Wrongful Death Act, including loss of support and services, loss of companionship and protection, mental pain and suffering, medical and funeral expenses, and lost net accumulations, as set forth in Fla. Stat. § 768.21, and, if allowed, punitive damages.

COUNT VII
WRONGFUL DEATH — NEGLIGENT HIRING, RETENTION,
AND SUPERVISION
as to Melbourne Airport Authority and City of Melbourne
Fla. Stat. § 768.28

277. Plaintiff re-alleges paragraphs 1 through 21 (nature of the action, jurisdiction, venue, conditions precedent, parties, and the decedent's lawful status), 81 through 171 (the airport encounter and the shooting), and 203 through 227 (the investigative record, BROWN's training, service history and probationary status, and the Authority's and the City's post-incident review, commendation, and award of BROWN) as though fully set forth herein.
278. This Count asserts claims of negligent hiring, retention, and supervision under Florida's Wrongful Death Act. Sovereign immunity is waived pursuant to Fla. Stat. § 768.28.
279. The Authority and the City each owed NIEBUHR a duty to exercise reasonable care in the hiring, retention, and supervision of BROWN.
280. The Authority and the City breached those duties by: (a) failing to ensure that BROWN had received adequate training; (b) retaining BROWN as a probationary officer without ensuring requisite field training safeguards; (c) failing to provide a field training officer to supervise BROWN during the high-risk encounter; and (d) failing to take reasonable supervisory measures to redirect the encounter toward containment.
281. The Authority's and the City's negligence in the hiring, retention, and supervision of BROWN was a direct and proximate cause of NIEBUHR's death. As with Count VI, this Count does not challenge a discretionary, planning-level judgment about hiring criteria or staffing levels. It challenges the operational failure of the Authority and the City to carry out

supervisory requirements they had already adopted for probationary officers who have not completed field training, and sovereign immunity is waived as to that failure. Fla. Stat. § 768.28(1).

282. The Estate and statutory survivors sustained the damages recoverable under the Wrongful Death Act, including loss of support and services, loss of companionship and protection, mental pain and suffering, medical and funeral expenses, and lost net accumulations, as set forth in Fla. Stat. § 768.21, and, if allowed, punitive damages.

COUNT VIII
WRONGFUL DEATH — BATTERY
(Wanton and Willful Disregard for Human Rights or Safety)
as to BROWN (Individual Capacity)
Fla. Stat. §§ 784.03 and 768.28(9)
Pleaded in the Alternative to Count IX pursuant to Rule 8(d)(2)

283. Plaintiff re-alleges paragraphs 1 through 21 (nature of the action, jurisdiction, venue, conditions precedent, parties, and the decedent's lawful status), 81 through 171 (the airport encounter and the shooting), and 203 through 212 (the investigative record) as though fully set forth herein.
284. This Count is brought under Florida's Wrongful Death Act and is asserted against BROWN individually.
285. Under Florida law an officer commits a battery when he intentionally uses force that is unlawful or excessive under the circumstances. Deadly force used without legal justification, or in reckless and wanton disregard for human life, constitutes wanton battery.

286. On June 28, 2024, BROWN intentionally fired four rounds at NIEBUHR, causing physical injury and death against NIEBUHR's will. ¶ 168.
287. BROWN acted in bad faith, with malicious purpose, and with wanton and willful disregard of human rights and safety because, at the time of the shooting, BROWN had actual knowledge that: (a) NIEBUHR had committed no crime; (b) NIEBUHR had not pointed his firearm at any officer before BROWN opened the door; (c) NIEBUHR was lawfully carrying his firearm under Fla. Stat. § 790.25(5); and (d) BROWN had affirmatively created the close-range confrontation by opening the door. ¶¶ 161, 167, 212.
288. BROWN has forfeited any immunity pursuant to Fla. Stat. § 768.28(9)(a) and is personally liable for the battery.
289. As a direct and proximate result of BROWN's battery, NIEBUHR suffered grievous bodily injury and death.
290. The Estate and statutory survivors sustained the damages recoverable under the Wrongful Death Act, including loss of support and services, loss of companionship and protection, mental pain and suffering, medical and funeral expenses, and lost net accumulations, as set forth in Fla. Stat. § 768.21, and, if allowed, punitive damages.

COUNT IX
WRONGFUL DEATH — BATTERY
(By Agent in Scope of Employment)
as to Melbourne Airport Authority and City of Melbourne
Fla. Stat. §§ 784.03 and 768.28(1)
Pleaded in the Alternative to Count VIII pursuant to Rule 8(d)(2)

291. Plaintiff re-alleges paragraphs 1 through 21 (nature of the action, jurisdiction, venue, conditions precedent, parties, and the decedent's

lawful status), 81 through 171 (the airport encounter and the shooting), and 203 through 212 (the investigative record) as though fully set forth herein.

292. On June 28, 2024, BROWN committed a battery upon NIEBUHR by intentionally firing four rounds, causing physical injury and death. ¶ 168.

293. To the extent BROWN's conduct is found not to rise to the level of bad faith sufficient to strip immunity under Fla. Stat. § 768.28(9)(a), the Authority and the City are liable for the battery as BROWN's employer under Fla. Stat. § 768.28(1).

294. Pursuant to §§ 12-144 and 12-227 of the Melbourne City Code, BROWN was an employee of the City and subject to the supervision and control of the Authority. The battery was committed within the course and scope of his employment. Sovereign immunity has been waived as set forth in Fla. Stat. § 768.28(1).

295. As a direct and proximate result of BROWN's conduct, NIEBUHR suffered grievous bodily injury and death.

296. The Estate and statutory survivors sustained the damages recoverable under the Wrongful Death Act, including loss of support and services, loss of companionship and protection, mental pain and suffering, medical and funeral expenses, and lost net accumulations, as set forth in Fla. Stat. § 768.21, and, if allowed, punitive damages.

COUNT X
WRONGFUL DEATH — NEGLIGENCE
(Issuance of Unwarranted Situational Awareness Bulletin
as Proximate Cause of Death)
as to City of Palm Bay
Fla. Stat. §§ 768.16–768.26; 768.28

297. Plaintiff re-alleges paragraphs 1 through 80 (nature of the action, jurisdiction, venue, conditions precedent, parties, the decedent's lawful status, the Bulletin, the Kirkland Road encounter, the Flock platform and the surveillance of NIEBUHR, the DAVID checks, and NIEBUHR's reports of law-enforcement targeting), 107 (the machine-generated alerts retrieval at 9:24:25), 153 through 161 (the CAD alerts retrievals, the return of NIEBUHR's plate history followed by a redacted dispatch instruction, and the opening of the passenger door), 167 through 171 (the shooting), 181 through 187 (the public release of the Bulletin and MAPD's public statement attributing its BOLO on NIEBUHR to his recent interactions with PBPD), and 195 through 196 (the Farley use of force and the written notice given by Deputy Chief Fisher) as though fully set forth herein.
298. This Count is brought under Florida's Wrongful Death Act. The City of Palm Bay's sovereign immunity is waived pursuant to Fla. Stat. § 768.28 for the negligent acts and omissions of its officers committed within the scope of their employment.
299. This Count challenges PBPD's affirmative conduct in creating, circulating, and maintaining the Bulletin, and in converting NIEBUHR's complaints into the officer-safety characterizations the Bulletin carried. Plaintiff does not premise this Count on any duty to enforce the law, to investigate, or

to protect the public at large, and does not challenge any decision whether to open or to decline an investigation. Plaintiff alleges that the City, through PBPD, affirmatively created and published a document about a named, uncharged private citizen that characterized him to other law-enforcement agencies as “paranoid,” as exhibiting “sovereign citizen behaviors,” as having access to firearms, and as a subject of officer-safety concern, ¶¶ 25, 47–48, 77; that those characterizations were false, unsupported, or misleading; that PBPD circulated the document to agencies it knew would act on it, ¶¶ 27–28; and that MAPD did act on it, ¶¶ 153, 156, 186–187. A private person who publishes false or misleading characterizations of a named individual to third parties who foreseeably act upon them owes that individual a duty of reasonable care, and the same duty applies to the City. The City’s affirmative act created a foreseeable zone of risk to NIEBUHR that did not exist before the Bulletin issued.

300. The City of Palm Bay, through its PBPD officers, therefore owed NIEBUHR a duty of reasonable care in what it wrote about him and to whom it published it, including a duty not to characterize him to other agencies in a manner PBPD knew or should have known was false or misleading and would foreseeably alter how those agencies approached him. This Count challenges operational conduct — what PBPD in fact wrote in the Bulletin, to whom it in fact circulated it, and how it in fact handled and characterized NIEBUHR’s complaints — and not any planning-level

judgment about how to allocate police resources or whether to open an investigation. The content and distribution of a document about a named citizen, once the decision to create such a document has been made, is the implementation of policy rather than the making of it, and sovereign immunity is waived as to it. Fla. Stat. § 768.28(1).

301. PBPD breached that duty by:

- a. Issuing the Situational Awareness Bulletin without probable cause, reasonable articulable suspicion, or any open criminal case. ¶¶ 22–29.
- b. Characterizing NIEBUHR in the Bulletin as “paranoid” and as exhibiting “sovereign citizen behaviors” when his stated concern — that the government was watching and tracking him — was true, ¶¶ 70, 77, and when he had never invoked sovereign-citizen status, ¶ 48.
- c. Dismissively handling NIEBUHR’s formal complaints, labeling him “S20” without clinical basis, and converting his complaint into officer-safety intelligence. ¶¶ 70–79.
- d. Publishing the Bulletin without the information PBPD itself possessed that contradicted its characterizations — that NIEBUHR had committed no crime, had legitimate business and the owner’s permission at Kirkland Road, had himself contacted PBPD to report that he was being tracked, and had repeatedly asked for a supervisor

— and without any indication that he warranted a crisis-response rather than a threat-response posture. ¶¶ 43–45, 70–76.

302. The issuance and circulation of the Bulletin were a proximate cause of NIEBUHR's death. MAPD publicly stated that the BOLO on NIEBUHR issued due to his recent interactions with PBPD. ¶¶ 186–187. Law-enforcement alerts for the encounter location were retrieved at approximately 9:24 a.m., when BROWN arrived, and again at approximately 9:47 a.m., five minutes before the shooting; and NIEBUHR's license plate history was returned at 9:49:22, followed by a dispatch instruction that is redacted in the report produced to date. ¶¶ 107, 153, 156. The Bulletin foreseeably caused MAPD officers to approach NIEBUHR as a pre-identified threat, which affected their tactical decision-making and caused or contributed to the shooting. The connection alleged is not one of chronology alone. The same Palm Bay material — the Bulletin, the BOLO, and the law-enforcement alert history returned on NIEBUHR's tag — is the material that MAPD itself has publicly stated accounted for its BOLO on NIEBUHR.

303. That NIEBUHR himself telephoned MAPD for directions, and that airport employees observed and reported him, does not break the causal chain. Those contacts were the ordinary and foreseeable consequence of NIEBUHR being present in a public area in a vehicle that PBPD had already flagged and was already tracking, and an intervening act relieves a defendant of liability only where the act was unforeseeable. Whether

these contacts were foreseeable, and whether the Bulletin shaped how MAPD officers responded to them, are questions of fact that cannot be resolved on the pleadings. In any event, the route by which MAPD came to encounter NIEBUHR is a separate question from the posture with which MAPD officers approached, contained, detained, and shot him, and it is that posture Plaintiff alleges the Palm Bay material shaped. ¶¶ 107, 153, 156.

304. As a direct and proximate result of the City of Palm Bay's negligence, NIEBUHR suffered fatal gunshot wounds and died.
305. The Estate and statutory survivors sustained the damages recoverable under the Wrongful Death Act, including loss of support and services, loss of companionship and protection, mental pain and suffering, medical and funeral expenses, and lost net accumulations, as set forth in Fla. Stat. § 768.21, and, if allowed, punitive damages.

COUNT XI
42 U.S.C. § 1983 — MUNICIPAL LIABILITY
(Policy, Custom, Failure to Supervise, and Ratification)
as to City of Palm Bay
Pursuant to the Fourth and Fourteenth Amendments
and 42 U.S.C. § 1983

306. Plaintiff re-alleges paragraphs 1 through 80 (nature of the action, jurisdiction, venue, conditions precedent, parties, the decedent's lawful status, the Bulletin, the Kirkland Road encounter, the Flock platform and the surveillance of NIEBUHR, the DAVID checks, and NIEBUHR's reports of law-enforcement targeting), 107 (the machine-generated alerts retrieval at 9:24:25), 153 through 161 (the CAD alerts retrievals, the return of

NIEBUHR's plate history followed by a redacted dispatch instruction, and the opening of the passenger door), 167 through 171 (the shooting), 181 through 187 (the public release of the Bulletin and MAPD's public statement attributing its BOLO on NIEBUHR to his recent interactions with PBPD), 195 through 196 (the Farley use of force and the written notice given by Deputy Chief Fisher), and 220 (PBPD's officer-involved incidents during the period in which BROWN began his service there) as though fully set forth herein.

307. At all material times the officers and employees of PBPD acted under color of state law and pursuant to the authority of the City of Palm Bay. NIEBUHR had clearly established Fourth and Fourteenth Amendment rights to be free from unreasonable search and seizure, from warrantless and suspicionless governmental tracking of his movements, and from baseless governmental profiling. Plaintiff does not allege that the City of Palm Bay employed, trained, supervised, or directed BROWN or WHEELER, or that it controlled any decision made at the airport on June 28, 2024. Plaintiff alleges that the City's own policies and customs, alleged below, were a moving force behind the constitutional injuries alleged in this Count.

308. A municipality is liable under 42 U.S.C. § 1983 where its own policy or custom is the moving force behind a constitutional deprivation. A plaintiff may establish a municipal policy or custom by pointing to an officially adopted policy or a decision of a final policymaker; by identifying a

widespread practice so permanent and well settled as to constitute a custom with the force of law; or by showing that the municipality tacitly authorized or displayed deliberate indifference toward the constitutionally offensive actions of its employees. A policy is a decision officially adopted by the municipality or made by an official of such rank that he or she may be said to act on its behalf; a custom is a practice so settled and permanent that it takes on the force of law. Plaintiff pleads each of the three routes, in the alternative and cumulatively.

309. Official policy. The Bulletin was not the unauthorized act of a line officer. It was an official written product of the Palm Bay Police Department, issued on the Department's authority, bearing Chief of Police Mariano Augello at its top, circulated by the Department to other law-enforcement agencies, updated by the Department after the June 17, 2024 encounter, and used by the Department as the local area BOLO on NIEBUHR. The activation of Flock ALPR surveillance under the stated reason of "Intel," with no open case and no lawful predicate, was likewise an official act of the Department, performed by its Crime Analyst using a Department-procured system on Department authority, under an Agreement executed on the City's behalf by its Chief Procurement Officer and authorized by the City Council. ¶¶ 52, 55. Because Plaintiff alleges that the municipal action itself violated federal law — the issuance of a predicateless intelligence product identifying a named private citizen, and the activation of suspicionless surveillance of that citizen — this is not a claim that a

facially valid municipal action produced a constitutional injury through the intervening act of an employee, and the rigorous standards of culpability and causation applicable to that second category do not govern. PBPD went far beyond merely reporting NIEBUHR to other law-enforcement agencies. PBPD:

- a. Issued the Bulletin formally flagging NIEBUHR as a threat subject to MAPD without any criminal predicate. ¶¶ 22–29.
- b. Conducted ongoing Flock ALPR surveillance, embedding NIEBUHR within the shared law-enforcement targeting apparatus. ¶¶ 49–59.
- c. Converted NIEBUHR’s formal complaint into officer-safety intelligence, mischaracterizing his documented and accurate privacy and safety concerns as “paranoid” and as “sovereign citizen behaviors,” and thereby supplying MAPD with pretexts that predictably caused responding officers to treat NIEBUHR as dangerous. ¶¶ 74, 77.
- d. Labeled NIEBUHR “S20” without clinical basis and took no steps to provide mental health resources or to alert MAPD that NIEBUHR was vulnerable. ¶ 72.

310. Widespread custom. The City maintained a practice, so settled and permanent as to carry the force of law, of directing its surveillance apparatus and its intelligence products at persons suspected of no crime — including the use of Flock for purposes its own Chief of Police described as “not even being used for crimes,” Flock-generated stops of persons

against whom no independent reasonable suspicion existed, and the characterization of individuals as threats on the basis of perceived belief rather than conduct. ¶¶ 49–79.

311. Deliberate indifference and failure to supervise. The City adopted the Flock system by consent agenda in 2021, operated it with no written General Order until May 21, 2026, and conducted no locatable audit of officer use before 2026. ¶¶ 55, 61, 65. The absence of any policy, training, or audit governing a surveillance system capable of reconstructing a citizen’s movements made the suspicionless targeting of a person such as NIEBUHR a plainly obvious and highly predictable consequence of those failures. The City’s own Flock Agreement confined use of the system to gathering evidence for a lawful criminal investigation and obligated the City not to use it for any other purpose, ¶ 52(a); the City nonetheless adopted no policy, training, or audit to enforce that limit, and its Chief of Police later acknowledged that the system was “not even being used for crimes.” ¶ 62.

312. Notice. On or about May 10, 2024 — seven weeks before NIEBUHR was killed and approximately one month before the Bulletin issued — PBPD Deputy Chief Lance Fisher submitted a written complaint to the Palm Bay City Attorney, the Human Resources Director, and the City Manager concerning PBPD’s abuse of authority, misuse of official position, and selective enforcement practices. ¶ 196. The City of Palm Bay thereby had actual notice, through its own senior officials, of the conditions alleged

herein before the Bulletin issued and before NIEBUHR was killed, and failed to investigate, address, or take corrective action.

313. Plaintiff pleads the constitutional injury in the alternative, pursuant to Rule 8(d)(2). First, the warrantless, suspicionless, and sustained surveillance and profiling of NIEBUHR was itself a deprivation of his rights under the Fourth and Fourteenth Amendments, complete when it occurred and independent of the shooting. Second, and in addition, the policies and customs alleged herein were the moving force behind the fatal encounter of June 28, 2024.
314. MAPD officers arrived at the scene with NIEBUHR already framed as a threat subject by PBPD's Bulletin, and acted on that predicate without independent assessment of his conduct at the airport. That allegation is supported by MAPD's own public statement that the BOLO on NIEBUHR issued due to his recent interactions with PBPD, ¶¶ 186–187; by the retrieval of law-enforcement alerts for the encounter location at approximately 9:24 a.m. and again at approximately 9:47 a.m., ¶¶ 107, 153; and by the return of NIEBUHR's license plate history at 9:49:22 followed by a redacted dispatch instruction, ¶ 156.
315. The route by which MAPD came to encounter NIEBUHR does not defeat causation. That NIEBUHR telephoned MAPD, and that airport employees reported him, were foreseeable consequences of his lawful presence in a public area; neither supplied the officers with the threat framing that the Bulletin, the BOLO, and the alert information returned at approximately

9:24 a.m., at approximately 9:47 a.m., and at 9:49:22 supplied. ¶¶ 107, 153, 156. Foreseeability and superseding cause are questions of fact not resolvable on a motion to dismiss.

316. Each of these acts and omissions — the issuance and dissemination of the Bulletin, the activation and maintenance of Flock surveillance without predicate, the conversion of NIEBUHR’s complaints into officer-safety intelligence, the “S20” designation without clinical basis, and the failure to supervise or audit the surveillance program — was undertaken with deliberate indifference to NIEBUHR’s known or obvious rights and was the moving force behind the constitutional injuries alleged in this Count.
317. NIEBUHR was deprived of his constitutional rights by the policies and customs of the City of Palm Bay alleged herein, including: (a) his right to be free from warrantless Flock ALPR surveillance; (b) his right to be free from baseless governmental profiling; (c) his Second Amendment and Fla. Stat. § 790.25(5) right to possess a firearm without that lawful act being used as a threat marker; and (d) his right to be free from the use of excessive and unreasonable deadly force.
318. NIEBUHR’s Fourth Amendment right was violated not by the reading of a license plate in public view but by the aggregation and retrospective querying of thousands of such observations to reconstruct the whole of his movements over a thirty-day period, undertaken by the City without a warrant, without probable cause, without reasonable suspicion, and

- without any recorded predicate. ¶¶ 58–59. That deprivation was complete when the record was assembled and is independent of NIEBUHR’s death.
319. The issuance of the Bulletin, the authorization of the Flock surveillance, and the conversion of NIEBUHR’s complaint into officer-safety intelligence each reflect official PBPD policy or custom for which the City of Palm Bay is responsible under *42 U.S.C. § 1983*.
320. As a direct and proximate result of the policies and customs of the City of Palm Bay, NIEBUHR was deprived of his constitutional rights and suffered fatal gunshot wounds.
321. Plaintiff is entitled to all relief available under *42 U.S.C. § 1983*, including compensatory damages, punitive damages to the extent permitted by law, and attorneys’ fees and costs pursuant to *42 U.S.C. § 1988*, as Plaintiff has been obligated to retain legal counsel. Flock Group, Inc.’s joint and several liability for *§ 1983* damages arising from its participation in the surveillance apparatus is addressed in Count XII.

COUNT XII
42 U.S.C. § 1983 — PRIVATE ACTOR LIABILITY
(Joint Action, Nexus, and Entwinement with Governmental Actors)
as to Flock Group, Inc.
Pursuant to the Fourth and Fourteenth Amendments
and 42 U.S.C. § 1983

322. Plaintiff re-alleges paragraphs 1 through 80 (nature of the action, jurisdiction, venue, conditions precedent, parties, the decedent’s lawful status, the Bulletin, the Kirkland Road encounter, the Flock platform and the surveillance of NIEBUHR, the DAVID checks, and NIEBUHR’s reports of law-enforcement targeting), 107 (the machine-generated alerts retrieval

at 9:24:25), 153 through 161 (the CAD alerts retrievals, the return of NIEBUHR's plate history followed by a redacted dispatch instruction, and the opening of the passenger door), 167 through 171 (the shooting), and 181 through 187 (the public release of the Bulletin and MAPD's public statement attributing its BOLO on NIEBUHR to his recent interactions with PBPD) as though fully set forth herein.

323. A private actor is liable under 42 U.S.C. § 1983 where its conduct is fairly attributable to the State. A private actor acts under color of state law where it is a willful participant in joint action with the State or its agents; where there is a sufficiently close nexus between the State and the challenged conduct that the conduct may be treated as that of the State itself; or where the private entity is so entwined with governmental policies, or the government so entwined in the private entity's management or control, that its nominally private character is overborne. Plaintiff pleads joint action, nexus, and entwinement, in the alternative and cumulatively.
324. The nexus and joint-action inquiries turn on the specific conduct of which Plaintiff complains, and may be established by circumstantial evidence, including the operational role the private actor played in the challenged conduct, the degree to which the private actor's system was integrated into the agency's own operations, and whether the private actor's system was specifically deployed against the plaintiff. Joint action does not require proof of an agreement to violate the plaintiff's rights; an understanding between the private and state actors, and the private actor's willful

participation in the challenged conduct, suffice. Plaintiff does not rely on a conspiracy or meeting-of-the-minds theory. Plaintiff does not allege that Flock's liability arises from the existence of a contract with PBPD. Plaintiff alleges that Flock performed the challenged conduct itself.

325. Flock Group, Inc. is a private surveillance corporation that contracts with law-enforcement agencies to provide automated license plate reader systems, including the Flock Safety platform, through which participating agencies can monitor, track, flag, and share vehicle location data in near real time. Flock's platform permits agencies to enter vehicle tags as "Hot List" subjects and to receive automated alerts whenever a vehicle so entered is captured by any Flock-networked camera within a participating network. Flock's systems are designed to facilitate and extend law-enforcement surveillance operations.

326. Flock's platform does more than match a captured plate against a list an agency has entered. It aggregates captures made by cameras belonging to many separate agencies and customers into a single index that Flock alone maintains, and it permits retrospective queries across that index that reconstruct where an identified vehicle has been over a period of days or weeks. ¶¶ 53–54.

327. Pursuant to a contract with the City of Palm Bay and PBPD, Flock installed, operated, and maintained its ALPR infrastructure within the City of Palm Bay's law-enforcement network, and operated that infrastructure on a continuing basis as a hosted service. ¶¶ 52–53. That contract is the

Flock Agreement of August 2021, attached as Exhibit A, which carried a sixty-month initial term and governed the relationship in June 2024. ¶ 52.

328. Beginning on or about June 19, 2024, PBPD Crime Analyst Welzenbach, Flock operator “J. WEL,” initiated a search of NIEBUHR’s vehicle, Florida tag KPQQ61, on Flock’s platform. Flock’s system required a stated reason for the search and recorded the reason entered: “Intel.” That entry identified no crime, no case number, no offense, and no legal predicate. No warrant, no open criminal case, no probable cause, and no reasonable articulable suspicion supported the search. Flock designed and controlled the predicate-verification mechanism on its own system, recorded a facially non-predicated reason, and executed the search notwithstanding. ¶¶ 49–50. Under Flock’s own contract, the sole permitted purpose of the system was “to facilitate gathering evidence that could be used in a lawful criminal investigation,” and Flock reserved the right to monitor the City’s use and to prohibit or suspend any use outside that purpose. ¶ 52(a), (c). “Intel” is not a lawful criminal investigation on its face. Flock’s system executed the search anyway.

329. Upon information and belief, the search was executed by Flock, on Flock’s infrastructure, using Flock’s software. Flock’s cameras captured the images; Flock’s systems received, stored, and indexed them; Flock’s software ran the retrospective query across the participating camera network when NIEBUHR’s tag was entered; and Flock assembled and

returned the resulting movement record to PBPD. PBPD did not store, index, or search the underlying captures, and could not have assembled that record without Flock. Flock did not merely supply PBPD with a tool and step away. Flock performed the search. ¶¶ 52(b), 53–54. Flock’s involvement did not end when a match was reported to an officer. Flock did not compare a captured plate against a list PBPD had supplied and then step out of the transaction. Flock searched its own aggregated index, across cameras PBPD does not own, did not install and does not control, over a thirty-day period, and produced a record of NIEBUHR’s movements that had not existed anywhere before Flock’s system assembled it. ¶¶ 54, 58–59.

330. The surveillance was retrospective and sustained rather than incidental: a single search of NIEBUHR’s movements spanned thirty days, drew on captures from approximately 4,760 devices, and produced a chronological reconstruction of where NIEBUHR’s vehicle had been throughout that period. ¶¶ 58–59.

331. Flock was not a passive provider of neutral technology. Flock designed its ALPR platform to integrate with law-enforcement investigative systems, to facilitate the entry of vehicle tags for targeted monitoring, and to generate automated alerts to officers when flagged vehicles are detected. Flock markets and operates its platform specifically for law-enforcement targeting purposes, including “Hot List” surveillance of specific vehicles.

332. Flock's platform was integrated with PBPD's Computer-Aided Dispatch calls-for-service reporting program, so that Flock's output entered the agency's own operational workflow rather than being delivered to the agency at arm's length for the agency's separate use. ¶ 56. PBPD's Flock activity was described by City officials as providing real-time intelligence used to create an approach plan, and PBPD's Chief of Police publicly acknowledged that the system was not being used for crimes but to "identify and gather intel." ¶¶ 56, 62. Flock is thereby entwined with the operations and policies of the agency to a degree that overcomes its nominally private character with respect to the conduct alleged here. Flock's own Agreement describes the relationship in the same terms: a Customer Success Manager who is the agency's "strategic partner" for the life of the contract, continuing monitoring by Flock for the length of the term, and a shared mission — "Let's defeat crime together." ¶ 52(f).
333. Flock knew that law-enforcement agencies were using its platform against persons suspected of no crime. Flock's Chief Executive Officer publicly acknowledged that "[t]he abuse is a problem," that "[a]ny level of abuse is unacceptable," and that responsibility for it is "shared"; Flock introduced optional proactive auditing permitting an agency to audit its own personnel's use only after such misuse was reported; and Flock announced additional safeguards in August 2026 in response to reported widespread misuse. ¶¶ 65–66. Flock nonetheless made and kept its platform available for searches for which its own system recorded no

predicate, and Flock's system executed the suspicionless search of NIEBUHR's movements. Flock's knowledge did not begin in 2026. In 2021 Flock itself wrote the restriction confining the City's use of its system to lawful criminal investigation, wrote the clause reserving Flock's right to monitor the City's use and to suspend it for any other purpose, and presented itself to PBPD as a continuing partner in that use. ¶ 52(a), (c), (f). Flock therefore knew in June 2024 what the permitted purpose was, knew that its system recorded the stated purpose of every search, ¶ 50, and held the contractual power to act on a stated purpose that was not a lawful criminal investigation.

334. Flock was a willful participant in joint action with PBPD, a governmental actor operating under color of state law, in conducting the warrantless, suspicionless search of NIEBUHR's movements. The nexus alleged here is not the existence of a contract. It is that Flock aggregated and maintained the index that made the search possible; that Flock designed and controlled the mechanism that was supposed to require a predicate; that Flock recorded the absence of any predicate and executed the search regardless; that Flock's own software performed the query and assembled the resulting movement record; and that Flock's output was delivered into the agency's operational dispatch system. Each of those acts is Flock's own, and each involves the specific conduct of which Plaintiff complains. The Flock Agreement confirms each of them: the platform, the index, and the cameras remained Flock's; the searches were run by Flock's software

through Flock's Web Interface; and Flock alone held the power to monitor, prohibit, and suspend use outside the permitted purpose. ¶ 52(b), (c). Flock's contractual disclaimer that "[n]o agency, partnership, joint venture, or employment is created" by the Flock Agreement, Flock Agreement § 10.4, does not answer that allegation: whether a private party is a willful participant in joint action turns on what it did, not on the label the parties gave their relationship, and the Agreement's allocation to the City of responsibility for lawful use, *id.* §§ 3.2, 8.3, is a term between Flock and the City that neither binds NIEBUHR nor alters the conduct Flock itself performed.

335. The search of NIEBUHR's historical movements violated his rights under the Fourth Amendment. Plaintiff does not allege that the reading of a license plate in public view is, standing alone, a search. Plaintiff alleges that the aggregation of thousands of such observations, drawn from cameras across many jurisdictions, retained by a private entity, and queried retrospectively to reconstruct where an identified individual's vehicle had been over a thirty-day period, is a search — because the whole of that record reveals what no individual observation reveals: the privacies of a person's life, and his familial, political, professional, religious, and other associations.

336. NIEBUHR retained a reasonable expectation of privacy in the whole of his physical movements over that period. The record assembled about him was not a snapshot of his location at a discrete time on a public road; it

was a comprehensive, retrospective, and effortlessly compiled chronicle, produced without a warrant, without probable cause, without reasonable suspicion, and without any recorded predicate other than the word “Intel.” Nor could NIEBUHR have avoided its creation, short of abandoning the use of a vehicle. ¶¶ 58–59.

337. That deprivation was complete when the search was executed and the record assembled on or about June 19, 2024. It did not depend upon, and was not caused by, the events of June 28, 2024. Plaintiff is entitled to recover for that deprivation independent of NIEBUHR’s death.

338. Plaintiff pleads the injury caused by Flock in the alternative, pursuant to Rule 8(d)(2). First, and principally, the search described above was itself the constitutional injury, complete on or about June 19, 2024 and independent of the shooting. Second, and in addition, the surveillance Flock conducted was a proximate and contributing cause of NIEBUHR’s death: a Flock capture of NIEBUHR’s truck was placed in the Bulletin; the Bulletin and the surveillance shaped MAPD’s posture toward NIEBUHR; and that posture contributed to the fatal encounter. ¶¶ 25, 156, 186–187.

339. That NIEBUHR telephoned MAPD for directions, and that airport employees observed and reported him, does not break that chain. Those contacts were the foreseeable consequence of his lawful presence in a public area; neither supplied the officers with the threat framing that the Bulletin, the BOLO, and the alert information returned at approximately 9:24 a.m., at approximately 9:47 a.m., and at 9:49:22 supplied, ¶¶ 107,

153, 156; and whether an intervening act was foreseeable is a question of fact not resolvable on the pleadings.

340. As a direct and proximate result of Flock's conduct, NIEBUHR was deprived of his rights secured by the Fourth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment and, as alleged in the alternative above, suffered fatal gunshot wounds.

341. Plaintiff is entitled to all relief available under 42 U.S.C. § 1983, including compensatory damages, punitive damages to the extent permitted by law, and attorneys' fees and costs pursuant to 42 U.S.C. § 1988, as Plaintiff has been obligated to retain legal counsel. The City of Palm Bay and Flock are jointly and severally liable for the § 1983 damages flowing from the joint action alleged in this Count.

COUNT XIII
42 U.S.C. § 1983 — FIRST AMENDMENT RETALIATION
(Petition and Speech)
as to City of Palm Bay
Pursuant to the First and Fourteenth Amendments
and 42 U.S.C. § 1983

342. Plaintiff re-alleges paragraphs 1 through 80 (nature of the action, jurisdiction, venue, conditions precedent, parties, the decedent's lawful status, the Bulletin, the Kirkland Road encounter, the Flock platform and the surveillance of NIEBUHR, the DAVID checks, and NIEBUHR's complaints to PBPD and the City and the response to them), 181 through 187 (the public release of the Bulletin), and 195 through 196 (the Farley

use of force and the written notice given by Deputy Chief Fisher) as though fully set forth herein.

343. At all material times the officers and employees of PBPD acted under color of state law and pursuant to the authority of the City of Palm Bay.

344. Plaintiff alleges in this Count that the City's own policies, customs, and final-policymaker decisions, alleged below, were the moving force behind the retaliation alleged.

345. NIEBUHR engaged in activity protected by the First Amendment. On June 17, 2024, he told PBPD officers that they, not he, were trespassing on private property, asked that a supervisor be sent to the scene, and told the property owner on speakerphone that the officers were harassing him. ¶¶ 40, 42, 44. On June 24, 2024, he went in person to the PBPD lobby to report to the on-duty sergeant that the government was watching and tracking him, and then went to Palm Bay City Hall to raise the same concern with city officials. ¶¶ 70–71. On June 25 and 26, 2024, he telephoned PBPD, asked for a supervisor, and asked that his complaint be reassigned to an officer free of any conflict. ¶¶ 73–75. Complaining to a police department and to city officials about the conduct of that police department is speech on a matter of public concern and a petition to the government for redress of grievances. PBPD's own policy invited it: citizens are encouraged to report any incident to a shift supervisor as soon as possible. ¶ 76.

346. The City, through PBPD, responded to that protected activity with the following adverse actions:

- a. It classified NIEBUHR's June 24, 2024 report as an "S20" or "Signal 20" — a mental-illness incident — without any clinical basis, assessment, or referral. ¶ 72.
- b. It linked his complaints to the officer-safety Bulletin and assigned his complaint about Officer Boggess back to Officer Boggess, and continued to do so after he asked for a supervisor and for reassignment to an officer without a conflict. ¶¶ 73–75.
- c. It characterized the substance of his complaint — that the government was watching and tracking him, which was true — as "paranoid" and as "sovereign citizen behaviors" in a document circulated to other law-enforcement agencies, although he had never invoked sovereign-citizen status and no criminal case was open against him. ¶¶ 29, 47–48, 77.
- d. It created, updated after the June 17, 2024 encounter, and circulated to area law-enforcement agencies a Bulletin identifying him by name, date of birth, physical description, home address, vehicle, license plate, and photograph, listing decades-old minor citations, and alerting officers that he had access to firearms, all without any criminal predicate. ¶¶ 23–27, 46–47.
- e. It initiated and maintained Flock ALPR surveillance of his vehicle under the stated reason "Intel," with no open case, two days after

the June 17, 2024 encounter in which he had asserted his rights and asked for a supervisor. ¶¶ 49–51, 58.

347. Each of those actions, and all of them together, would deter a person of ordinary firmness from complaining to the police or to city officials about police conduct. A citizen who reports that he is being tracked and is answered by being labeled mentally ill, branded a sovereign-citizen threat to every police agency in the area, placed under retrospective surveillance of his movements, and having his home address and photograph circulated with a firearms warning has been punished for speaking, and the punishment is of a kind that a court in this Circuit has already recognized a jury may find sufficient. *Bennett v. Hendrix*, 423 F.3d 1247, 1254–55 (11th Cir. 2005). The inquiry is objective; that NIEBUHR persisted in calling PBPD does not diminish the deterrent character of what was done to him.

348. The retaliatory actions were caused by NIEBUHR’s protected activity. PBPD had actual knowledge of his complaints: they were made to PBPD itself, in its lobby, on its telephone lines, and at City Hall next door, and PBPD’s own event reports record them and link them to the Bulletin. ¶¶ 70–74. The content of the retaliation is the protected speech itself — the Bulletin’s “paranoid” characterization is a characterization of the complaint he made, ¶ 77, and could not have been written before he made it. The adverse actions followed the protected activity within days. And nothing else explains them: the Bulletin identified no offense and no case,

¶¶ 24, 29; the Kirkland Road investigation confirmed no violation, ¶ 45; and NIEBUHR had committed no crime, ¶ 21. But for his complaints and his assertion of his rights, there was nothing to characterize, nothing to flag, and no reason to surveil him.

349. To the extent the Bulletin bears a date of June 4, 2024, Plaintiff pleads in the alternative, as in paragraph 23, that the Bulletin was updated with the June 17, 2024 encounter and with the characterizations of NIEBUHR's later complaints, or was post-dated; in either event the characterizations of his complaints as "paranoid" and as "sovereign citizen behaviors" were added after, and because of, the complaints they describe.

350. The retaliation is attributable to the City of Palm Bay under each of the following routes, pleaded in the alternative and cumulatively:

- a. Final policymaker. The Bulletin was an official written product of PBPD issued on the Department's authority, bearing the name of Chief of Police Mariano Augello at its top, and Chief Augello is, upon information and belief, the official with final policymaking authority over PBPD's intelligence products and their dissemination. ¶ 26. His approval of the Bulletin and of its characterizations of NIEBUHR is a decision of the City.
- b. Custom. The City maintained a practice, so settled and permanent as to carry the force of law, of treating those who complained about PBPD as threats and of retaliating against them: PBPD's Crime Suppression Team used Flock to surveil an outspoken, law-abiding

resident who was committing no crime, ¶ 64; Deputy Chief Fisher’s May 10, 2024 written complaint of abuse of authority and selective enforcement was met with escalating retaliation ending in his termination, ¶ 196; residents’ misconduct complaints at public council meetings were dismissed by the Mayor and Council with calls for officers to be “aggressive as war fighters,” ¶ 38(d); and NIEBUHR’s complaints were converted into officer-safety intelligence. ¶¶ 74, 77.

- c. Deliberate indifference. Seven weeks before NIEBUHR was killed, the City had actual written notice from its own Deputy Chief that PBPB was engaged in abuse of authority, misuse of official position, and selective enforcement. ¶ 196. The City investigated nothing and corrected nothing, and the obvious consequence — that PBPB would continue to use its intelligence and surveillance tools against citizens who challenged it — followed.

351. The injury from the retaliation was complete when the retaliatory acts were taken, and Plaintiff is entitled to recover for it independent of NIEBUHR’s death: the chilling of his right to petition and to speak, the branding of him as mentally ill and as a threat to law enforcement throughout the area, the warrantless reconstruction of his movements, and the exposure of his identity, residence, and lawful firearm possession to every agency that received the Bulletin and, after his death, to the public. ¶¶ 25, 27, 58–59, 183–184.

352. Separately and in the alternative, pursuant to Rule 8(d)(2), the retaliatory characterizations of NIEBUHR in the Bulletin were a proximate and contributing cause of his death, for the reasons alleged in Counts X and XI: the Bulletin framed him for MAPD as a paranoid, sovereign-citizen threat with access to firearms; MAPD had the Bulletin and has publicly attributed its BOLO on him to his interactions with PBPD; and that framing shaped the posture with which MAPD officers approached, contained, detained, and shot him. ¶¶ 153, 156, 186–187.
353. As a direct and proximate result of the policies, customs, and final-policymaker decisions of the City of Palm Bay, NIEBUHR was deprived of his rights to freedom of speech and to petition the government for redress of grievances secured by the First Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment.
354. Plaintiff is entitled to all relief available under 42 U.S.C. § 1983, including compensatory damages and attorneys’ fees and costs pursuant to 42 U.S.C. § 1988, as Plaintiff has been obligated to retain legal counsel.

JURY TRIAL DEMAND AND REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests:

- A. A trial by jury on all claims and issues in this matter that may be tried to a jury;
- B. Upon judgment or verdict, compensatory damages in an amount to be determined against all Defendants, jointly and severally as

permitted by law, including for violations of civil rights, conscious physical pain and suffering before death, medical and funeral expenses, loss of prospective net estate, mental pain and suffering of survivors, and loss of companionship, support, and guidance;

- C. Punitive damages as allowed by law;
- D. Reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and other applicable law;
- E. Pre-judgment and post-judgment interest as allowed by law;
- F. Judgment in excess of the statutory cap of Fla. Stat. § 768.28(5), the excess to be pursued by a claims bill; and
- G. Such other and further relief, whether in law or in equity, as this Court deems just and proper.

Respectfully submitted,

By: _____



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Certificate of Service

I HEREBY CERTIFY that on this 3rd day of September 2026, a true and correct copy of the foregoing has been electronically filed with the Clerk of the Court using the Court's CM/ECF system, which will serve a copy upon all counsel of record as set forth below:

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/s/ Jessica J. Travis
Jessica J. Travis, FBN 76701

EXHIBIT A

FLOCK AGREEMENT

with Palm Bay Police Department



**FLOCK GROUP INC.
SERVICES AGREEMENT
ORDER FORM**

This Order Form together with the Terms (as defined herein) describe the relationship between Flock Group Inc. ("Flock") and the customer identified below ("Customer") (each of Flock and Customer, a "Party"). This order form ("Order Form") hereby incorporates and includes the "GOVERNMENT AGENCY CUSTOMER AGREEMENT" attached (the "Terms") which describe and set forth the general legal terms governing the relationship (collectively, the "Agreement"). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations.

The Agreement will become effective when this Order Form is executed by both Parties (the "Effective Date").

Customer: Palm Bay Police Department

Contact Name: Lance Fisher

Address: 130 Malabar Road
Palm Bay, FL 32907

Phone: 321-952-3539

E-Mail: lance.fisher@palmbayflorida.org

Expected Payment Method: Check

Billing Contact:
(if different than above)

Initial Term: 60

Renewal Term: 60 Months

Billing Term: Annual payment due Net 30 per terms and conditions

Name	Price	QTY	Subtotal
(Includes one-time fees)			
Flock Falcon Camera	\$2,500.00	17	\$42,500.00
Implementation Fee (Public)	\$0.00	17	\$0.00
Year 1 Total			\$42,500.00

Flock Group Inc.
Today's Date - Aug 19, 2021

Order Form
FL - Palm Bay Police
Department

This proposal expires in 30 days.

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Recurring Total:

\$42,500

Special terms:

- None



I have reviewed and agree to the Customer Implementation Guide on Schedule B at the end of this agreement.

By executing this Order Form, Customer represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms attached. The Parties have executed this Agreement as of the dates set forth below.

Flock Group Inc

By: 
Name: Alex Latraverse
Title: Chief Revenue Officer
Date: 08/20/2021

Customer: City of Palm Bay, Florida

By: 
Name: Juliet Misconi
Title: Chief Procurement Officer
Date: 8/26/2021

Flock Group Inc.
Today's Date - Aug 19, 2021

This proposal expires in 30 days.

Order Form
FL - Palm Bay Police
Department

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flock safety

Let's defeat crime together.™



CUSTOMER IMPLEMENTATION GUIDE

LAW ENFORCEMENT

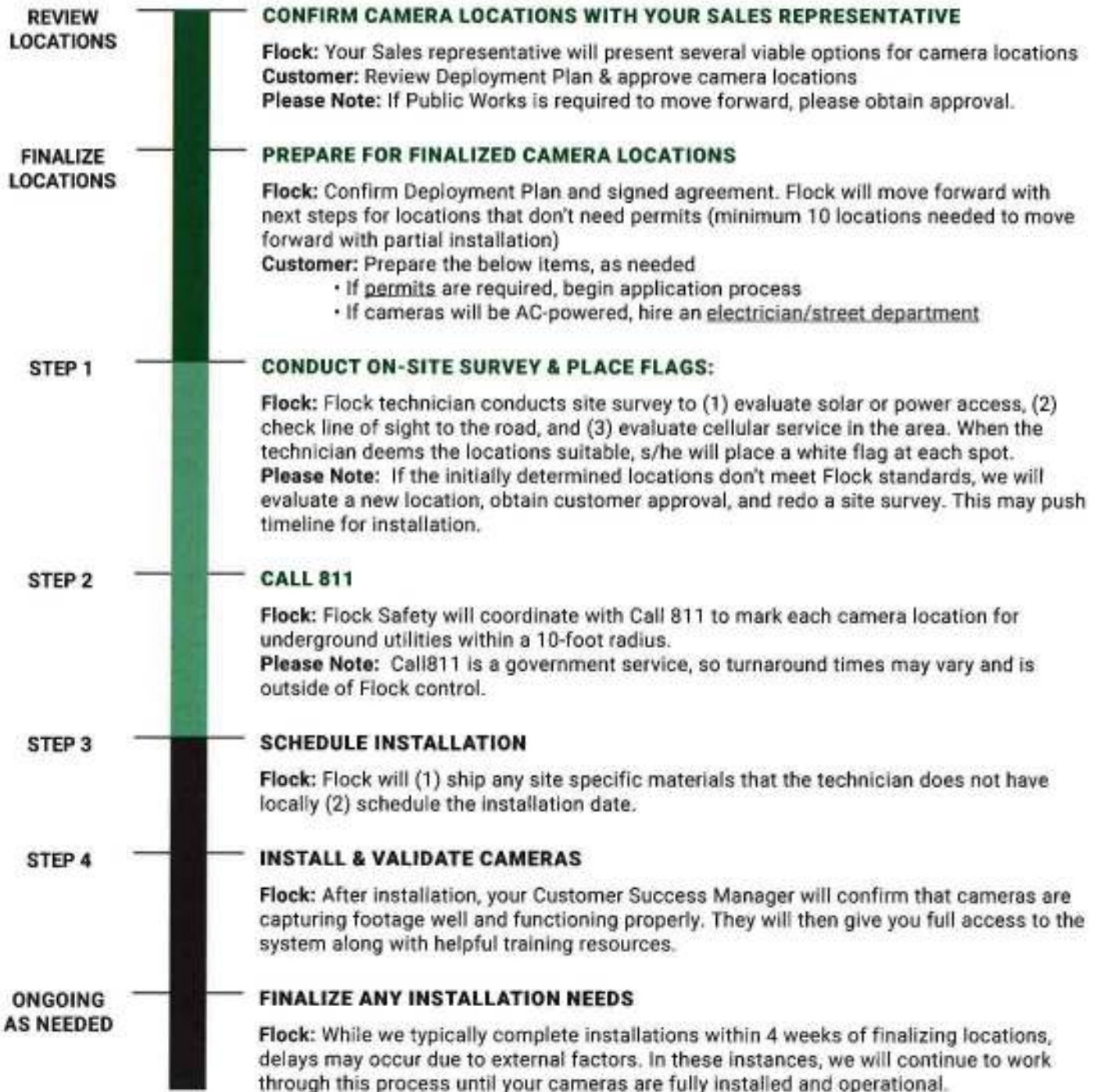
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IMPLEMENTATION TIMELINE

This timeline provides general guidance and understanding of your installation process. While we typically complete installations 6-8 weeks after locations have been finalized, delays can occur as noted in the timeline below:



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IMPLEMENTATION TEAM

FLOCK TEAM	HOW WILL THEY SUPPORT YOU
 Customer Success Manager	Your Customer Success Manager is your strategic partner for your lifetime as a Flock customer. They will be your guide through the installation process. After install, they will help you understand how best to leverage the Flock Safety tool to solve crime. You should reach out to them when you want to discuss: • Training • Benefits of features • Best practices for getting relevant data • Opportunities to expand the security network in your area • Feedback on your partnership with Flock
 Flock Safety Support	The Flock Safety Support team is committed to answering all your day-to-day questions as quickly as possible. To get in touch with support, simply email support@flocksafety.com. Support can help you: • Request camera maintenance • Troubleshoot online platform • Contract / Billing questions • Update account information • Camera Sharing questions • Quick "How to" questions in your Flock Account
 Product Implementation Specialist	Your Product Implementation Specialist is your technical product expert. They will help translate your goal for using Flock Safety cameras into a technical plan that can be executed and enable you to solve crime. Your specialist will work with you to: • Review the cameras in your deployment • Ensure that the deployment plan is set up for success from a technological standpoint in addition to meeting your goals for the product • If any of your locations require permits, a member of the Product Implementation team will assist you in packaging your application(s).



IMPLEMENTATION TEAM



Field Operations Team

The Field Operations team is responsible for the physical installation and maintenance of cameras and associated equipment provided by Flock. This includes a large team of technicians, schedulers, and many others involved in ensuring the delivery of your product.

They take the technical plan you finalized with Product Implementation and work closely with other teams at Flock to make sure that your cameras are installed quickly and safely, and in a way that maximizes the opportunity to solve crime at a specific location.

***Note*:** For all installation questions or concerns, please always direct them to your **Customer Success Manager** and not to the technician.

Please Note: On some occasions, third parties outside of Flock Safety may be (or need to be) involved in your implementation.

OUTSIDE PARTY	WHEN THEY MAY BE INVOLVED
Electrician/Street Department	If your Flock cameras need to be AC powered, you (customer) are responsible for providing an electrician to ensure power connectivity
Public Works (LE)	To weigh in on use of public Right of Ways or property
Department of Transportation (DOT), City, or County Agencies	If installation in your area requires permitting



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THINGS TO CONSIDER WHEN PICKING LOCATIONS

Falcon Cameras

• Use Cases

- Flock LPRs are designed to capture images of rear license plates, aimed in the direction of traffic.
- Flock LPRs are not designed to capture pedestrians, sidewalks, dumpsters, gates, other areas of non-vehicle traffic, intersections

• Placement

- They capture vehicles driving away from an intersection.
- They cannot point into the middle of an intersection.
- They should be placed after the intersection, to prevent stop and go motion activation, or "stop and go" traffic.

• Mounting

- They can be mounted on existing utility, light, or traffic signal poles, or 12 foot Flock poles. ****NOTE**** Permitting (or permission from pole owner) may be required in order to use existing infrastructure or install in specific areas, depending on local regulations & policies.
- They should be mounted one per pole*. If using AC power, they can be mounted 2 per pole.
*Cameras need sufficient power. Since a solar panel is required per camera, it can prevent sufficient solar power if 2 cameras and 2 solar panels were on a single pole (by blocking visibility). Therefore if relying on solar power, only one camera can be installed per pole.
- They can be powered with solar panels or direct wire-in AC Power (no outlets). ****NOTE**** Flock does not provide Electrical services. The agency or community must work with an electrician to wire the cameras once installed. Electrician services should be completed within 2 days of installation to prevent the camera from dying.
- They will require adequate cellular service using AT&T or T-Mobile to be able to process & send images
- Any Flock equipment mounted over 14 feet or on a horizontal beam will require a bucket truck. If mounting in this way:
 - Flock will request use of a bucket truck through the customer or Public Works
 - If a bucket truck is not available through the customer, Flock will have to procure one.

****Note**** This will lead to delays on install & any subsequent maintenance visits based on bucket truck availability

- Flock will likely require traffic control assistance provided by customer to install or provide maintenance with a bucket truck

Solar Panels

- Solar panels need unobstructed southern-facing views



CUSTOMER RESPONSIBILITIES: AC-POWERED CAMS

In the event your Flock cameras need to be AC-powered, the customer is responsible for acquiring an electrician and ensuring they connect the camera to power. *See steps 2 and 6 below.*

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Let's defeat crime together.™

Don't Let Access to Solar Limit Your Power Needs

The Flock Safety license
plate reading camera
system can leverage AC
power to help your
community solve crime no
matter the location.



Easy to Use Install
Power Kit

Work with Local
Electricians

Efficient Quote &
Installation Process



How to Get Started with a Powered Install

- 1. Create a Deployment Plan**
Work with Flock to select the best location(s) for your cameras and power sources.
- 2. Acquire an Electrical Quote**
Contact an electrician to receive a quote to run 120volt AC power to the camera.
- 3. Sign Flock Safety Agreement**
Sign the Flock Safety purchase order to begin the installation of the cameras.
- 4. Conduct Site Survey**
Flock will mark camera locations, locate underground utilities and mark if present.
- 5. Install Camera**
Flock will install the camera and AC power kit at the specified camera location.
- 6. Connect Camera to Power**
Notify the electrician that the camera is ready for the power connection installation.

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Visit flocksafety.com/power-install for the full plan, FAQs & to get started!



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ELECTRICIAN HANDOUT

Electrician Installation Steps

1. Run AC cable and conduit to the box according to NEC Article 300 and any applicable local codes. The gland accepts ½" conduit
2. Open the box using hinges
3. Connect AC Mains per wiring diagram below:
 - a. Connect AC Neutral wire to the Surge Protector white Neutral wire using the open position on the lever nut.
 - b. Connect AC Line wire to the Surge Protector black Line wire using the open position on the lever nut.
 - c. Connect AC Ground wire to the Surge Protector green ground wire using the open position on the lever nut.
4. Verify that both the RED LED is lit on the front of the box
5. Close box and zip tie the box shut with the provided zip tie
6. While still on site, call Flock who will remotely verify that power is working correctly:

Southeast Region - (678) 562-8766

West Region (804) 607-9213

Central & NE Region - (470) 868-4027



FAQS ABOUT AC-POWERED FLOCK CAMERAS

What voltage is supported?

The AC kit is designed to work with 120VAC infrastructure by default. A 240VAC version is available on request.

How much power does this consume?

Peak current draw is 1.5 A at 120VAC. Average power draw is roughly 30W in high traffic conditions, but may be lower when less vehicles are present.

Who is responsible for contracting the electrician?

The customer is responsible for contracting an electrician. We can help answer questions, but the customer is responsible for identifying and contracting an electrician.

Who is responsible for maintenance?

Flock will handle all maintenance related to the camera and power equipment installed by Flock. However, any problems with the electrical supply are the responsibility of the customer. The AC junction box has two lights to indicate the presence of power and make it easy for quick diagnosis if there is a problem related to the AC power source.

In the event the camera indicates to Flock that there is a power supply problem, Flock will notify the customer and request that the customer verify the lights on the AC junction box. If the AC Source light is illuminated, Flock will send a technician to investigate. If the AC source light is not illuminated the customer should check any GFCI's or breakers in the supply circuit or call the electrician who installed the power supply.

How much does it cost?

Work required to bring AC power to each location will be different, so exact pricing is not possible. The primary driver of cost is the distance from AC power source to the intended camera location.



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What information do I need to provide my electrician?

The Flock deployment plan and these work instructions should be sufficient to secure a quote. It will be helpful if you know the location of existing power infrastructure before creating the deployment plan.

Can you plug into my existing power outlet?

The Flock AC power adapter does not use a standard outlet plug, but must be directly wired into the power mains. While using outlet plugs may be convenient, they can easily be unplugged presenting a tampering risk to this critical safety infrastructure. If an outlet is close to the camera, the electrician can route power directly to the camera with a direct wire-in connection.

How long does this process typically take?

The installation process typically takes 6-8 weeks. In order to accelerate the process, be sure to have the electrician perform his work shortly after the Flock technician finishes installing the camera.

What kind of electrician should I look for?

Any licensed electrician should be able to perform this work, though we have found that those who advertise working with landscape lighting are most suited for this work.

What happens if the electrician damages the equipment?

The customer is responsible for contracting the electrician. Any liability associated with this work would be assumed by the customer. If any future work is required at this site due to the electrical infrastructure or the work performed by the electrician would be the responsibility of the customer.

When should the electrician perform his work?

Once Flock installs the camera, you will receive an email alert letting you know that this has been completed. After this, you will need to schedule the electrician to route power to the pole.

What if my electrician has questions about Flock's AC Kit?

You should share the **AC-Power Kit Details** packet with the electrician if they have questions.

What if the AC power is on a timer?

Sometimes the AC power will be on a timer (like used for exterior lighting). Flock requires that the AC power provided to the camera be constant. The source that the electrician uses must not be on a timing circuit.



INSTALLATION SERVICE BRIEF

Below outlines the statement of work for your Flock Camera Installation:

WHAT IS COVERED BY FLOCK	WHAT IS NOT COVERED BY FLOCK	SPECIAL NOTE
Flock Cameras & Online Platform	Traffic Control and any associated costs	
Mounting Poles	Electrician & ongoing electrical cost	
AC Power Kit (as needed)	Engineering Drawings	
Solar Panels (as needed)	Relocation Fees	exc. changes during initial installation
Site Surveys and Call 811 Scheduling	Contractor licensing fees	
Installation Labor Costs	Permit application processing fees	
Customer Support / Training	Specialist mounting equipment	Including, but not limited to, *MASH poles or adapters
Cellular Data Coverage	Bucket trucks	
Maintenance Fees (review Fees Sheet for more details)	Loss, theft, damage to Flock equipment	
Data storage for 30 days	Camera downtime due to power outage	Only applicable for AC-powered cameras

*MASH poles: Manual for Assessing Safety Hardware (MASH) presents uniform guidelines for crash testing permanent and temporary highway safety features and recommends evaluation criteria to assess test results



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PERMITTING: PRE-INSTALL QUESTIONNAIRE

1. Timeline

- In Flock Safety's experience, in-depth permitting requirements can **add 2+ months to the installation timeline**. Law enforcement agencies and city governments can work with their local Public Works or Department of Transportation offices directly to help expedite the process. When Flock Safety customers manage the permitting processes, results tend to come more quickly.
- Is your agency able to own the permitting process with Flock Safety's assistance?

2. Right of Way

- Will any of the Flock Safety cameras be installed on city, state or power company owned poles or in city, county, or state Right of Way (RoW)?
 - What is the RoW buffer?
 - Will additional permits or written permission be required from third-party entities (such as DOT, power company, public works, etc)?
- Will any cameras be installed on city-owned traffic signal poles (vertical mass)?
 - If yes, please provide heights/photos to determine if a bucket truck is needed for the installation.
Note: If height is greater than 15 feet tall, a bucket truck is **required**.



3. AC Power vs. Solar

- If AC powered, is there a 120V power source available, and is there access to an electrician who can connect the existing wire to the Flock Safety powered installation kit?

[CLICK HERE](#)

- If solar powered, consider the size of the solar panel and potential to impact visibility of DOT signs/signals:
 - Single Panel: 21.25" x 14" x 2" (Length x Width x Depth)
 - Double Panel: 21.25" x 28" x 2" (LxWxD)



4. Traffic Control & Installation Methods

- If a **bucket truck is required**, this typically necessitates a full lane to be blocked in the direction of travel. **Can you provide a patrol car escort, or will full traffic control be required?**
 - Note: If traffic control is required, you may incur additional costs due to city/state requirements; Fees will be determined by quotes received.
- If **full traffic control required (cones, arrowboards, etc.)**:
 - Will standard plans suffice, or are custom plans needed? Custom plans can double the cost, while standard plans can be pulled from the Manual of Uniform Traffic Control Devices (**MUTCD**).
 - Will a non-sealed copy of the traffic plan suffice? Or does the traffic plan need to be sealed and/or submitted by a professional engineer?
 - Are there state-specific special versions/variances that must be followed?
- If a **bucket truck is not required**, the shoulder or sidewalk should suffice and enable Flock Safety to proceed without traffic control systems in place.
 - Note: In some states (i.e. California), sidewalks may require signage. If signage is mandatory, Will your Public Works department be able to assist?

5. Paperwork & Required Forms

- Flock Safety will need copies of paperwork to complete prior to proceeding (ex. business license applications, encroachment permit applications). We can save critical time by gathering these documents upfront. We appreciate your assistance in procuring these.

6. Contacts

- If Flock Safety will need to interface directly with the departments, please share the contact information of the following departments:
 - Permitting
 - Public Works
 - Traffic Department



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FEE SCHEDULING

*Fee Schedule

After a deployment plan with Designated Locations and equipment has been agreed upon by both Flock and the Customer, any subsequent changes to the deployment plan ("Reinstalls") driven by a Customer's request will incur a fee per the table below.

All fees are per reinstall or required visit (in the case that a reinstall is attempted but not completed) and include labor and materials. If you have any questions, please email support@flocksafety.com.

See the most up to date information;

[CLICK HERE](#)

*Below fee schedule is subject to change;

REINSTALL OR JOB TYPE	REINSTALL FEE
Camera or pole relocation	\$150
Camera replacement as result of vandalism, theft, or third party damage	\$500
Pole replacement as a result of vandalism, theft, or third party damage	\$150
Pole upgrade	\$300
Angle Adjustment - Customer request	\$125
Installation of additional Flock Safety sign (including cost of sign)	\$100
Convert camera to use of electrical outlet (excluding cost of electrical work)	\$150
Other site visit/technician visit that does not result in a reinstall being required	\$150



HELP CENTER

Our Help Center is filled with tons of resources to help you navigate through the online platform. Below you will find some common questions and their relevant help article:

How do I search camera footage?

How do I add a user?

How do I add a vehicle to my own Hot List?

How do I enable browser notifications for Hot List alerts?

How do I get text alerts for Hot List?

How do I request camera access from other nearby agencies?

How do I use the National Lookup to search for a plate?

(National Lookup - network of law enforcement agencies that have opted to allow their Flock cameras to be used for searches)

How do I reset my / another user's password?

CUSTOMER SUPPORT

You can reach our customer support team anytime by emailing support@flocksafety.com. They can help answer any "How-To" questions you may have.

Email support@flocksafety.com





(866) 901-1781 | 1170 Howell Mill Rd NW, Unit 210, Atlanta, GA 30318 | flocksafety.com

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EXHIBIT B

Customer Implementation Guide (Initials Required on Page 1 of Order Form)

Flock Group Inc.
Today's Date - Aug 19, 2021

This proposal expires in 30 days.

Order Form
FL - Palm Bay Police
Department

0066g00002E08vLAAR

EXHIBIT A

Statement of Work

Installation of Flock Cameras on existing pole or Flock-supplied pole if required.

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GOVERNMENT AGENCY CUSTOMER AGREEMENT

This Government Agency Agreement (this "**Agreement**") is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Rd NW Suite 210, Atlanta, GA 30318 ("**Flock**") and the police department or government agency identified in the signature block below ("**Agency**") (each a "**Party**," and together, the "**Parties**").

RECITALS

WHEREAS, Flock offers a software and hardware solution for automatic license plate detection through Flock's technology platform (the "**Flock Service**"), and upon detection, the Flock Service creates images and recordings of suspect vehicles ("**Footage**") and can provide notifications to Agency upon the instructions of Non-Agency End User ("**Notifications**");

WHEREAS, Agency desires to purchase, use and/or have installed access to the Flock Service in order to create, view, search and archive Footage and receive Notifications, including those from non-Agency users of the Flock System (where there is an investigative purpose) such as schools, neighborhood homeowners associations, businesses, and individual users;

WHEREAS, because Footage is stored for no longer than (thirty) 30 days in compliance with Flock's records retention policy, Agency is responsible for extracting, downloading and archiving Footage from the Flock System on its own storage devices for auditing for prosecutorial/administrative purposes; and

WHEREAS, Flock desires to provide Agency the Flock Service and any access thereto, subject to the terms and conditions of this Agreement, solely for the purpose of crime awareness and prevention by police departments and archiving for evidence gathering ("**Purpose**").

AGREEMENT

NOW, THEREFORE, Flock and Agency agree as follows and further agree to incorporate the Recitals into this Agreement.

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

- 1.1 "**Authorized End User**" shall mean any individual employees, agents, or contractors of Agency accessing or using the Flock Services through the Web Interface, under the rights granted to Agency pursuant to this Agreement.
- 1.2 "**Agency Data**" will mean the data, media and content provided by Agency through the Flock Services. For the avoidance of doubt, the Agency Data will include the Footage and geolocation information and environmental data collected by sensors built into the Units.
- 1.3 "**Documentation**" will mean text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Flock Services which are provided by Flock to Agency in accordance with the terms of this Agreement.
- 1.4 "**Embedded Software**" will mean the software and/or firmware embedded or preinstalled on the Hardware.
- 1.5 "**Flock IP**" will mean the Flock Services, the Documentation, the Hardware, the Embedded Software, the Installation Services, and any and all intellectual property therein or otherwise provided to Agency and/or its Authorized End Users in connection with the foregoing.

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- 1.6 "**Footage**" means still images and/or video captured by the Hardware in the course of and provided via the Flock Services.
- 1.7 "**Hardware**" shall mean the Flock cameras and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Flock Services. The term "**Hardware**" excludes the Embedded Software.
- 1.8 "**Implementation Fee(s)**" means the monetary fees associated with the Installation Services, as defined in Section 1.9 below.
- 1.9 "**Installation Services**" means the services provided by Flock regarding the installation, placements and configuration of the Hardware, pursuant to the Statement of Work attached hereto.
- 1.10 "**Flock Services or Services**" means the provision, via the Web Interface, of Flock's software application for automatic license plate detection, searching image records, and sharing Footage.
- 1.11 "**Non-Agency End User**" means a Flock's non-Agency customer that has elected to give Agency access to its data in the Flock system.
- 1.12 "**Non-Agency End User Data**" means the Footage, geolocation data, environmental data and/or notifications of a Non-Agency End User.
- 1.13 "**Unit(s)**" shall mean the Hardware together with the Embedded Software.
- 1.14 "**Usage Fee**" means the subscription fees to be paid by the Agency for ongoing access to Flock Services and Hardware.
- 1.15 "**Support Services**" shall mean On-site Services and Monitoring Services, as defined in Section 2.9 below.
- 1.16 "**Web Interface**" means the website(s) or application(s) through which Agency and its Authorized End Users can access the Flock Services in accordance with the terms of this Agreement.

2. FLOCK SERVICES AND SUPPORT

- 2.1 **Provision of Access.** Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right to access the features and functions of the Flock Services via the Web Interface during the Service Term (as defined in Section 6.1) and No-Fee Term, solely for the Authorized End Users. The Footage will be available for Agency's designated administrator, listed on the Order Form, and any Authorized End Users to access via the Web Interface for thirty (30) days. Authorized End Users will be required to sign up for an account, and select a password and username ("**User ID**"). Flock will also provide Agency the Documentation to be used in accessing and using the Flock Services. Agency shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Agency, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Agency. Agency shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User's use of the Flock Services and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Flock Services, including without limitation using a third party to host the Web Interface which the Flock Services makes available to Agency and Authorized End Users. WARRANTIES PROVIDED BY SUCH THIRD PARTIES, ARE THE AGENCY'S SOLE AND EXCLUSIVE REMEDY AND FLOCK'S SOLE AND EXCLUSIVE LIABILITY WITH REGARD TO SUCH THIRD-PARTY SERVICES, INCLUDING WITHOUT LIMITATION HOSTING THE WEB INTERFACE. To the extent practicable, Agency agrees to comply with any acceptable use policies and other terms of any third-party service provider that are provided or otherwise made available to Agency from time to time.

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- 2.2 Embedded Software License.** Subject to all terms of this Agreement, Flock grants Agency a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as installed on the Hardware by Flock; in each case, solely as necessary for Agency to use the Flock Services.
- 2.3 Documentation License.** Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right and license to use the Documentation during the Service Term in connection with its use of the Flock Services as contemplated herein, and under Section 2.4, below.
- 2.4 Usage Restrictions.** The purpose for usage of the Hardware, Documentation, Services, support, and the Flock IP is solely to facilitate gathering evidence that could be used in a lawful criminal investigation by the appropriate government agency and not for tracking activities that the system is not designed to capture ("*Permitted Purpose*"). Agency will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP, or attempt to do any of the foregoing, and Agency acknowledges that nothing in this Agreement will be construed to grant Agency any right to obtain or use such source code; (iii) modify, alter, tamper with or repair any of the Flock IP, or create any derivative product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Flock; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Flock Services or Flock IP; (vi) use the Services, support, Hardware, Documentation or the Flock IP for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Agency's rights under Sections 2.1, 2.2, or 2.3.
- 2.5 Retained Rights; Ownership.** As between the Parties, subject to the rights granted in this Agreement, Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Agency acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Agency further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. There are no implied rights.
- 2.6 Suspension.** Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Agency's and any Authorized End User's access to any portion or all of the Flock IP if (i) Flock reasonably determines that (a) there is a threat or attack on any of the Flock IP; (b) Agency's or any Authorized End User's use of the Flock Service disrupts or poses a security risk to the Flock Service or any other customer or vendor of Flock; (c) Agency or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Flock's provision of the Flock Services to Agency or any Authorized End User is prohibited by applicable law; (e) any vendor of Flock has suspended or terminated Flock's access to or use of any third party services or products required to enable Agency to access the Flock IP; or (f) Agency has violated any term of this provision, including, but not limited to, utilizing the Flock Services for anything other than the Permitted Purpose (each such suspension, in accordance with this Section 2.6, a "*Service Suspension*"). Flock will make commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to Agency (including notices sent to Flock's registered email address) and to provide updates regarding resumption of access to the Flock IP following any Service Suspension. Flock will use commercially reasonable efforts to resume providing access to the Flock Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Agency or any Authorized End User may incur as a result of a Service Suspension. To the extent that the Service Suspension is not caused by Agency's direct actions or by the actions of parties associated with the Agency, the expiration of the Term will be tolled by the duration of any suspension (for any continuous suspension lasting at least one full day).

2.7 Installation Services.

2.7.1 Designated Locations. Prior to performing the physical installation of the Units, Flock shall advise Agency on the location and positioning of the Units for optimal license plate image capture, as conditions and location

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allow. Flock and Agency must mutually agree on the location (mounting site or pole), position and angle of the Units (each Unit location so designated by Agency, a "**Designated Location**"). Flock shall have no liability to Agency resulting from any poor performance, functionality or Footage resulting from or otherwise relating to the Designated Locations or delay in installation due to Agency's delay in identifying the choices for the Designated Locations, in ordering and/or having the Designated Location ready for installation including having all electrical work preinstalled and permits ready. Designated Locations that are suggested by Flock and accepted by Agency without alteration will be known as Flock Designated Locations. After a deployment plan with Designated Locations and equipment has been agreed upon by both Flock and the Agency, any subsequent changes to the deployment plan ("**Reinstalls**") driven by Agency's request will incur a charge for Flock's then-current list price for Reinstalls, as listed in the then-current Reinstall Policy (available at <https://www.flocksafety.com/reinstall-fee-schedule>) and any equipment charges. These changes include but are not limited to camera re-positioning, adjusting of camera mounting, re-angling, removing foliage, camera replacement, changes to heights of poles, regardless of whether the need for Reinstalls related to vandalism, weather, theft, lack of criminal activity in view, and the like.

2.7.2 Agency's Installation Obligations. Agency agrees to allow Flock and its agents reasonable access in and near the Designated Locations at all reasonable times upon reasonable notice for the purpose of performing the installation work. The "**Agency Installation Obligations**" include, to the extent required by the deployment plan, but are not limited to electrical work to provide a reliable source of 120V AC power that follow Flock guidelines and comply with local regulations if adequate solar exposure is not available. Agency is solely responsible for (i) any permits or associated costs, and managing the permitting process; (ii) any federal, state or local taxes including property, license, privilege, sales, use, excise, gross receipts or other similar taxes which may now or hereafter become applicable to, measured by or imposed upon or with respect to the installation of the Hardware, its use, or (iii) any other supplementary cost for services performed in connection with installation of the Hardware, including but not limited to contractor licensing, engineered drawings, rental of specialized equipment or vehicles, third-party personnel (i.e. Traffic Control Officers, Electricians, etc.), such costs to be approved by the Agency. Flock will provide options to supply power at each Designated Location. If Agency refuses alternative power supply options, Agency agrees and understands that Agency will not be subject to any reimbursement, tolling, or credit for any suspension period of Flock Services due to low solar. Flock will make all reasonable efforts within their control to minimize suspension of Flock Services. Any fees payable to Flock exclude the foregoing. Without being obligated or taking any responsibility for the foregoing, Flock may pay and invoice related costs to Agency if Agency did not address them prior to the execution of this Agreement or a third party requires Flock to pay. Agency represents and warrants that it has all necessary right title and authority and hereby authorizes Flock to install the Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation.

2.7.3 Flock's Installation Obligations. The Hardware shall be installed in a workmanlike manner in accordance with Flock's standard installation procedures, and the installation will be completed within a reasonable time from the time that the Designated Locations are selected by Agency. Following the initial installation of the Hardware and any subsequent Reinstalls or maintenance operations, Flock's obligation to perform installation work shall cease; however, Flock will continue to monitor the performance of the Units for the length of the Term and will receive access to the Footage for a period of three (3) business days after the initial installation in order to monitor performance and provide any necessary maintenance solely as a measure of quality control. Agency can opt out of Flock's access to Footage after the initial installation which would waive Flock's responsibility to ensure such action was successful. Agency understands and agrees that the Flock Services will not function without the Hardware. Labor may be provided by Flock or a third party.

2.7.4 Security Interest. The Hardware shall remain the personal property of Flock and will be removed upon the termination or expiration of this Agreement. Agency agrees to perform all acts which may be necessary to assure the retention of title of the Hardware by Flock. Should Agency default in any payment for the Flock Services or any part thereof or offer to sell or auction the Hardware, then Agency authorizes and empowers Flock to remove the Hardware or any part thereof. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Agency's default and Flock shall have the right to enforce any other legal remedy or right.

2.8 Hazardous Conditions. Unless otherwise stated in the Agreement, Flock's price for its services under this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall

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have the right to cease work immediately in the area affected until such materials are removed or rendered harmless. Any additional expenses incurred by Flock as a result of the discovery or presence of hazardous material or hazardous conditions shall be the responsibility of Agency and shall be paid promptly upon billing.

- 2.9 **Support Services.** Subject to the payment of fees, Flock shall monitor the performance and functionality of Flock Services and may, from time to time, advise Agency on changes to the Flock Services, Installation Services, or the Designated Locations which may improve the performance or functionality of the Services or may improve the quality of the Footage. The work, its timing, and the fees payable relating to such work shall be agreed by the Parties prior to any alterations to or changes of the Services or the Designated Locations ("**Monitoring Services**"). Subject to the terms hereof, Flock will provide Agency with reasonable technical and on-site support and maintenance services ("**On-Site Services**") in-person or by email at hello@flocksafety.com. Flock will use commercially reasonable efforts to respond to requests for support. If Agency chooses to self-install Hardware or install Hardware on a mobile location, Flock shall make reasonable commercial efforts to provide On-Site Services, if permissible. Agency shall not be entitled to reimbursement, tolling, or credit for any lapse in Services associated with the Unit malfunction due to installation on mobile locations (i.e. trailers). Agency shall be subject to Reinstall Fees for re-positioning Units on mobile locations, or subsequent installation on Flock or other stationary poles.
- 2.10 **Special Terms.** From time to time, Flock may offer certain "Special Terms" related to guarantees, service and support which are indicated in the proposal and on the order form and will become part of this Agreement. To the extent that any terms of this agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.
- 2.11 **Changes to Platform.** Flock Safety may, in its sole discretion, make any changes to any system or platform that it deems necessary or useful to (i) maintain or enhance (a) the quality or delivery of Flock Safety's products or services to its customers, (b) the competitive strength of, or market for, Flock Safety's products or services, (c) such platform or system's cost efficiency or performance, or (ii) to comply with applicable law.

3. AGENCY RESTRICTIONS AND RESPONSIBILITIES

- 3.1 **Agency Obligations.** Upon creation of a User ID, Agency agrees to provide Flock with accurate, complete, and updated registration information. Agency may not select as its User ID a name that Agency does not have the right to use, or another person's name with the intent to impersonate that person. Agency may not transfer its account to anyone else without prior written permission of Flock. Agency will not share its account or password with anyone, and must protect the security of its account and password. Agency is responsible for any activity associated with its account. Agency shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services. Agency will, at its own expense, provide assistance to Flock, including, but not limited to, by means of access to, and use of, Agency facilities, as well as by means of assistance from Agency personnel, to the limited extent any of the foregoing may be reasonably necessary to enable Flock to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services or any Installation Services.
- 3.2 **Agency Representations and Warranties.** Agency represents, covenants, and warrants that Agency will use the Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of video, photo, or audio content and retention thereof. To the extent allowed by the governing law of the state mentioned in Section 10.6, or if no state is mentioned in Section 10.6, by the law of the State of Georgia, Agency hereby agrees to indemnify and hold harmless Flock against any damages, losses, liabilities, settlements and expenses, including without limitation costs and attorneys' fees, in connection with any claim or action that arises from an alleged violation of the foregoing, Agency's Installation Obligations, or otherwise from Agency's use of the Services, Hardware and any Embedded Software, including any claim that such actions violate any applicable law or third party right. Although Flock has no obligation to monitor Agency's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

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4. CONFIDENTIALITY; AGENCY DATA; NON-AGENCY DATA

4.1 Confidentiality. Each Party (the "*Receiving Party*") understands that the other Party (the "*Disclosing Party*") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "*Proprietary Information*" of the Disclosing Party). Proprietary Information of Flock is non-public information including but not limited to features, functionality, designs, user interfaces, trade secrets, intellectual property, business plans, marketing plans, works of authorship, hardware, customer lists and requirements, and performance of the Flock Services. Proprietary Information of Agency includes non-public Agency Data, Non-Agency End User Data, and data provided by Agency or a Non-Agency End User to Flock or collected by Flock via the Unit, including the Footage, to enable the provision of the Services. The Receiving Party shall not disclose, use, transmit, inform or make available to any entity, person or body any of the Proprietary Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Proprietary Information and the parties' respective rights therein, at all times exercising at least a reasonable level of care. Each party agrees to restrict access to the Proprietary Information of the other party to those employees or agents who require access in order to perform hereunder. The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Flock's use of the Proprietary Information may include processing the Proprietary Information to send Agency Notifications or alerts, such as when a car exits Agency's neighborhood, or to analyze the data collected to identify motion or other events. Flock agrees and understands that Agency is a governmental entity of the State of Florida and is subject to the broad public records laws of the State of Florida, pursuant to Chapter 119, Florida Statutes, and any information provided will be subject to potential disclosure as required by law.

The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by Receiving Party prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to Receiving Party without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party.

Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any subpoena, summons, judicial order or other judicial or governmental process, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to obtain a protective order or otherwise oppose the disclosure. For clarity, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with a legal process or request; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Flock, its users, a third party, or the public as required or permitted by law, including respond to an emergency situation. Having received notice prior to data being deleted, Flock may store Footage in order to comply with a valid court order but such retained Footage will not be retrievable without a valid court order.

4.2 Agency and Non-Agency End User Data. As between Flock and Agency, all right, title and interest in the Agency Data and Non-Agency End User Data, belong to and are retained solely by Agency. Agency hereby grants to Flock a limited, non-exclusive, royalty-free, worldwide license to use the Agency Data and Non-Agency End User Data and perform all acts with respect to the Agency Data and Non-Agency End User Data as may be necessary for Flock to provide the Flock Services to Agency, including without limitation the Support Services set forth in Section 2.9 above, and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify and distribute the Agency Data and Non-Agency End User Data as a part of the Aggregated Data (as defined in Section 4.4 below). As between Flock and Agency, Agency is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Agency Data and Non-Agency End User Data. As between Agency and Non-Agency End Users that have prescribed access of Footage to Agency, each of Agency and Non-Agency End Users will share all right, title and interest in the Non-Agency End User Data. This Agreement does not by itself make any Non-Agency End User Data the sole property or the Proprietary Information of Agency. Flock will automatically delete Footage older than thirty (30) days. Agency has a thirty (30) day window to view, save and/or transmit Footage to the relevant government agency prior to its deletion.

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- 4.3 **Feedback.** If Agency provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency hereby assigns (and will cause its agents and representatives to assign) to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.
- 4.4 **Aggregated Data.** Notwithstanding anything in this Agreement to the contrary, Flock shall have the right to collect and analyze data that does not refer to or identify Agency or any individuals or de-identifies such data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Agency Data and data derived therefrom). For the sake of clarity, Aggregated Data is compiled anonymous data which has been stripped of any personal identifying information. Agency acknowledges that Flock will be compiling anonymized and/or aggregated data based on Agency Data and Non-Agency End User Data input into the Services (the "**Aggregated Data**"). Agency hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the Service Term hereof) to (i) use and distribute such Aggregated Data to improve and enhance the Services and for other marketing, development, diagnostic and corrective purposes, other Flock offerings, and crime prevention efforts, and (ii) disclose the Agency Data and Non-Agency End User Data (both inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. No rights or licenses are granted except as expressly set forth herein.

5. PAYMENT OF FEES

- 5.1 **Fees.** Agency will pay Flock the first Usage Fee, the Implementation Fee and any fee for Hardware (as described on the Order Form, together the "Initial Fees") as set forth on the Order Form on or before the 30th day following receipt of invoice, after successful validation of the Units. Flock is not obligated to commence the Installation Services unless and until the Initial Fees have been made and shall have no liability resulting from any delay related thereto. Agency shall pay the ongoing Usage Fees set forth on the Order Form with such Usage Fees due and payable thirty (30) days in advance of each payment period. All payments will be made by either ACH, check, or credit card. The first month of Flock Services corresponding to the first Usage Fee payment will begin upon the first installation of Hardware. For Agencies who purchase ten (10) or more Units, in the event that only a portion of the Units are installed at the first installation with additional Units to be installed at a later date, Usage Fees shall be calculated on a pro rata basis corresponding to the then-installed Units. Agencies will be invoiced for the additional Units immediately upon installation of the remaining Units.
- 5.2 **Changes to Fees.** Flock reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or any Renewal Term, upon sixty (60) days' notice prior to the end of such Initial Term or Renewal Term (as applicable) to Agency (which may be sent by email). If Agency believes that Flock has billed Agency incorrectly, Agency must contact Flock no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Flock's customer support department. Agency acknowledges and agrees that a failure to contact Flock within this sixty (60) day period will serve as a waiver of any claim Agency may have had as a result of such billing error.
- 5.3 **Invoicing, Late Fees; Taxes.** Flock may choose to bill through an invoice. Payment is due in accordance with the Local Government Prompt Payment Act, Chapter 218, Florida Statutes. Notwithstanding the foregoing, invoices are due to be paid within 45 days of invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection, and may result in immediate termination of Service. To the extent allowable by law or Agency regulations pertaining to tax-exempt entities, Agency shall be responsible for all taxes associated with Services other than U.S. taxes based on Flock's net income.
- 5.4 **No-Fee Term Access.** Subject to Flock's record retention policy, Flock offers complimentary access to the Flock System for thirty (30) days ("**No Fee Term**") to Agency when Non-Agency End Users intentionally prescribe access or judicial orders mandate access to Non-Agency End User Data. Agency agrees to pay the Initial Fees and Usage Fees according to Section 5.1 and will receive Flock's complimentary access to the Flock Service and

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Footage for no additional cost. Should such access cause Flock to incur internal or out-of-pocket costs that are solely the result of the access, Flock reserves the right to invoice these costs to Agency under Section 5.3 and Agency agrees to pay them. The complimentary No-Fee Term access to Flock Services shall survive the expiration or termination of this Agreement for five (5) years unless Agency provides written notice of the intent to cancel access to Flock Services.

6. TERM AND TERMINATION

6.1 Term. Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the "*Initial Term*"). *Following the Initial Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms for the greater of one year and the length set forth on the Order Form* (each, a "*Renewal Term*", and together with the Initial Term, the "*Service Term*") *unless either party gives the other party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

6.2 Agency Satisfaction Guarantee. At any time during the agreed upon term, an Agency not fully satisfied with the service or solution may self-elect to terminate their contract. Self-elected termination will result in a one-time fee of actual cost of removal and labor, said cost not to exceed \$500 per camera. Upon self-elected termination, a refund will be provided, prorated for any fees paid for the remaining Term length set forth previously. Self-termination of the contract by the Agency will be effective immediately. Flock will remove all equipment at Flock's own convenience, within a commercially reasonable period upon termination. Advance notice will be provided.

6.3 Termination. In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty-day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business. Upon termination for Flock's material breach, Flock will refund to Agency a pro-rata portion of the pre-paid Fees for Services not received due to such termination.

6.4 Effect of Termination. Upon any termination of the Service Term, Flock will collect all Units, delete all Agency Data, terminate Agency's right to access or use any Services, and all licenses granted by Flock hereunder will immediately cease. Agency shall ensure that Flock is granted access to collect all Units and shall ensure that Flock personnel does not encounter Hazardous Conditions in the collection of such units. Upon termination of this Agreement, Agency will immediately cease all use of Flock Services.

6.5 No-Fee Term. The initial No-Fee Term will extend, after entering into this Agreement, for thirty (30) days from the date a Non-Agency End User grants access to their Footage and/or Notifications. In expectation of repeated non-continuous No-Fee Terms, Flock may in its sole discretion leave access open for Agency's Authorized End Users despite there not being any current Non-Agency End User authorizations. Such access and successive No-Fee Terms are deemed to be part of the No-Fee Term. Flock, in its sole discretion, can determine not to provide additional No-Fee Terms or can impose a price per No-Fee Term upon thirty (30) days' notice. Agency may terminate any No-Fee Term or access to future No-Fee Terms upon 30 days' notice.

6.6 Survival. The following Sections will survive termination: 2.4, 2.5, 3, 4, 5 (with respect to any accrued rights to payment), 5.4, 6.5, 7.4, 8.1, 8.2, 8.3, 8.4, 9.1 and 10.5.

7. REMEDY; WARRANTY AND DISCLAIMER

7.1 Remedy. Upon a malfunction or failure of Hardware or Embedded Software (a "*Defect*"), Agency must first make commercially reasonable efforts to address the problem by contacting Flock's technical support as described in Section 2.9 above. If such efforts do not correct the Defect, Flock shall, or shall instruct one of its contractors to repair or replace the Hardware or Embedded Software suffering from the Defect. Flock reserves the right in their

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sole discretion to refuse or delay replacement or its choice of remedy for a Defect until after it has inspected and tested the affected Unit provided that such inspection and test shall occur within seventy-two (72) hours after Agency notifies the Flock of a Defect. In the event of a Defect, Flock will repair or replace the defective Unit at no additional cost. In the event that a Unit is lost, stolen, or damaged, Flock agrees to replace the Unit at a fee according to the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>). Agency shall not be required to replace subsequently lost, damaged or stolen Units, however, Agency understands and agrees that functionality, including Footage, will be materially affected due to such subsequently lost, damaged or stolen units and that Flock will have no liability to Agency regarding such affected functionality nor shall the Usage Fee or Implementation Fees owed be impacted.

7.2 Exclusions. Flock will not provide the remedy described in Section 7.1 above if any of the following exclusions apply: (a) misuse of the Hardware or Embedded Software in any manner, including operation of the Hardware or Embedded Software in any way that does not strictly comply with any applicable specifications, documentation, or other restrictions on use provided by Flock; (b) damage, alteration, or modification of the Hardware or Embedded Software in any way; or (c) combination of the Hardware or Embedded Software with software, hardware or other technology that was not expressly authorized by Flock.

7.3 Warranty. Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Upon completion of any installation or repair, Flock shall clean and leave the area in good condition. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

7.4 Disclaimer. THE REMEDY DESCRIBED IN SECTION 7.1 ABOVE IS AGENCY'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTIVE HARDWARE AND/OR EMBEDDED SOFTWARE. THE FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND INSTALLATION SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER OF SECTION 7.4 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6, OR IF NO STATE IS MENTIONED IN SECTION 10.6, BY THE LAW OF THE STATE OF GEORGIA.

7.5 Insurance. Flock and Agency will each maintain commercial general liability policies with policy limits reasonably commensurate with the magnitude of their business risk. Certificates of Insurance will be provided upon request.

7.6 Force Majeure. Flock Safety is not responsible nor liable for any delays or failures in performance from any cause beyond its control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, weather conditions or acts of hackers, internet service providers or any other third party or acts or omissions of Agency or any Authorized End User.

8. LIMITATION OF LIABILITY AND INDEMNITY

8.1 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL HARDWARE AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT

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LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY, INCOMPLETENESS OR CORRUPTION OF DATA OR FOOTAGE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE OR IDENTIFY AND/OR CORRELATE A LICENSE PLATE WITH THE FBI DATABASE; (D) FOR ANY PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION MADE IN GOOD FAITH; (E) FOR CRIME PREVENTION; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY AGENCY TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT OF AN EMERGENCY, AGENCY SHOULD CONTACT 911 AND SHOULD NOT RELY ON THE SERVICES. THIS LIMITATION OF LIABILITY OF SECTION 8 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6, OR IF NO STATE IS MENTIONED IN SECTION 10.6, BY THE LAW OF THE STATE OF GEORGIA.

8.2 Additional No-Fee Term Requirements. IN NO EVENT SHALL FLOCK'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THE COMPLIMENTARY NO-FEE TERM AS DESCRIBED IN SECTION 6.5 EXCEED \$100, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE. Except for Flock's willful acts, Agency agrees to pay for Flock's attorneys' fees to defend Flock for any alleged or actual claims arising out of or in any way related to the No-Fee Term.

8.3 Responsibility. Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, deputies, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable (if at all) only for the torts of its own officers, agents, or employees that occur within the scope of their official duties. Agency will not pursue any claims or actions against Flock's suppliers.

8.4 Indemnity. Neither party shall indemnify the other, nor pay costs or attorney's fees. The customer is protected by sovereign immunity to the extent and limits permitted by law, including but not limited to, Section 728.28, Florida Statutes, and Flock recognizes that nothing contained herein shall be construed as a waiver of same or an admission of liability by the Agency. Although Flock has no obligation to monitor Agency's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of Section 3.2 or this Agreement.

9. RECORD RETENTION

9.1 Data Preservation. The Agency agrees to store Agency Data and Non-Agency End User Data in compliance with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules. As part of Agency's consideration for paid access and no-fee access to the Flock System, to the extent that Flock is required by local, state or federal law to store the Agency Data or the Non-Agency End User Data, Agency agrees to preserve and securely store this data on Flock's behalf so that Flock can delete the data from its servers and, should Flock be legally compelled by judicial or government order, Flock may retrieve the data from Agency upon demand.

10. MISCELLANEOUS

10.1 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

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- 10.2 Assignment.** This Agreement is not assignable, transferable or sublicensable by Agency except with Flock's prior written consent. Flock may transfer and assign any of its rights and obligations, in whole or in part, under this Agreement without consent.
- 10.3 Entire Agreement.** This Agreement, together with the Order Form(s), the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>), and Deployment Plan(s), are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. None of Agency's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected.
- 10.4 Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Agency does not have any authority of any kind to bind Flock in any respect whatsoever.
- 10.5 Costs and Attorneys' Fees.** In any action or proceeding to enforce rights under this Agreement, each party will be responsible for their own costs and attorneys' fees.
- 10.6 Governing Law; Venue.** This Agreement shall be governed by the laws of the State of Florida without regard to its conflict of laws provisions. To the extent that the arbitration language below does not apply, the federal and state courts sitting in the State of Florida will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement. The parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement. Any dispute arising out of, in connection with, or in relation to this agreement or the making of validity thereof or its interpretation or any breach thereof shall be determined and settled by arbitration in Palm Bay, Florida by a sole arbitrator pursuant to the rules and regulations then obtaining of the American Arbitration Association and any award rendered therein shall be final and conclusive upon the parties, and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The service of any notice, process, motion or other document in connection with an arbitration award under this agreement or for the enforcement of an arbitration award hereunder may be effectuated by either personal service or by certified or registered mail to the respective addresses provided herein.
- 10.7 Publicity.** Unless otherwise indicated on the Order Form, Flock has the right to reference and use Agency's name and trademarks and disclose the nature of the Services provided hereunder in each case in business and development and marketing efforts, including without limitation on Flock's website.
- 10.8 Export.** Agency may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Services, the Hardware, the Embedded Software and Documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.
- 10.9 Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated Sections.
- 10.10 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 10.11 Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the organizations and individuals they are representing.

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10.12 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

Signature Certificate

Document Ref.: VTDZN-SWY7R-EXT4W-8VKIY

Document signed by:

	Alex Lat Verified E-mail: lat@flocksafety.com	
		

Document completed by all parties on:

31 Aug 2021 20:12:27 UTC

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