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Concerns Regarding the City of San Diego
Ubicquia and Flock Contract

According to the proposed contract, San Diego owns "City Data" produced by Smart Streetlights and ALPR, but gives Ubicquia and Flock irrevocable "worldwide" and "perpetual" licenses to data about San Diegans forever. (See Exhibit A.I)

The Ubicquia contract emphasizes that the City owns "City Data" – this is the data we might obviously recognize as video, audio, and photos, for example. However, the Ubicquia contract claims "perpetual" right and license to "Aggregated Data" which they define "to include the City Data as a part of the Aggregated Data" (See Exhibit A.I). They retain this right even "after the Term" of the contract is over.

"City Data", "Aggregate Data", and "Anonymized Data" will be used to profit Ubicquia and Flock as they develop new products and services that we have no control over. The nature of Flock and Ubicquia's business model is to use the data of San Diegan citizens for the growth of their own centralized, corporate cloud-based business model.

The contract takes pains to portray "Aggregated Data" as statistical and performance related, rather than identifying. However, Ubicquia retains leeway to use that data for "improvement of [its services]." (Exhibit A.B.1), painting a picture of new product development based on City Data.

A critical "may" (rather than "will") below seems to offer this leeway:

> "Aggregated Data derived from the provision, use, and performance of the Public Safety Solution as well as from the operations of similar systems and technologies by other Ubicquia customers will not refer to or identify the City or any individuals and may be used to produce statistical and performance information related to the provision and operation of Ubicquia's products and services (including the Hardware, the Public Safety Solution, and the Services) and/or the improvement of same." (Exhibit A.B.1)

A passage in Exhibit A.I. also suggests that City Data (as part of Aggregate Data) can be used in crime prevention elsewhere: "The City hereby grants Ubicquia a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the Term) to (i) use and distribute Aggregated Data to improve and enhance the services and for other development, diagnostic, and corrective purposes, other

Ubicquia offerings, and crime prevention efforts."

The Flock EULA mirrors the Ubicquia contract language, with Flock retaining a "perpetual" license to what they call "anonymized data". Flock is permitted to use this data to "perform the Services and related systems and technologies, including the training of machine learning algorithms" and to distribute this data in order to enhance and develop "other Flock offerings" (Exhibit F.4.3).

The provided contract cannot meaningfully safeguard San Diegans privacy.

This contract supersedes San Diego's use policies, relinquishing City oversight. This is especially concerning as Ubicquia and Flock reserve the right to comply with requests from outside agencies (see Exhibit A.J). There is no transparency in how Flock and Ubicquia may use and share data.

The City Agreement, section 6.2 specifies that the contract and Flock's EULA supersede the provisions of "the applicable use policy." Council's approved use policies prevent a range of data sharing in attempting to protect immigrants, reproductive care seekers, and other vulnerable communities. This order of priority allows the contract to supercede the City's use policy.

Yet in Exhibit A.J, Ubicquia and Flock say that they will comply, at their discretion, with requests from outside agencies — including federal and out-of-state agencies — that SDPD may not even be privy to:

> "Ubicquia, and/or its vendor or subcontractor, may access, use, and preserve the Footage, if legally required to do so or if Ubicquia has a good faith belief that such access, use, preservation, or disclosure is reasonably necessary to… (1) Comply with a legal process or request… (3) Protect the rights, property, or safety of Ubicquia, its vendors or contractors, or the public as required or permitted by law, including in response to an emergency" (Exhibit A.J).

In Exhibit A.N, however, the contract forbids sharing data for a variety of purposes, including reproductive care and immigration enforcement in accordance with "The California Values Act." However, Chula Vista PD has claimed that ALPR sharing does not violate the letter of the California Values Act because they claim ALPR contains no identifying information. SDPD has made the same claim in their presentation titled "[Technology Refresh – Smart Streetlights](#)."

Further, the latitude offered in Exhibit A.J could seem to contradict the protections attempted in Exhibit A.N should Ubicquia believe there is an emergency or what it determines to be a safety threat.

Data disclosures and sharing should be logged, including date and recipient of disclosure and data object shared so that City Council can exercise oversight over this contract.

Flock offers a transparency portal that describes data sharing relationships, but we seek information about data sharing events City Council and communities can see frequency and magnitude along with

relationships. Even with contract and use policy provisions, the EFF found that 71 California police agencies were violating state law by sharing ALPR data in 2023.[1] The California State Auditor also found agencies failing to comply with existing laws.[2] City Council must have a plan for ensuring compliance with City contracts and laws. City Council must commit to reviewing and auditing these disclosures.

We remain concerned that federal law enforcement task forces can use the data collected by this system because of the loophole in the Surveillance Oversight Ordinance.

[1]
https://www.eff.org/press/releases/civil-liberties-groups-demand-california-police-stop-sharing-drivers-location-data
[2]
https://www.auditor.ca.gov/reports/2019-118/summary.html#:~:text=Our%20audit%20of%20the%20use,ALPR%20images%20and%20associated%20data.