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INTER-OFFICE MEMORANDUM

To: Chairperson Lisa Carter, Board of Police Commissioners
Vice-Chairperson Eva Garza Dewaelsche, Board of Police Commissioners
Commissioner Willie E. Bell, Immediate Past Chairperson, Board of Police Commissioners
Honorable Board of Police Commissioners

From: Mr. Gregory Hicks, Secretary to the Board of Police Commissioners
Melanie A. White, Executive Manager of Policy, Board of Police Commissioners

Date: Thursday, September 5, 2019

Re: Board of Police Commissioners' ('Board') Policy Division Memorandum on Policy Recommendations for **Facial Recognition 307.5**

Introduction:

In 2017, the Detroit Police Department (hereinafter 'Department' or 'DPD') contracted for Facial Recognition with Data Works Plus Company. Subsequently, Detroit City Council approved the contract, and the Department has operated with the technology system for almost two years.

On January 18, 2019, the Detroit Police Department transmitted its first version of the proposed policy on Facial Recognition for the Board of Police Commissioners' (hereinafter 'Board') consideration.

On June 27, 2019, the Department rescinded the first version of the Facial Recognition proposed policy for "technical refinements" and indicated that it would return a revised policy version for the Board's consideration, specifically eliminating the surveillance or live video streaming component of Facial Recognition along with other areas.

On August 1, 2019, the Department transmitted the revised Facial Recognition Policy. The Department also indicated their willingness to engage in a discussion and refinement to the proposed Facial Recognition policy.

The Honorable Board of Police Commissioners requested the Policy Division to conduct a review of the proposed policies (both versions) and identify policy recommendations.

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The Policy Division conducted a robust review and evaluation of professional guidelines and recommendations for the Facial Recognition policy. The Policy Division further attended the Department's Real Time Crime Center ('RTCC') Facial Recognition Tour, and spoke with Department Executives. Additionally, the Division engaged in reviews and communications with various officials from jurisdictions and agencies around the country on the subject matter. Lastly, we attended the weekly Board of Police Commissioners' meetings, noted the Board's, public's concerns and feedback, as well as the Department's comments. All of the above activity helped develop the recommendations listed below. See references below.

The following policy recommendations are submitted for the Board's (committee of the whole) consideration. The recommendations are divided into two categories: 1. *Broad Category* and *2. Critical Importance Category*.

The policy recommendations encompass reviews of both proposed policies. Please note that within this document, recommendations entitled "*NEW*" reflect a Board proposed recommendation. Recommendations entitled "*UPDATED*" consist of a provision already contained in the Department's proposed policy but was either revised or reemphasized for the Board's attention.

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Board of Police Commissioners'
Policy Recommendations for Facial Recognition Proposed Policy 307.5

Broad Category: Addresses Key Administrative Recommendations and general areas of importance.

1. **NEW:** *Specific Purpose of the Facial Recognition Technology Use*: The Department shall specify the purpose of the Facial Recognition Technology's permitted limited use.
   a. See below for an example from Georgetown Law.
      i. "(a) Face recognition refers to an automated process of matching face images utilizing algorithms and biometric scanning technologies [and human component review].[1]
      ii. (b) The system aids in the support of an ongoing Part 1 Violent Crime Investigation or a Home Invasion I investigation. [2]
      iii. *Part 1 Violent Crimes*: Criminal Homicides, Sexual Assaults, Aggravated Assaults, Non-Fatal Shootings; Robberies, and Carjacking.
      iv. *Home Invasion I Elements*:
         1. (1) entered a home without permission or broke in,
         2. (2) intended to commit or did commit a felony, larceny, or assault in the home, and
         3. (3) either was armed with a dangerous weapon or entered while another person was lawfully within the home.
         4. *See* MCL 750.110a(2).
      v. (c) The use of the Facial Recognition Technology is only utilized to identify investigative leads. The requesting investigator shall continue to conduct a thorough and comprehensive investigation.

2. **NEW:** *Required Facial Recognition Technology Training*: The Department shall indicate that Department members utilizing the Facial Recognition technology system shall have ongoing, competent training from an experienced source to access and operate the Facial Recognition technology software (i.e. FBI Agency, Department-Approved Training, other nationally recognized Facial Recognition conferences, etc.).

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[1] Clare Garvie, Alvaro Bedoya & Jonathan Frankle, The Perpetual Line-Up: Unregulated Face Recognition in America (Oct. 16, 2016), https://www.perpetuallineup.org/recommendations.
[2] *Id.*

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3. **NEW:** *Specify Supervisor Responsibilities*: The Department shall specify the Crime Intelligence Unit Supervisor's responsibilities within the proposed policy directive (i.e. Supervisory Review of all Peer-to-Peer evaluations, written evaluation required for each review, monitoring use of system, etc.).

4. **NEW:** *Indicate Minimum Required Standard*: The Department shall specify the minimum threshold standard at the beginning of the policy directive for the use of the Facial Recognition Technology. (also noted within the definition section)
   a. I.e. Reasonable Suspicion – defined as "specific articulable facts coupled with rational inferences when taken together that reasonably warrant the degree of intrusion" or
   b. Heightened Standard: Probable Cause: "A reasonable belief that a person has committed, is committing, or will commit a crime."

5. **UPDATED:** *Include Definitions for public and operational clarity*: The Department shall retain the terms initially identified in the first proposed policy on Facial Recognition, which are as follows:

   a. Biometric Data
   b. Data Works Plus
   c. Facial Recognition
   d. Certified Examiner
   e. Highly Restricted Personal Information
   f. Personally Identifiable Information
   g. Statewide Network of Agency Photos (SNAP)
   h. Talon System

   The Department shall also define the following terms within Department policy[3]:
   a. Reasonable Suspicion – define and cite which level of standard is allowed for use of the Facial Recognition System.
   b. Probable Cause – define and cite which level of standard is allowed for use of the Facial Recognition System.
   c. Part 1 Violent Crimes
   d. Home Invasion 1 Elements
   e. Authorized User: An individual who is authorized to access the SNAP application and whose agency is approved by the Detroit

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[3] *Id. (See also* The Center for Catastrophe Preparedness & Response).

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Police Department and the Michigan Department of State (MSP) to utilize the SNAP.[4]

f. <u>Probe Image</u>: "Biometric characteristics obtained at the site of verification or identification submitted through an algorithm which converts the characteristic into biometric features for comparison with biometric templates."[5]

g. <u>Participating Agencies</u>: Please specify all participating agencies within the Department policy.

h. <u>Identification</u>: "A task where the biometric system searches a database for a biometric template that matches a submitted biometric sample (probe), and if found, returns a corresponding identity."[6]

Please cite whether the following terms will be applicable regarding the use of the Facial Recognition System:

a. False negative: "An incorrect non-match between a probe and a candidate in the gallery returned by a face recognition algorithm, technology, or system."[7]

b. False positive: "An incorrect match between a biometric probe and biometric template returned by a face recognition during the verification task."[8]

c. False reject: "An incorrect non-match between a biometric probe and biometric template returned by a face recognition during the verification task."[9]

d. False reject rate: "A statistic used to measure biometric performance when performing the verification task. The percentage of times a face recognition algorithm, technology, or system incorrectly rejects a true claim to existence or non-existence of a match in the gallery, based on the comparison of a biometric probe and biometric template."[10]

e. Identification: "A task where the biometric system searches a database for a biometric template that matches a submitted

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[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*

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biometric sample (probe), and if found, returns a corresponding identity."[11]

6. **NEW:** *Address Data Retention Area*: The Department shall address any applicable Data Retention Requirements within the proposed directive.
   a. I.e. The Department shall be prohibited from retaining a separate Facial Recognition Database for any purpose. (I.e. retaining those photo images not identified as investigative leads, etc.).

7. **NEW:** *Prevention Against Hacking and Other Data Breaches*: The Department shall implement **preventative and remedial measures** regarding **data collection protection** and **maintenance** for Facial Technology use. The Department shall retain specific measures in an internal training document, consistent with the Department's current policy on data protection and security. The Department shall add a provision confirming that it will prevent data breaches and protect confidential and sensitive information.

8. **UPDATED:** *Requesting Procedures*: The Department shall add the following provision as contained in the initial proposed Facial Recognition policy: Under 307.5 – 6 Section 2, it states the following: "Requests for facial recognition services shall be submitted, through channels, on an Inter-Office Memorandum (DPD 568) to the commanding officer of Crime Intelligence, with photographs, or videos to be reviewed. Photographs and videos shall be handled as specified in Manual Directive 306.1 Evidence Property."

   a. **UPDATED:** Additional recommendations for "Process for Requesting Facial Recognition":
      i. Spell out the names of other image depositories.
      ii. Review the sequencing of these tasks to determine whether the order should be reconsidered.
      iii. Add "and not be added to another image file controlled or shared by or with DPD or another law enforcement agency. Purged – should mean destroyed – not retained."
      iv. The CIU shall keep a current log of all usage and individuals accessing the Facial Recognition software. The log shall be reviewed weekly by Command supervision. The logs shall

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[11] *Id.*

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be made available upon request for review and inspection by
the Board of Police Commissioners.

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Critical Importance Category: Addresses Specific areas of importance such as required notifications, required audits, and required prohibitions.

Required Notifications:

9. **NEW:** *Notification Regarding Data Works Plus Contract Proposals, Grants, and Other Modifications, etc.*: The Department shall immediately inform the Board of Police Commissioners in writing and during the next immediate scheduled Board of Police Commissioners' Meeting of any current or future plans of Facial Recognition technology customizing, contract proposals, changes, or varying use. (I.e. addition, deletion, extension or modification of the contract, etc. Additionally, the Department shall provide the Board of Police Commissioners with a copy of any proposed or existing grants related to Facial Recognition or any other advanced technology. The Department shall also provide the Board of Police Commissioners with the updated Data Works Plus Contract.

10. **NEW:** *Notification of Changes to Facial Recognition Department Policy*: The Department shall seek the Board of Police Commissioners' approval regarding any and all changes to the Facial Recognition Policy. Examples include but are not limited to the following: consideration of expansion of technology, functionality use, or change(s) regarding system.

11. **NEW:** *Notification of Algorithm Agnostic Upgrade, Improvements, or Changes*: The Department shall immediately notify the Board of Police Commissioners of all algorithm agnostic upgrades, improvements, or changes with the Facial Recognition System.

12. **NEW:** *Notification* of *Policy Violations including any Breach of First Amendment Violations 307.5 – 5.2*. The Department shall add the following provision: "If for any reason Facial Recognition is used contrary to Department policies and procedures including but not limited to Section 307.5 – 2.3 (First Amendment Events), the Board of Police Commissioners, the Mayor, City Council President and President Pro Tem shall be notified within 4 hours of a breach. Notification shall be both verbally and written."

13. **NEW:** *Provide Clarity Regarding Outside Law Enforcement Agencies Required Adherence to Department Policy*: The Department shall specify that any law enforcement agency granted access or permissive use of the Facial Recognition System shall adhere to the Detroit Police Department's policy guidelines. Additionally, the Department shall document in writing its

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approval for outside agencies' use or access to the Facial Recognition System and immediately notify the Board of Police Commissioners.

Required Audits/Documentation:

14. **UPDATED:** *Facial Recognition Review Requiring Written Documentation of Concurrence or Disagreement of Review*: Under Section 307.5 – 4.4 Process for Requesting Facial Recognition, Subsections 4 and 6: For accountability and transparency measures, the Facial Recognition Examiner, Peer Reviewer(s), and CIU Supervisor shall each document in writing their individual concurrence or disagreement within the supplemental report for the requesting investigator or the specific report prepared when no viable candidate is identified.

15. **NEW:** *Required Department Audits*: The Department shall include within Department policy that it is engaged in continuous internal auditing processes. Additionally, the Department shall provide the Board of Police Commissioners with its internal auditing processes and reports of conclusions on an annual basis or as determined by the Board of Police Commissioners.
    a. Such information shall address the following but not be limited to the following: Whether the auditing process include inspections for accuracy and racial bias, as well as inspections regarding trained face examiners' activities?
    b. Whether the Department allows a third party agency to conduct the auditing?
    c. Whether the Department will engage in its own auditing measures? What will be the processes?
    d. The percentage rate of identifying Part I Violent Crime offenders.

16. **UPDATED:** *Enforcement Provisions*: The Department shall add the Enforcement Provisions as identified in the initial proposed draft policy under Section 306.5 – 8.3. The provision reads as follows: "Any authorized user who is found to be in noncompliance with the provisions of this policy regarding the collection, receipt, access, use, dissemination, retention, and purging, may be subject to the following:
    a. Suspend or discontinue access to information;
    b. Apply appropriate disciplinary or administrative actions or sanctions; and/or
    c. Refer the matter to appropriate authorities for criminal prosecution, as necessary, to effectuate the purposes of the policy;

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d. The Department reserves the right to establish the qualifications and number of personnel having access to the Department's facial recognition system and to suspend or withhold service and deny access to any participating agency or participating agency personnel violating this facial recognition policy.

e. *Revised*: The Department shall immediately inform the Board of Police Commissioners in writing of all Enforcement Actions and alleged offending personnel involved.

17. **UPDATED:** *Specify Annual Report Mandatory Provisions 307.5 – 5.3*: The Department shall add the following provision under 307.5 – 5 Governance and Oversight: "The Department (DPD) shall develop a separate annual report on the use of Facial Recognition utilization outlining its use, results and effectiveness in investigating and solving crime. The report shall include if a warrant request was obtained from any prosecutorial authorities. **The report is intended to track and discuss the long term effects of the use of the technology that would not normally appear in segregated weekly reports**. The report should also make a determination if Facial Recognition, based on the actual experience with Facial Recognition technology, is useful for the Department. Such determination will also weigh the current and future costs of the technology as one determining factor to continue the use. The Report shall also include information on the type and amount of legal judgment, settlements and lawsuits wherein Facial Recognition technology was shown to be a liability in whole or in part in financial payout by the City.

Such Annual Report shall be completed and transmitted to the appropriate agencies by the close of each fiscal year with copies provided to the Board of Police Commissioners, the Detroit City Council, Mayor of the City of Detroit, the Clerk for the City of Detroit and a list of civil rights organizations including but not limited to the Damon J. Keith Law Center (Wayne State University), American Civil Liberties Union (ACLU), Detroit Digital Project, NAACP, and the Urban League. The Annual Report shall also be published on the website of the City of Detroit, Board of Police Commissioners and Detroit Police Department for public access.

18. **UPDATED:** *Require Compliance with Laws*: The Department shall comply with current federal, state, and local laws. Further, Department Policy should require yearly checks and compliance with all applicable laws to anticipate new regulations.

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Required Prohibitions:

19. **NEW:** *Indicate in Department Policy that Facial Recognition Technology Does Not Establish Probable Cause to Arrest*: The Department shall specify that the Facial Recognition Image Result does not establish probable cause for an arrest and shall only be used as an investigative lead in Part I Violent Crime investigations and Home Invasion I investigations.

    a. Recommended language: "The Facial Recognition information provided does not constitute probable case for an arrest. The results are only possible names(s) of the photograph(s) and video(s) that were submitted with the request. It shall be the responsibility of the assigned detective to verify the identity of all suspects."

20. **NEW:** *Prohibition against Mobile Facial Recognition, Live Stream, Real Time, or any other constant streaming Video Using Drones, etc.*: The Department shall be prohibited from using Facial Recognition through the use of Mobile FR/Evolution Multimodal Identification Device, live video using drones, etc.

21. **NEW:** *Prohibition against Facial Recognition for Immigration Purposes*: The DPD shall be prohibited from the use of Facial Recognition for Immigration Enforcement purposes. The DPD shall also be prohibited from allowing or sharing Facial Recognition photographs or information with the Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), Customs and Border Patrol, or any other agency involved in immigration enforcement measures.

22. **NEW:** *Predictive Analytics Prohibited.* The Department shall be prohibited from using Predictive Analytics through the use of Facial Recognition Technology. Predictive Analysis is the branch of the advanced analytics, which is used to make predictions about unknown future events. Predictive analytics uses many techniques from data mining, statistics, modeling, machine learning, and artificial intelligence to analyze current data to make predictions about the future.

23. **UPDATED:** *Reemphasize Guarantee of Constitutional Protections*: The Department shall not violate First, Fourth, Fourteenth Amendments and

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will not perform or request Facial Recognition searches against individuals or organizations based on the following:

a. Prohibition: First Amendment Violations (religion, freedom of expression and association, political (i.e. Red Files), and social activities and events).

b. Prohibition: Fourth Amendment Violations (illegal searches and seizures).

c. Prohibition: Fourteenth Amendment Violations (profiling against selected classes (i.e. race, gender identification, sex, religion, immigration status, sexual orientation, disabilities, age discrimination, places of origins, and other classes protected by law).

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