

MASTER PRODUCT AGREEMENT 05-192

Initial Order Description

Advanced Public Safety (APS) a United States based corporation with corporate headquarters located at 500 Fairway Drive, Suite 204, Deerfield Beach, FL, authorized to do business in the state of Texas. ("SELLER") agrees to supply software ("Programs") and Hardware to the City of College Station, a Texas home-rule municipal corporation ("Purchaser") and to make available the manufacturer's System Maintenance services ("Maintenance Services") to Purchaser under the terms of this Agreement. Collectively, Hardware and Programs are referred to as "Products".

The Products, Software License Agreement, Hardware and Maintenance Services to be provided to Purchaser are specified in Exhibits 1 and 2. The parties may enter into new product schedules from time to time which shall be governed by this Agreement, provided all such product schedules shall be in writing, shall be signed by both parties, shall be sequentially numbered (Product Schedule A-1, A-2, A-3, etc.), and shall reference this Agreement. Alternatively, Purchaser may provide SELLER with a purchase order for additional Products or Maintenance Services, which is in Purchaser's standard form. However, Purchaser acknowledges and agrees that, notwithstanding anything in Purchaser's standard form purchase order to the contrary, the Additional Terms of this Agreement will govern all additional orders of Products or Maintenance Services reflected on product schedules or purchase orders SELLER accepts from Purchaser after the date hereof. No changes shall be made, nor will bills for changes, alterations, modifications, deviations, and extra orders be recognized or paid for except upon the written order from authorized personnel of the City.

The original contract price may not be increased by more than **twenty-five percent (25%)**. Written change orders that do not exceed **twenty-five percent (25%)** of the original contract amount may be made or approved by the City Manager or his delegate if the change order is less than **Twenty-five Thousand Dollars (\$25,000.00)**. Changes in excess of **Twenty-five Thousand Dollars (\$25,000.00)** must be approved by the City Council prior to commencement of the services, work or delivery of equipment. **Any change to the Contract Amount shall be made prior to the beginning of the work covered by the proposed change or the right to payment for Extra Work shall be waived.** No course of conduct or dealing between the parties, or implied acceptance of additional Work or changes to the Contract shall be the basis for any claim for an increase in compensation or change in time. Any cost incurred by Seller in connection with any additional work, services or equipment shall be included in any change order and Seller's failure to include any such cost shall act to Waive and Release any claim for such non included cost.

The price for all Products is shown in Exhibit 1. PURCHASER agrees to pay the total price of all Products, Project Management, Training and Support Materials and Maintenance. Travel expenses will be billed as actual, but will not exceed \$1,630.00. Software License Agreement and Maintenance Services Terms and Conditions are contained in Exhibit 2.

Seller shall provide copies of all documentation, including but not limited to any manufacturer warranties for all the hardware. Seller shall pass through or assign all manufacturer warranties on the hardware to City.

Warranty

Seller represents and warrants that (1) the Hardware and the Licensed Software identified herein constitutes all the applications or systems software or interfaces required by City to operate the Licensed Software; (2) the Licensed Software, as delivered to City hereunder, shall operate on or with the Hardware identified ; (3) the Licensed Software, as delivered to City hereunder shall meet the specifications, and documentation without the need for customization or modification, or the delivery of any additional Services; (4) the Licensed Software shall be compatible with City;s existing data files, business information, and systems, such that significant additional applications or systems software or interfaces shall not be required to be produced or procured in order to complete the implementation of the Licensed Software; (5) and the Licensed Software shall be free of any defect in material of the media in which the Licensed Software is delivered, specified or provided by Licensor. SELLER provides a 100% Satisfaction Guarantee with all of their deployed solutions. SELLER is committed to ensuring Purchaser is completely satisfied with the development, implementation, and overall performance of the Software covered by this Agreement. Purchaser may withhold final payment until the software is fully deployed and accepted by the Purchaser as described in the Acceptance Testing section of the Additional Terms of this Agreement.

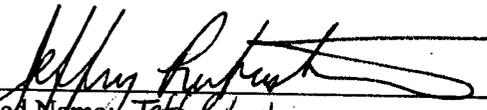
This Master Product Agreement, including the Additional Terms and Exhibits, form the complete Agreement (the "Agreement") regarding these Products and Maintenance Agreements and replace and supercede any prior oral or written communication between us, including, without limitation, any purchase order that Purchaser issues for these Products or Maintenance Agreements. . The priority of documents shall be as follows:

- (1) This signed Agreement
- (2) Addendum and Exhibits to this Agreement
- (3) City's Request for Proposal
- (4) SELLER's Response to City's Request for Proposal

By signing below, the parties agree to these terms.

Agreed to
APS INCORPORATED

Agreed to:
CITY OF COLLEGE STATION

BY: 
 Printed Name: Jeff Rubenstein
 Title: President
 Date: 12/1/05

BY: _____
 Ron Silvia, Mayor
 Date: _____

ATTEST:

 Connie Hooks, City Secretary
 Date: _____

APPROVED:

 Glenn Brown, Interim City Manager
 Date: _____

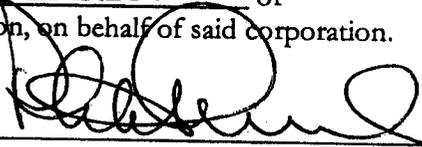

 City Attorney
 Date: _____

 Jeff Kersten, Finance & Strategic
 Planning Director
 Date: _____

STATE OF FLORIDA)
)
COUNTY OF BERNARD)

ACKNOWLEDGMENT

This instrument was acknowledged before me on the 01 day of DECEMBER, 2005 by JEFFREY RUBENSTEIN in his/her capacity as PRESIDENT of ADVANCED PUBLIC SAFETY, a corporation, on behalf of said corporation.



Notary Public in and for
the State of Florida

NOTARY PUBLIC-STATE OF FLORIDA
Philip Menard
Commission # DD464950
Expires: AUG. 23, 2009
Bonded Thru Atlantic Bonding Co., Inc.

STATE OF TEXAS)
)
COUNTY OF BRAZOS)

ACKNOWLEDGMENT

This instrument was acknowledged before me on the ___ day of _____, 200___, by _____, in his capacity as _____ of the City of College Station, a Texas home-rule municipality, on behalf of said municipality.

Notary Public in and for
the State of Texas

Additional Terms

Order, Delivery and Installation

Unless Purchaser requests otherwise and pays the corresponding charges, all Products are shipped via normal ground transportation. SELLER bears the risk of loss for each Product until it is delivered to Purchaser. Thereafter, Purchaser assumes the risk of loss. SELLER warrants that all equipment and parts delivered will be new and not reconditioned or previously used and will perform in accordance with manufacturer's specifications.

Acceptance Testing

Once the deliverables are installed in Purchaser's premises as specified herein SELLER shall notify the Purchaser in writing that the deliverable(s) as specified has been installed in good working order and ready for use, that the modifications or enhancements are completed as defined and specified herein, are in good working order, ready for use, and to the best of SELLER's knowledge is one hundred percent operational and that the deliverable(s) as then installed is ready for testing. The date of this notification is termed the "Certified Date". At that point, Purchaser shall have 30 working days to perform and complete acceptance testing on-site (Performance Period). If the deliverable(s) as installed and represented passes such testing, Purchaser shall so notify SELLER in a writing termed the Certificate of Acceptance. If the deliverable(s) as installed fails to pass such testing, Purchaser shall notify SELLER in writing and SELLER shall then have 60 days to correct any failure. SELLER shall then certify to Purchaser that the failure has been corrected and a new Performance Period will start. Purchaser shall have 30 working days for additional testing at which time Purchaser shall supply the Certificate of Acceptance if the deliverable(s) passes testing. If the deliverable(s) fails testing twice, at City's option, (1) the Correction Period may be extended as may be agreed by the parties; or (2) City may terminate this Agreement, return the specifications, product and documentation to SELLER and SELLER will refund to Purchaser any payments previously remitted for the deliverable(s).

Payment and Assignment

Purchaser agrees to supply tax exemption documentation to SELLER. SELLER will submit Invoices in duplicate to the City of College Station, Accounting Dept., P.O. Box 9973, College Station, Texas 77842-0973. If invoices are subject to cash discount, discount period to be taken from the date of completion of order or date of receipt of invoice, whichever occurs last regardless of whether or not correct discount terms appear on invoice. All undisputed invoices to be paid in full within 30 days of receipt of invoice. Payment will be made in accordance with the following schedule:

- 45% down payment (at time of PO)
- 25% upon initial software delivery (excluding QuickData)
- 15% due on system delivery
- 15% at final acceptance (as defined in the "Acceptance Testing" section)

Title and License

The application, use and other aspects of the Programs are solely governed by the terms and conditions of the applicable agreement between Purchaser and the Owner of the Program. Purchaser does not receive title to any Program, but only the right to use the Program under the applicable license agreement between Purchaser and the Owner of the Program.

Execution of this agreement is contingent on acceptance of the accompanying Software License Agreement between APS Inc. and the City of College Station ("Purchaser") incorporated as Exhibit 2.

Escrow

Purchaser will not be furnished source code, but may at Purchaser's expense enter into a mutually acceptable agreement with SELLER to have source code deposited with a third party escrow agent.

Copyright Notices

SELLER and other third party software vendors shall have the unrestricted right to include copyright notices on all products provided by APS Inc. Purchaser agrees to reproduce all copyright notices as provided by APS Inc. and other third party software vendors and agrees not to make any adjustment or alteration to such copyright notices.

Right to Use

Purchaser shall have use of the Licensed Program Materials on computer processing units as defined in the accompanying Software License Agreement.

Product Documentation

SELLER will provide Purchaser one copy each of detailed documentation for the use of Purchaser's product in both a searchable PDF document and a bound printed document. Purchaser may reproduce additional copies of said

documentation solely for its own use. "Documentation" means all specifications, manuals, drawings, and other media and materials other than Equipment and Software.

WARRANTY

APS WARRANTS ALL PRODUCTS DELIVERED UNDER THIS AGREEMENT TO BE NEW AND DOES NOT CONTAIN RECONDITIONED PARTS, FREE OF DEFECTS IN MEDIA, MATERIALS AND WORKMANSHIP FOR A PERIOD OF ONE YEAR FROM INSTALLATION AND ACCEPTANCE BY PURCHASER. APS WILL REPLACE AND INSTALL, AT NO COST TO PURCHASER, ANY PRODUCTS THAT FAIL OR ARE DEFECTIVE OR NONCONFORMING WITH PRODUCT SPECIFICATIONS DURING THIS ONE YEAR PERIOD PROVIDED PURCHASER MAINTAINS AND OPERATES THE SYSTEM IN ACCORDANCE WITH SELLER'S INSTRUCTIONS AND WRITTEN DOCUMENTATION PROVIDED TO PURCHASER. THESE WARRANTIES ARE PURCHASER'S EXCLUSIVE WARRANTIES AND SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF ANY PRODUCT.

LIMITATION OF LIABILITY

IF EITHER PARTY IS ENTITLED TO RECOVER DAMAGES FROM THE OTHER, IN EACH INSTANCE, REGARDLESS OF THE BASIS ON WHICH DAMAGES CAN BE CLAIMED, EACH PARTY IS LIABLE ONLY FOR ACTUAL DAMAGES IN AN AMOUNT NO GREATER THAN THE PRICE PURCHASER HAS PAID FOR THE PRODUCT THAT IS THE SUBJECT OF THE CLAIM. UNDER NO CIRCUMSTANCES IS EITHER PARTY RESPONSIBLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES (INCLUDING LOST PROFITS OR SAVINGS), EVEN IF EITHER PARTY IS INFORMED OF THEIR POSSIBILITY.

Venue and Choice of Law

This Agreement shall be governed by the laws of the State of Texas excluding any conflicts of law rule or principle that might refer the construction or interpretation of this Agreement to the laws of another state. Any action or court proceeding which may arise from this Agreement shall be heard in the Courts in the County of Brazos, Texas and the parties hereto submit to the jurisdiction of said courts

Indemnification

It is further agreed that the Seller (separately and collectively the "Indemnitee") shall indemnify, hold harmless, and defend the City, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person or for damage to any property arising out of or in connection with the hardware, services and software provided by the SELLER under this Contract. Such indemnity shall apply regardless of whether the claims, losses, damages, causes of action, suits, or liability arise in whole or in part from the negligence of the City, any other party indemnified hereunder, the Contractor, or any third party.

Release

SELLER assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person and any loss of or damage to any property that is caused by, alleged to be caused by, arising out of, or in connection with the Seller's work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance and regardless of whether such injury, death, loss, or damage was caused in whole or in part by the negligence of the City, any other party released hereunder, the Contractor, or any third party.

Severability

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected

or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

Term

This Agreement is effective from the date on which both parties execute this Agreement as set forth on the signature page hereto and shall remain in effect for the term provided herein.

Integration

SELLER must provide the capability to export the data shown in Exhibit 3 as a "txt" file with fixed length fields as shown in the exhibit.

Amendments

No amendment to this Agreement shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless waiver or consent to breach is in writing. The SELLER's response to the City of College Station is incorporated as part of this agreement and is incorporated as Exhibit 4

Insurance

Prior to the commencement of any work under this Contract, SELLER shall furnish an original completed Certificate(s) of Insurance to the City's Finance Department, Attention: Risk Manager, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the Purchaser. Purchaser shall have no duty to pay or perform under the Contract until such certificate shall have been delivered to the City's Finance Department. The City reserves the right to review the insurance requirements herein during the effective period of the Contract, including any extensions or renewal of the Contract, and to modify insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager, based upon changes in statutory law, court decisions, or circumstances surrounding the Contract. In no instance will the City allow modification whereupon the City may incur increased risk. Seller shall obtain and maintain in full force and effect, at the its sole cost and expense, for the duration of the Contract, including any extensions or renewal hereof, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to Purchaser.

Exhibit 1

Quantity	Item/Description	Unit Cost(\$)	Total Cost(\$)
	<u>Software:</u>		
1	Mobile Computer: Virtual Partner Engine	\$5,000	\$5,000
32	Mobile Computer: Quick Ticket Application	\$349	\$11,168
7	Handheld: PocketCitation Application	\$1,499	\$10,493
3	QuickData Application	\$7,500	\$22,500
1	QuickPrint Application	\$5,000	\$5,000
1	QuickAccess Application	\$12,500	\$12,500
32	Software for DL swiper	\$79.00	\$2,528
	SubTotal		\$69,189
	<u>Deployment Costs:</u>		
1	Project Management	\$2,800	\$2,800
1	Training & Support Materials	\$3,333	\$3,333
1	Travel Expense (Not to Exceed)	\$1,630	\$1,630
	SubTotal		\$7,763
	<u>Support/Maintenance</u>		
1	Annual Maintenance/Support	\$15,120	\$15,120
	SubTotal		\$15,120
	Total Software Cost		\$92,072

Hardware to Support E-Citations Project

Qty	Description	Unit Cost	Total Cost
25	Zebra RW420 Printer (w/ 12-volt Power Supply) and Zebra RW420 USB cables (12-volt Power Supply includes cable and connections to connect to Zebra RW420 Printer and min 6 ft of EIS 4284 (UL) SVT VW-1 60°C 300V 18AWGX2C or LLIO7286 CSA SVT FT2 60°C 300V 18AWGX2C Leader)	\$635.32	\$15,883.00
7	Zebra RW420 Printer w V 1.2 Bluetooth interface	\$705.05	\$4,935.35
7	Symbol MC50 (w/2D Imager), QWERTY keypad, Cradle, Line Cord, 110-volt, 802.11 wireless	\$1,086.89	\$7,608.23
7	Snap-on Magstripe Reader for MC 50	\$130.98	\$916.86
2	4-slot battery charger for MC 50	\$279.39	\$558.78
7	Zebra RW420 Printer w 802.11 interface	\$816.65	\$5,716.55
7	USB Bluetooth Plug-in Interface	\$70.47	\$493.29
2	QL, RW Series U.S. & Japan Quad Charger for	\$135.00	\$270.00

	Zebra RW420 Printer with 110/115v power cord		
7	Spare Standard 4.0 Ah, 7.4V battery for Zebra RW420 Printer	\$73.75	\$516.25
25	Case of 36 rolls of paper for Zebra RW 420 Printer, (Non-printed plain white thermal roll fed paper)	\$123.42	\$3,085.50
	Total Hardware Cost		\$39,983.81

Exhibit 2

SOFTWARE LICENSE

THIS SOFTWARE LICENSE (the "Agreement") is entered into on, _____2005 by and between ADVANCED PUBLIC SAFETY, INC. ("LICENSOR"), a Florida corporation, with principal offices located at 500 Fairway Drive, Suite 204, Deerfield Beach, FL 33441 authorized to do business in the State of Texas and, City of College Station, Texas home-rule municipal corporation ("LICENSEE"), located at 1101 Texas Ave. College Station, TX 77840.

ARTICLE I RIGHT TO USE LICENSED SOFTWARE

1.1 *Defined Terms.* The terms in this Agreement are defined as follows:

(a) *Effective Date* means the date entered above.

(b) *Licensed Software* means the computer program relating to LICENSOR's Virtual Partner software application.

(c) *Host Software* means the Virtual Partner family of products (QuickVoice, QuickTicket, etc) and/or PocketSuite (PocketCitation, PocketParking, etc) software sold by APS.

1.2 *Grant of Right.* Subject to the terms and conditions set forth herein and as of the Effective Date, LICENSOR grants to LICENSEE, a personal, nontransferable, nonexclusive right to install and use the Licensed Software during the Term (as defined below) solely for internal law enforcement purposes through its police department or sheriff's office. Except as expressly permitted under this Agreement, LICENSEE may not permit any third party to use the Licensed Software nor may LICENSEE use the Licensed Software itself for the benefit of any third party.

1.3 *Copying.* LICENSEE may not decompile, disassemble, reverse engineer, or translate the Licensed Software into another computer language or otherwise reduce the Licensed Software to a human-perceivable form. LICENSEE is permitted to make a single copy of all Software for backup or security purposes.

1.4 *Ownership.* The Licensed Software is LICENSOR's exclusive property. LICENSOR shall have sole and exclusive ownership of all right, title, and interest in and to the Licensed Software and all modifications and enhancements thereof (including ownership of all patents, trade secrets and copyrights pertaining thereto), subject only to the rights and privileges expressly granted by LICENSOR. This Agreement does not provide LICENSEE with title or ownership of the Licensed Software, but only a right of limited use. LICENSEE must keep the Licensed Software free and clear of all claims, liens, and encumbrances.

1.5 *Transfer Prohibited.* LICENSEE may not sell, lease, sublicense or otherwise transfer or dispose of the Licensed Software, in whole or in part.

1.6. "Error" means any failure of the Program(s) to conform in any material respect to its or their published specifications.

1.7. "Error Correction" means LICENSOR shall be responsible for using all reasonable diligence to correct verifiable and reproducible Errors when reported to LICENSOR in accordance with its standard reporting procedures. The Error Correction, when completed, may be provided in the form of a "temporary fix" consisting of sufficient programming and operating instructions to implement the Error Correction.

ARTICLE II LICENSED SOFTWARE ACCEPTANCE

2.1 *Installation.* The Licensed Software shall be installed by LICENSEE upon delivery by LICENSOR. The computer shall be the type of computer used by LICENSEE'S intended users of the software and shall contain the same operating system and software. The date of this delivery will be referred to as the "Certified Date".

2.2 *Performance.* During the period commencing on the Certified Date and ending thirty (30) days thereafter (the "Performance Period"), LICENSEE shall utilize the Licensed Software and computer system for its intended purpose (in-service use), testing all operation modes and equipment configuration, with the system fully loaded, in order to determine whether the Licensed Software operates successfully. "Successful operation" is defined as the absence of any major software failure in the application software, which results in the disabling of a major item, resulting in the inability of the overall system to perform. Minor failures, such as operational problems and adjustment normally encountered during implementation of a new system, shall not constitute a failure in achieving successful operation.

2.3 *Acceptance.* If the Licensed Software does not successfully operate, LICENSEE shall notify LICENSOR during the Performance Period with specific information detailing why LICENSEE believes the Licensed Software does not successfully operate. LICENSOR shall have sixty (60) days to make any revisions or corrections. If LICENSOR fails to make the corrections within such 60-day period, both LICENSEE and LICENSOR shall each have the right to terminate this Agreement and the License granted hereunder and LICENSEE shall receive a full refund of the Licensed Software Fees and Maintenance Fees. Following revisions or corrections by LICENSOR, a new thirty (30) day Performance Period will start. If, at any time during the Performance Period, the Licensed Software is altered by any party (except LICENSOR) in any way, or if the media has been damaged by accident, abuse or misapplication, or if the unsuccessful operation arises out of use of the Licensed Software with other than a recommended hardware configuration, the Licensed Software shall automatically deemed to be accepted by LICENSEE. LICENSEE shall notify LICENSOR in a writing termed the "Certificate of Acceptance" following successful operation of the Licensed Software during the initial Performance Period or any additional Performance Periods resulting from revisions or corrections by LICENSOR.

ARTICLE III SUPPORT AND MAINTENANCE

3.1 *Eligibility for Support.* To be eligible for support, LICENSEE must have a valid Licensed Software Agreement for the application and be in compliance with the schedule of payments.

3.2 *Scope of Support Services; Hours of Support.* LICENSOR shall provide technical support to LICENSEE during the Initial Term and, provided all Annual Maintenance Fees (as defined below) are paid by LICENSEE, during Renewal Terms. Additionally, LICENSOR shall use all reasonable diligence in correcting verifiable and reproducible errors when reported in accordance with LICENSOR'S standard reporting procedures, which may be modified from time to time at LICENSOR'S discretion. If an error exists, to the extent that LICENSEE is reasonably able to define the errors, LICENSEE must provide LICENSOR with information sufficient for LICENSOR to duplicate the circumstances under which the bug in the Licensed Software became apparent. Such technical support shall be provided to LICENSEE 24 hours a day, 7 days a week.

3.3 *Upgrades.* LICENSOR may, from time to time, issue new releases of the Licensed Software. LICENSOR shall provide LICENSEE with one (1) copy of each new release without additional charge. LICENSOR shall provide reasonable assistance to help LICENSEE install and operate each new release,

provided that if such assistance is to be provided at LICENSEE's facility, LICENSEE shall pay supplemental charges set forth in LICENSOR's then current rate schedule for such assistance. Fees for this assistance shall be limited to rate schedules provided to LICENSEE in advance of providing the additional services. LICENSOR shall use all reasonable diligence to modify the Licensed Software to work with upgrades to LICENSEE'S Host Software.

3.4 *Maintenance.* During the Initial Term and, provided all Annual Maintenance Fees (as defined below) are paid by LICENSEE, during Renewal Terms, LICENSOR shall use reasonable efforts to ensure that the Licensed Software continues to successfully operate in the event of LICENSEE's upgrade of its Windows operating system, mobile client upgrades or changes, changes to national, state and/or local queries and modifications to law enforcement forms used by the Licensed Software.

3.4.A. *Scope of Services.* During the term of this Agreement, LICENSOR will provide LICENSEE the following Standard Annual Maintenance Services for the Software:

- a. Corrections of defects in the Software so that the Software will operate as described in the user manuals (provided at the time of shipment of the product), as modified by LICENSOR's Specifications
- b. Periodic updates of the Software that may incorporate (A) corrections of any defects; (B) fixes of any bugs; (C) enhancements requested by the agency to the Software (Enhancements including, but not limited to: statute changes, violation changes, fine amount changes, updates in racial profiling information, modifications of the printed citation, etc.); and (D) upgrades to user manuals as set out above.
- c. An appropriately trained support staff is available via telephone between the hours of 8:00 a.m. to 6:00 p.m. Eastern Time, Monday through Friday, to assist the agency in using the Software.
- d. In the event of emergencies or system failures which occur outside of the designated support hours, telephone support will be provided 24 hours per day, seven (7) days per week for the term of the Agreement.

3.5 *Obligations of Customer.* LICENSEE must provide LICENSOR a list of computer hardware specifications and Operating System Software versions within ten (10) business days of the Effective Date of this agreement. LICENSOR will provide written confirmation of compatibility within ten (10) business days of the date of this Agreement. In the event the Host Software is deemed to be incompatible by LICENSOR, LICENSOR shall make recommendations for compatibility. If LICENSEE chooses not to follow such recommendations, this Agreement will be null and void. LICENSEE must provide new versions of its Operating System Software to LICENSOR prior to any installation of the Licensed Software to determine compatibility. LICENSOR will provide written confirmation of compatibility within ten (10) business days of receiving such notification. In the event the Host Software is deemed to be incompatible by LICENSOR, LICENSOR shall make recommendations for compatibility. If LICENSEE chooses not to follow such recommendations, either party may terminate this agreement.

ARTICLE IV PAYMENTS

4.1 *Fees.* LICENSEE shall pay a one-time Licensed Software Fee and an Annual Maintenance Fee. (Exhibit 1)

4.2 *Payment Terms.* The Licensed Software Fee shall be due and payable when the Licensed Software is accepted as set forth in Article II. LICENSEE shall pay the Annual Maintenance Fee for the Initial Term when the Licensed Software is accepted as set forth in Article II. LICENSEE shall pay the Annual

Maintenance Fee within thirty (30) days of the expiration of any Term for succeeding Renewal Terms. LICENSEE shall pay all hardware costs within thirty (30) days from delivery of hardware to LICENSEE. In the event that hardware is received in separate deliveries, partial payments shall be made by LICENSEE within thirty (30) days of each delivery.

4.3 All undisputed amounts payable under this Agreement that remain unpaid for more than thirty (30) days are subject to TEX. GOV'T. CODE SECTION 2251.001 ET. SEQ. as amended

ARTICLE V TERM AND TERMINATION

5.1 *Term.* The Term of this Agreement and the License granted hereunder shall be one (1) year (the "Initial Term") commencing on the Certified Date. The Initial Term shall automatically renew for subsequent terms (each, a "Renewal Term"; collectively, the Initial Term and any Renewal Terms are the "Term") unless either party provides written notice to the other of non-renewal no later than thirty (30) days prior to the expiration of a Term. Notwithstanding the foregoing, a Term shall not be renewed unless LICENSEE has paid the Annual Maintenance Fee prior to the commencement of the new Term. If LICENSEE fails to pay the Annual Maintenance Fee prior to the commencement of a new Term, this agreement and the Licensed Software shall terminate immediately.

5.2 *Termination for Breach.* Either party may terminate this Agreement and the License granted hereunder upon a material breach thereof, if such material breach has not be cured within thirty (30) days of the date of notice of such material breach to the other party Upon any termination of this Agreement, LICENSEE shall promptly cease using the Licensed Software and must destroy all copies of the Licensed Software in its possession (such destruction includes, without limitation, deleting all copies installed) and certify such destruction in writing to LICENSOR within thirty (30) days from the date of termination. In the event of any termination of this Agreement except such terminations pursuant to Article II, LICENSOR has no obligation to refund any amounts paid to it hereunder.

ARTICLE VI WARRANTIES; LIMITATIONS ON LIABILITY

6.1 *Limited Warranties.* LICENSOR warrants that the Licensed Software conforms in all material respects to the specifications for the current release of the Licensed Software as described in LICENSOR's product specifications as of the date of this Agreement. This warranty is expressly conditioned on LICENSEE's observance of proper operating, security and data-control procedures set by LICENSOR. LICENSOR is not responsible for obsolescence of the Licensed Software that may result from changes in LICENSEE'S requirements, including new software packages and/or operating systems used by LICENSEE. The foregoing warranty shall apply only to the most current release of the Licensed Software issued by LICENSOR from time to time. LICENSOR assumes no responsibility for the use of superseded, outdated, or uncorrected releases of the Licensed Software. EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY, LICENSOR DISCLAIMS ALL OTHER WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. IF APPLICABLE LAW IMPLIES ANY WARRANTIES WITH RESPECT TO THE LICENSED SOFTWARE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY DAYS FROM THE ACCEPTANCE DATE OF THE LICENSED SOFTWARE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LICENSOR MAKES NO WARRANTY OR REPRESENTATION OF ANY NATURE THAT THE LICENSEE'S USE OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE, OR SECURE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY

LICENSOR, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES CREATES ANY WARRANTIES OR IN ANY WAY INCREASES THE SCOPE OF THIS LIMITED WARRANTY. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO LICENSEE. THIS WARRANTY GIVES LICENSEE SPECIFIC LEGAL RIGHTS AND LICENSEE MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

6.2 *Limitation of Damages.* NEITHER PARTY IS LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, OR THE LIKE), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, EVEN IF THE OTHER PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. EACH PARTY'S TOTAL LIABILITY TO THE OTHER FOR ACTUAL DAMAGES FROM ANY CAUSE WHATSOEVER IS LIMITED TO THE AMOUNT PAID BY LICENSEE FOR THE LICENSED SOFTWARE THAT CAUSED SUCH DAMAGE. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO LICENSEE. TO THE EXTENT PROHIBITED BY APPLICABLE LAW, THE FOREGOING LIMITATIONS OF DAMAGES DO NOT APPLY TO DAMAGES FOR PERSONAL INJURY TO LICENSEE, IF ANY. THE CUMULATIVE LIABILITY OF LICENSOR TO LICENSEE FOR ALL CLAIMS RELATED TO THE LICENSED SOFTWARE AND THIS AGREEMENT, INCLUDING ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID TO LICENSOR HEREUNDER. Notwithstanding the foregoing, if the Licensed Software is altered by any party (except LICENSOR) in any way, or if the media has been damaged by accident, abuse or misapplication, or if the Licensed Software is used with hardware which is not recommended by LICENSOR, LICENSOR shall have no liability hereunder of any nature whatsoever.

BY ENTERING INTO THIS CONTRACT LICENSEE DOES NOT GIVE ITS CONSENT TO SUIT, WAIVE GOVERNMENTAL IMMUNITY OR THE LIMITATIONS AS TO DAMAGES IN THE TEXAS TORT CLAIMS ACT.

ARTICLE VII TITLE AND INDEMNITY

7.1. *Title.* LICENSOR warrants that it owns the software, including all associated intellectual property rights, or otherwise has the right to grant Customer the right and license provided in this Agreement, and that as of the date of this Agreement, to the best of LICENSOR's knowledge, neither the software nor the documentation infringe on any valid patents, copyrights, trademarks, or other proprietary rights of any third parties.

7.2 *Indemnity.* **LICENSOR, at its own expense, will defend, indemnify and hold harmless LICENSEE against any and all claims, losses, damages causes of action or expense including court costs, reasonable attorney fees, expert fees and other related fees or expenses arising out of or relating to a claim that the Software infringes on a United States patent or copyright or misappropriates trade secrets protected under United States law, provided LICENSEE (a) gives LICENSOR prompt written notice of such claims, (b) permits LICENSOR to control the defense and settlement of the claims, and (c) provides all reasonable assistance to LICENSOR in defending or settling the claims.**

7.3. As to Software which is subject to a claim of infringement or misappropriation, LICENSOR may (a) obtain the right of continued use of the Software for Customer or (b) replace or modify the Software to avoid the claim. If neither alternative is available on commercially reasonable terms, then, at the request of LICENSOR, any applicable Software license and its charges will end, Customer will stop using the applicable Software, and Customer will return to LICENSOR all or destroy all copies of the applicable Software, and will certify in writing to LICENSOR that such return or destruction has been completed. Upon return or LICENSEE's receipt of certification of destruction, LICENSOR will reimburse LICENSEE for the price paid for the Software, and any unused maintenance fees under any current maintenance contract.

ARTICLE VIII MISCELLANEOUS PROVISIONS

8.1 Escrow. Upon request by LICENSEE within ninety (90) days of the date of this Agreement, LICENSOR shall establish an escrow agreement with an independent third party agent for the source code of the Licensed Software. Release of the source code from escrow shall occur only when LICENSOR: (i) ceases doing business and its business is not continued by another corporation or entity; (ii) becomes insolvent; (iii) makes a general assignment for the benefit of creditors; (iv) suffers or permits the appointment of a receiver for its business or assets; or (v) avails itself of, or becomes subject to, any proceeding under Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors or conditions outlined elsewhere (collectively, the "Release Events"). Upon the occurrence of a Release Event, LICENSEE shall be entitled to receive a copy of the Source Code immediately from the Escrow Agent upon LICENSEE's notification in writing to the Escrow Agent of any of the circumstances set forth above. The source code will be released to the LICENSEE on the condition and for the sole purpose of maintaining and supporting the Licensed Software for the remainder of the Term and may not be otherwise used, transferred or sold.

8.2 Confidentiality. Subject to any applicable public records laws, LICENSEE shall hold all components of the Licensed Software in confidence for LICENSOR. Except to such of LICENSEE's employees to whom disclosure is necessary in order to use the Licensed Software as contemplated under this Agreement, LICENSEE must not disclose Licensed Software (including methods or concepts utilized therein) to any third party. LICENSEE must appropriately notify all employees to whom any such disclosure is made that such disclosure is made in confidence and must be kept in confidence.

8.3 Trademarks. Nothing contained in this Agreement grants LICENSEE any license or right to use any name, trade name, trademark, service mark, symbol or any other identification, or any colorable imitation thereof, belonging to or used or adopted by LICENSOR.

8.4 Statements. On LICENSOR's written request, but not more frequently than annually, LICENSEE shall furnish to LICENSOR a statement, certified by an authorized representative of LICENSEE, that LICENSEE's use of Licensed Software has been reviewed and that it is being used only for LICENSEE's internal business purposes and such use is in full compliance with the provisions of this Agreement, and an itemized list of the computers installed with the software.

8.5 Nonassignability. The parties have entered this Agreement contemplating personal performance by LICENSEE. The rights granted LICENSEE hereunder do not extend to entities or persons other than

those expressly referred to herein. LICENSEE may not assign this Agreement or the License granted herein.

8.6 *Entire Agreement.* Except with respect to any Confidentiality or Non-Disclosure agreement entered into by and between the parties, this Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all other negotiations, understandings and representations, if any, made by and between the parties. No representations, inducements, promises or agreements, oral or otherwise, if any, not embodied herein is of any force and effect, except with respect to any Confidentiality or Non-Disclosure agreement entered into by and between the parties.

8.7 *Survival.* All covenants, agreements, representations and warranties made in this Agreement continue in full force and effect subsequent to and notwithstanding the Agreement's termination and until they are satisfied or by their nature expire.

8.8 *Binding Effect.* This Agreement, whether so expressed or not, is binding upon, inure to the benefit of, and are enforceable by the parties and their respective personal representatives, legal representatives, heirs, successors and permitted assigns.

8.9 *Notices.* All notices, requests, demands, consents and other communications required or permitted under this Agreement must be in writing and must be (as elected by the person giving such notice) hand delivered, delivered by a nationally recognized courier service, or mailed by registered or certified mail (postage prepaid), return receipt requested, addressed to the appropriate party at its address set forth above or to such other address as that party may designate by notice complying with the terms of this Section. Each such notice is deemed delivered: (a) on the date delivered if by hand delivery or courier service; or (b) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities or courier service as not deliverable, as the case may be, if mailed or couriered.

8.10 *Venue; Governing Law.* This Agreement shall be governed by, subject to, and interpreted in accordance with the laws of the State of Texas and the United States of America, without regard to rules or laws regarding conflict of law. The parties hereto submit to the exclusive jurisdiction of the courts within the State of Texas.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement on the date set forth above.

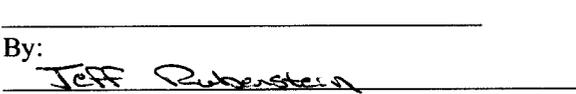
LICENSOR:
ADVANCED PUBLIC SAFETY, INC.

LICENSEE:
CITY OF COLLEGE STATION

By: 

Print Name: JEFFREY D. RUBENSTEIN
Its: CHIEF EXECUTIVE OFFICER

BY: _____
Ron Silvia, Mayor

By: _____


Print Name:
Its:

Date: _____

ATTEST:

Connie Hooks, City Secretary

Date: _____

APPROVED:

Glenn Brown, Interim City Manager

Date: _____



City Attorney

Date: _____

Jeff Kersten, Finance & Strategic

Planning Director

Date: _____

Exhibit 3

<u>Citation Fields</u>	<u>MIN Field Length</u>	<u>Comment</u>
Citation Number	16	
Citation Type	5	code from table
GEAC (Police) Related Case Number	32	
Last Name	60	text
First Name	30	text
Middle Name	30	text
Name Suffix	5	text
DL#	25	
DL Class	1	code from table
DL State	2	code from table
DL Expiration Date	10	date
DL Restrictions Code	1	code from table
CDL Check box Y/N	1	
DL Endorsements	1	code from table
State ID #	25	
ID State	2	code from table
DOB	10	date
Race	3	code from table
Sex	1	code from table
Height	3	
Weight	3	
Hair Color	3	code from table
Eye Color	3	code from table
SSN	11	Numeric with dashes (###-##-####)
Email	30	text
Alt 1 Ph#	10	phone
Permanent Ph#	10	phone
Permanent Address number and street (from DL)	40	text
Permanent Address City (from DL)	40	text
Permanent Address State (from DL)	2	code from table
Permanent Address Zip (from DL)	10	
Local Ph#	10	phone
Local Address number and street	40	text
Local Address City	40	text
Local Address State	2	code from table
Local Address Zip	10	
Employer Name	40	text
Work Ph# 1	10	phone
Work Address number and street (from DL)	40	text
Work Address City (from DL)	40	text
Work Address State (from DL)	2	code from table
Work Address Zip (from DL)	10	
Occupation	25	text
Juvenile check box Y/N	1	
School	25	text
Guardian/Parent Info Last Name	60	text
Guardian/Parent Info First Name	20	text
Guardian/Parent Info Middle Name	20	text
Guardian/Parent Name Suffix	5	text

Parent Address number and street	40	text
Parent Address City	40	text
Parent Address State	2	code from table
Parent Address Zip	10	
Parent Ph# 1	10	phone
Veh Yr	4	
Veh Make	6	code from table
Veh Model	6	code from table
Veh Body Style	8	code from table
Veh Color	3	code from table
Veh LP#	10	
Veh State	2	code from table
Veh LP Exp date	10	date
Commercial LP Y/N	1	
Trailer LP#	10	
Trailer LP State	2	code from table
Trailer LP Exp date	10	date
Impound #	10	
Location of Violation	40	text
Viol Date	10	date
Viol Time	8	time
Weather Cond	2	code from table
Traffic Cond	2	code from table
Beat	5	code from table
Roadway Condition	1	code from table
Traser Loc check box Y/N	1	
Accident check box Y/N	1	
Charges Filed - Description	40	text
Charges Filed - Code	6	code from table
Charges Filed (if "other" is chosen)	40	text
Charge Note	120	text
Statute	10	code from book
Speeding check box	1	
Work zone check box	1	
Workers present check box	1	
school zone check box	1	
Hazmat Y/N	1	
actual speed	3	
posted speed	3	
radar#	20	
Fail to wear seatbelt driver check box	1	
Fail to wear seatbelt Passenger check box	1	
Fail to wear seatbelt Child check box	1	
MIP (under 21) Alcohol check box	1	
MIP (under 18) Tobacco check box	1	
Type of Alcohol or tobacco	40	text
Expired LP check box	1	
Expired MVI check box	1	
Date MVI expired	10	date
Theft Check box	1	
Owner and desc of item stolen	40	text
Is traffic stop related? Y/N	1	

Type of Stop (Vehicle / Ped)	1	code from table
Audio/Video Status (Operational/ Non Oper)	1	code from table
Initial Reason for stop	1	code from table
Search Conducted Y/N	1	code from table
Authority for search: (one of the following)	2	code from table
consent check box	1	
PC check box	1	
Incident to arrest check box	1	
Inventory check box	1	
Other check box	1	
+other comment field	40	text
Contraband found Y/N	1	code from table
Type of contraband found	1	code from table
How was PC established	2	code from table
Officer Name	60	text
Officer ID	4	numeric
Step check box	1	Y/N
Step (1,2,3,4,5)	1	code from table
Officer Vehicle Unit	5	numeric
Narrative	255	text
*date format = MM/DD/YYYY		
*time format = HH:MM:SS		