



STAFF REPORT

DATE: JUNE 21, 2011

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: ROD FOSTER, CITY MANAGER

PREPARED BY: STEVE WARD, INTERIM POLICE CHIEF

SUBJECT: APPROVE THE CONTRACT WITH ADVANCED PUBLIC SAFETY COMPANY FOR THE PURCHASE OF AN ELECTRONIC HAND HELD CITATION SYSTEM AND EQUIPMENT

RECOMMENDED ACTIONS

Staff recommends that the City Council approve the purchase of a handheld electronic citation writing system to include software and other related hardware, from the Advance Public Safety Company (APS).

GOAL STATEMENT

The proposed action supports the City's goal to provide technology improvements relative to public safety.

BACKGROUND

On March 1, 2009, the Colton Police Department received a Byrne JAG grant in the amount of \$128,879 for an Electronic Citation Writing system and related equipment. The grant award was approved by the Colton City Council on April 21, 2009. Since that time a formal bid process was completed, and the Advanced Public Safety Company was selected by the police department to provide this service. If Colton City Council accepts this grant, Advanced Public Safety Company will be awarded the contract.

ISSUES/ANALYSIS

Historically, the Colton Police Department has issued citations by handwriting the necessary information onto a pre-printed citation form. Because the citations are handwritten by the issuing officer, human error in completion and disbursement is inevitable. The citations are physically transported to the respective court or hearing officer for disposition. Over the past several years courts have requested, and law enforcement has sought, better ways to complete and route citation forms.

The Advanced Public Safety Company provides a product that is compatible with the police departments' current records management system, and is being used by other San Bernardino County law enforcement agencies. This new program allows officers to write citations in the

field utilizing hand held citation writers. The devices use a magnetic scan device that reads bar codes and the magnetic strip on the California driver's license. The APS system also standardizes the code sections and definitions of the violations. These electronic devices save time in the field and reduce error. Once the citation is written it is electronically entered into Colton Police Department's computer database and sent electronically to the Courts without delay. This product allows officers to utilize all three of the department's citation forms. With this system Colton Police will become one step closer to a paperless system.

FISCAL IMPACTS

The project was budgeted for in the April 21, 2009 approval of the grant award acceptance (Expenditure Account # 225-6070-6086-4930-0000-000). There are no matching funds required for this grant and there is no impact to the General Fund.

ALTERNATIVES

1. Provide alternative direction to staff

ATTACHMENTS

1. Agenda report marked ITEM # 6, dated April 21, 2009
2. Advanced Public Safety Company contract agreement
3. Exhibit "B"

**CITY OF COLTON
AGENDA REPORT**

ITEM #6

FOR COUNCIL MEETING OF MAY 5, 2009

TO:	HONORABLE MAYOR AND CITY COUNCIL
FROM:	Bob Miller, Chief of Police
SUBJECT:	Request to approve the acceptance of the 2009 Byrne Justice Assistance Grant (Byrne JAG) from the United States Department of Justice: Approve the MOU allowing the County of San Bernardino to submit the application on behalf of the City and allocate the funds upon receipt.
DATE:	April 21, 2009

BACKGROUND:

For many years the City of Colton has been a recipient of the Bryne Justice Assistance Grant (Bryne JAG). The formula for the distribution of funds is based on each city's population, their Part 1 crimes, and direct allocations to State and local governments. As part of the American Recovery Stimulus Package a three year grant has been approved by Congress. The City of Colton's allocation has been determined to be \$135,662.00. The Agreement must be submitted to the County of San Bernardino no later than May 6, 2009 to ensure receipt of our allocation.

DISCUSSION/ANALYSIS:

In order to receive these funds, the City will enter into an Agreement with the County of San Bernardino to apply for and administrate the distribution of the allocations upon their receipt. The County will retain 5%, or \$6,783.00 of the City's allocation for this service, leaving the City \$128,879.00. These funds, including interest earned, must be utilized for law enforcement purposes only. The police department anticipates utilizing this allocation to purchase and install in-car video equipment. Video recording is fast becoming a necessity for any law enforcement agency. This technology is an asset for any officer-citizen contact, citizen transport in police car, and probable cause related questions. Typical benefits are increased conviction rates, less time in court proceedings and litigation, increased officer awareness of their conduct, training situations and reinforcement, and overall easier understanding of any (recorded) situation. This grant requires the participation of all city's listed. Should any city not participate, the remaining cities as well as the county will not receive their funding.

FINANCIAL IMPACT:

This grant award provides \$128,879.00, plus interest for the grant period. There are no matching funds required for this grant, and there is no impact to the General Fund. Revenue Account 225-5890-003 will be increased in the amount of \$128,879.00, plus interest accrued. Expenditure Account 225-6070-6084-4900 will also be increased proportionately to cover the expenses up to \$128,879.00, plus accrued interest. These amounts will be included in the Fiscal Year 2009-2010 Budget.

ENVIRONMENTAL IMPACT:

Not Applicable.

CONFLICT OF INTEREST – Gift Disclosure Requirements

None

RECOMMENDATION:

Staff recommends that the City Council approve the acceptance of the 2009 Bryne Justice Assistance Grant (Bryne JAG) from the United States Department of Justice; Approve the attached MOU allowing the County of San Bernardino to submit the application on behalf of the City and allocate the funds upon receipt.

Attachment: MOU

Prepared by: Candace Gonzales, Administrative Assistant

REVIEW TEAM ONLY	
City Attorney: <u>D. Darleth</u> UE	Finance Director: <u>D. DeAlwis</u> UE
City Manager: <u>[Signature]</u>	OTHER: _____



END USER LICENSE AGREEMENT and TERMS AND CONDITIONS OF SALE

END USER LICENSE AGREEMENT

(effective date May 1, 2011)

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3.1 **Applicable law - Settlement of Disputes:** This EULA shall be governed by the laws of the State of California and applicable United States Federal law without reference to "conflict of laws" principles or provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this EULA. Jurisdiction and venue for any action or proceeding arising out of or in connection with this EULA or the Software shall lie exclusively in or be transferred to the applicable state or federal court located in Los Angeles County, California, and Buyer hereby waives any objection it may have to such venue, including, without limitation, an objection based on the assertion that this venue is an inconvenient forum. No dispute or legal action arising under this EULA, may be brought by either party more than one (1) year after such cause of action accrued, except that an action for nonpayment may be brought within two (2) years of the date of the last payment.

3.2 **Severability:** These terms and conditions may be severable and the invalidity, illegality or unenforceability in whole or in part of any provision shall not affect the validity of other provisions

3.3 **Reservation of Rights:** APS reserves all rights not expressly granted by this EULA.

TERMS AND CONDITIONS OF SALE

These **Terms and Conditions of Sale** establish the basis on which the purchase and sale of products and services described in Customer purchase orders and furnished by Advanced Public Safety, Inc. ("APS"), (hereinafter, "Item(s)" or "item(s)") is made by and between you ("Customer") and APS. Every purchase order placed with APS is conditioned on and confirms Customer's acceptance of these terms and conditions of sale, and APS agrees to furnish the Items described in Customer's purchase orders only upon these terms and conditions. Any terms or conditions to the contrary appearing on orders, or within Customer's terms and conditions of purchase or any other documentation shall be of no effect. No waiver, modification, or addition to these terms and conditions, or any assignment of Customer's rights or obligations hereunder shall be valid or binding on APS unless in writing and signed by an authorized APS representative.

These terms and conditions of sale, together with the Basic Order Terms (defined in Section 1.3 below) set forth on a purchase order accepted by APS constitute the entire agreement of Customer and APS for purchase and sale of the Item(s) (hereafter sometimes referred to as the "contract").

1. General:

1.1 **Validity of sales agreement:** APS's quotations are non-binding unless otherwise expressly stipulated in writing. Customer orders are accepted as valid and binding only when confirmed by APS in writing. Orders cannot be canceled for any reason without the prior written consent of APS. In such case, APS may claim compensation under Section 3.2 below.

1.2 **Intellectual property ownership of tender materials:** APS retains title and full intellectual property ownership of all tender documents and materials, including without limitation, calculations, drawings, models, plans, sets of tools, etc. All such documents and materials are considered confidential and Customer shall not copy such documentation or materials or disclose them to third parties without APS's prior written consent.

1.3 **Basic Order Terms - Fixed:** All purchase orders for Items shall include the following information: (i) Items and quantities, (ii) prices, (iii) shipping instructions, and (iv) the APS part number, (collectively, "**Basic Order Terms**"). All Basic Order Terms are fixed and final upon APS's acceptance of the order. APS's obligation to Customer is limited to the contract terms.

1.4 **Software License:** If a purchase order includes software Items, such software is licensed, not sold, and Customer is authorized to use the software solely in accordance with, and subject to the terms and conditions of the end user license accompanying such software (including any differing limited warranty terms exclusions and limitations). Nothing herein shall be construed to grant any rights or license to use any software in any manner or for any purpose not expressly permitted by these terms and conditions or its applicable end user license agreement.

1.5 **Customization:** Customization or configuration of APS software Items performed by APS at Customer's request, if any,

will be subject to additional charges, except as otherwise provided on Customer's accepted order or agreed to in writing by APS. APS will retain all copyright and other proprietary rights to the Item and any additional customization or configuration, and shall have the right and authority to use, sell and distribute the Item and utilize the results of the work for any other purpose, in APS's sole discretion, without requirement of notification or liability to Customer of any kind (including, without limitation, monetary remuneration). The results of any additional customization or configuration will be deemed accepted upon receipt of notification to ship the APS software Items along with the associated hardware Items, if any. In the case of notifications to ship that are not in writing, Customer's acceptance of such Items will be deemed to occur (5) days after Delivery as defined in 2.2 below.

2. Delivery:

2.1 Delivery time: Delivery times are established when Customer's order is received and accepted in writing by APS. APS will use commercially reasonable efforts to meet Customer's requested delivery dates, unless Customer is in default under the contract or APS's performance is otherwise excused. APS shall not be liable for late or delayed shipment. Late or delayed shipment shall not be a basis for Customer's cancellation of any order.

2.2 Delivery terms: Delivery of the Items will be made on an FCA (Incoterms 2000) APS's facility basis. Title and risk of loss or damage to the Items covered by these Terms and Conditions shall pass to Customer upon delivery (except for title to software Items, in which case only title to the media shall pass). Unless otherwise agreed, APS will deliver the Items freight prepaid; provided that Customer will pay or reimburse APS for all costs of carriage, freight, insurance (if applicable), taxes, duty and other related shipping charges in connection with shipment hereunder. Customer shall make such payments to APS within thirty (30) days after date of APS's invoice. APS has the right to make partial deliveries.

3. Acceptance, Inspection, Notice of Nonconformance:

3.1 Customer's acceptance of ordered Items shall be deemed to occur at delivery to the FCA point. It is Customer's responsibility to give prompt written notice of identified damage or nonconformance of goods. Upon receipt, Customer shall inspect the condition of the Items. In the event of physical damage to delivered Items or their packaging Customer shall indicate any damage to the carrier on the delivery note, have the carrier's agent sign the document and, within two (2) days of receipt, send all documents by e-mail or fax to the APS facility from which shipment took place, together with the carrier's references. Customer shall notify APS within (5) days of delivery of incorrect or nonconforming Items or materials. Concealed physical loss or damage claims must be made by Customer to the carrier by requesting an inspection and filing a claim with the carrier, with written notice, which shall also be given to APS within (5) days of delivery. If Customer retains the Item without giving notice within the aforesaid designated periods, Customer will be deemed to have waived its right to reject the order.

3.2 If Customer rejects conforming Items under an accepted order, APS shall be entitled to claim reasonable compensation for restocking and other expenses it has actually incurred. The risk of accidental loss/destruction or accidental deterioration of Items sold or distributed hereunder shall pass to the Customer at the time Customer rejects conforming Items.

4. Return of Items: There is no right of return of conforming Items. Return of nonconforming and rejected Items must be made pursuant to APS's return procedures then in effect. Items must be returned, transport prepaid, to the APS facility (no C.O.D. or Collect Freight accepted) in original boxes and packing material, unless otherwise agreed by APS. The Items travel at the risk and responsibility of Customer. If returned Item is claimed to be defective, a complete description of the nature of the defect must be included with the returned Items. All returns are subject to inspection.

5. Pricing, Terms of Payment:

5.1 Unless otherwise agreed in writing, payment terms shall be as follows: 50% of the total purchase price is due on receipt of Customer's purchase order. Thereafter, 40% of the purchase price is due on initial software delivery (excluding SmartExport if applicable), and the remaining 10% is due upon the earlier of (i) completion of any additional minor services (e.g., software configuration) or (ii) fifteen (15) days following completed delivery of all hardware and software deliverables. The date of the receipt of payment by APS shall be determinative. No discount will be granted for advance payment. Payment shall be made in United States Dollars (USD\$). APS shall be entitled to offset payments against prior debt balances in Customer's account. Items or services purchased under APS's United States General Services Administration ("GSA") Schedules, if any, will be subject to all of the pricing and other terms, conditions described in the applicable GSA Schedule.

5.2 APS shall have the continuing right to review Customer's credit and change Customer's payment terms and, without limiting the foregoing, may at any time demand advance payment, satisfactory security (such as, but not limited to, a confirmed, irrevocable letter of credit acceptable to APS), or a guarantee of prompt payment, prior to shipment, if APS deems such to be required in view of APS' assessment of Customer's credit worthiness.

5.3 Interest shall be charged on all overdue sums owing to APS under these terms and conditions at the rate of one percent (1%) per month (or the highest legal limit if lower than said amount), and shall be calculated from the date the sums in question were payable to the date on which payment is made in full.

5.4 Customer grants APS a purchase money security interest in each Item shipped to Customer until payment is made in full to APS for such Items. Upon request from APS, Customer will cooperate with APS in perfecting any such security interest.

5.5 Customer shall be liable for any costs incurred by APS in the event of variation or suspension of any order by Customer.

5.6 Stated Item prices do not include any applicable sales, use, personal property or similar taxes, or transportation or insurance charges; all of which shall be paid by Customer. Any tax that APS may be required to collect or pay upon the sale or delivery of the Item shall be paid by Customer to APS unless Customer provides direct payment authority or an exemption certificate valid in the state to which the Item will be shipped.

6. APS Software Support and Maintenance Services

6.1 Eligibility for Support. To be eligible to receive the technical support and maintenance services for APS software Items as described in Sections 6.2 through 6.3 below ("Annual Maintenance Services"), the license under which accepts the APS software must be valid and currently in effect, and Customer must have timely paid all charges and fees due and payable under the contract and associated purchase order(s), including, without limitation, the Annual Maintenance Services fee (at the rates then currently in effect) for the applicable support Service Term. "Service Term" means each twelve (12)-month period during which APS agrees to furnish the Annual Maintenance Services.

6.2 Scope of Annual Maintenance Services. During Customer's applicable Service Term, APS will use commercially reasonable efforts to correct verifiable and reproducible software errors in the covered APS software Items when reported in accordance with APS's standard reporting procedures, which may be modified from time to time at APS's discretion. A software error shall mean a failure of the software that causes it not to perform substantially in accordance to its APS specifications. If an error exists, Customer must provide APS with information sufficient for APS to duplicate the circumstances under which the error in the APS software Item became apparent. APS will provide such technical support to Customer 24 hours a day, 7 days a week.

6.3 New Releases. APS may from time to time issue fixes or revisions of the APS software Items for release to its customers generally ("New Releases"). As part of the Annual Maintenance Services during the Service Term APS will provide Buyer with one (1) copy of each such New Release at no additional charge, subject to APS' established procedures for delivery to its customers. APS shall provide reasonable assistance to help Customer install and operate each New Release; provided however, that if such assistance is to be furnished at Customer's facility, Customer shall pay supplemental charges set forth in APS' then current rate schedule for such assistance.

7. Warranty:

7.1 Limited Warranty for APS Items: The warranty in this section applies to Items other than software. APS's warranty for software is set forth in the applicable End User License Agreement. Unless the limited warranty included with any APS manufactured Items covered by these terms and conditions grants different rights to the Customer, APS warrants to Customer, and only to Customer, that such Items furnished under the contract shall be designed and manufactured to conform to APS's specifications and all parts or media are and will be free from defects in material and workmanship for a period of ninety (90) days from date of shipment. During the warranty period, APS's liability is limited to replacing, repairing or issuing credit for any Item that is returned to APS by the original purchaser freight prepaid and which upon inspection is determined by APS to be defective in materials or workmanship. APS's repair or replacement of a defective Item as provided in this section is Customer's only and exclusive remedy for a defective Item, and is made subject to the terms of this warranty.

7.2 Warranty Exclusions: The foregoing APS limited warranty shall only apply in the event and to the extent that (a) the APS Item is properly and correctly installed, configured, interfaced, maintained, stored, and operated in accordance with APS's applicable operator's manual and specifications, and; (b) the Item is not modified or misused. This APS limited warranty shall not apply to, and APS shall not be responsible for defects or performance problems resulting from (i) the combination or utilization of the Items with hardware or software Items, information, data, systems, interfaces or devices not made, supplied or specified by APS; (ii) the operation of the APS Item under any specification other than, or in addition to, APS's standard specifications for its products; (iii) the unauthorized, installation, modification, repair or use of the APS Items; (iv) damage caused by accident, electrical discharge or exposure to environmental conditions for which the APS Items are not intended, or normal wear and tear; (v) equipment or software manufactured and produced by third parties; or (vi) change or upgrade of Customer's computer operating system or mobile client devices following Customer's purchase of the Items. **APS DOES NOT WARRANT OR GUARANTEE THE RESULTS OBTAINED THROUGH THE USE OF THE ITEMS. APS MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO SERVICES, WHICH IF PROVIDED HEREUNDER ARE PROVIDED "AS-IS."**

7.3 Third Party Manufactured Equipment and Software Items Warranty. APS will extend to Customer the manufacturer's warranty, if any, for all third-party manufactured equipment and software Items delivered by APS to Customer under the contract. Customer acknowledges and agrees that APS shall not be responsible for separately warranting or supporting third-party manufactured equipment or software Items.

7.4 WARRANTY DISCLAIMER: THE FOREGOING LIMITED WARRANTY TERMS STATE APS'S ENTIRE LIABILITY, AND YOUR EXCLUSIVE REMEDIES, RELATING TO THE ITEMS FURNISHED BY APS HEREUNDER. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTIONS 7.1 THROUGH 7.3, AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE ITEMS, ACCOMPANYING DOCUMENTATION AND MATERIALS ARE PROVIDED "AS-IS" AND WITHOUT EXPRESS OR IMPLIED WARRANTY OF ANY KIND, BY EITHER APS OR ANYONE WHO HAS BEEN INVOLVED IN ITS CREATION, PRODUCTION, INSTALLATION, OR DISTRIBUTION, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, APS MAKES NO WARRANTY OR REPRESENTATION OF ANY NATURE THAT THE BUYER'S USE OF THE LICENSED SOFTWARE OR OTHER ITEMS FURNISHED TO BUYER UNDER THIS AGREEMENT WILL BE UNINTERRUPTED, ERROR FREE, OR SECURE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY APS, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES CREATES ANY WARRANTIES OR IN ANY WAY INCREASES THE SCOPE OF THIS LIMITED WARRANTY

THE STATED EXPRESS WARRANTIES ARE IN LIEU OF ALL OBLIGATIONS OR LIABILITIES ON THE PART OF APS ARISING OUT OF, OR IN CONNECTION WITH, ANY ITEM. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OR THE EXCLUSION OF AN IMPLIED WARRANTY, SO THE ABOVE LIMITATION MAY NOT APPLY OR FULLY APPLY TO YOU. NOTHING IN THIS WARRANTY DISCLAIMER SHALL LIMIT TRIMBLE'S EXPRESS INDEMNIFICATION OBLIGATIONS IN SECTION 10.

8. LIMITATION OF LIABILITY: WITHOUT LIMITING THE FOREGOING, APS'S ENTIRE LIABILITY TO CUSTOMER UNDER OR FOR BREACH OF THESE TERMS AND CONDITIONS SHALL BE LIMITED TO THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO APS UNDER THE CONTRACT. FURTHER, NEITHER APS NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE DAMAGES OR OTHER DAMAGES, OR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, LOSS OF USE OF THE ITEM OR ANY ASSOCIATED EQUIPMENT, DOWNTIME AND USER TIME OR FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY RELATED TO THE ITEM. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, ANY IMPLIED WARRANTY OF QUALITY OR FITNESS FOR A PARTICULAR PURPOSE ON THIS ITEM IS LIMITED IN DURATION TO THE DURATION OF THE FOREGOING WARRANTY. ADDITIONALLY, SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, CONSEQUENTIAL OR SPECIFIED OTHER DAMAGES, OR ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY, OR MAY NOT FULLY APPLY.

9. Intellectual Property Ownership: As between APS and Customer, Customer agrees that APS and its suppliers, as applicable, own all right, title and interest to all intellectual property and other proprietary rights to the technology, software, designs, engineering details, schematics and similar data relating to or incorporated in the Items and any accompanying documentation or information derived from the foregoing. Customer shall take reasonable precautions to prevent unauthorized access and use of the software Items and accompanying documentation by third parties. To the extent permitted by applicable law, Customer shall not, nor allow any third party to copy, decompile, disassemble or otherwise reverse engineer the software Items, or attempt to do so. Customer is prohibited from, and shall prevent any third party from, removing, covering or altering any of APS' or its suppliers patent, copyright or trademark notices placed upon, embedded in or displayed by the Items or their packaging and related materials. APS and its suppliers, as applicable, reserve all rights not specifically granted to Customer hereunder.

10. Indemnification: If someone makes a claim against you that the Software infringes their intellectual property rights, APS will defend and indemnify you if you do the following: notify APS promptly in writing, not later than 30 days after you receive notice of the claim, or sooner if required by applicable law; give APS sole control of the defense and any settlement negotiations; and give APS the information, authority, and assistance APS needs to defend against or settle the claim. If APS believes that any of the Software may have violated someone else's intellectual property rights, APS may choose to either modify the Software or obtain a license to allow for continued use, or at APS' sole discretion, APS may end the license for the applicable Software and refund any license fees and any unused, prepaid support fees you have paid for it. APS will not indemnify you if you alter the Software outside the scope of use provided in the documentation or if you use a Software version which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Software. APS will not indemnify you to the extent that an infringement claim is based upon the combination of the Software with any products, software or services not provided by APS. **THIS SECTION PROVIDES YOUR EXCLUSIVE REMEDY FOR ANY INFRINGEMENT CLAIMS OR DAMAGES.**

11. GOVERNMENT END USERS-RESTRICTED RIGHTS. Use, duplication, or disclosure of software Items by the U.S. Government is subject to restrictions set forth in the applicable license agreement accompanying any such Item and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (OCT 1988), FAR 12.212(a) (1995), FAR 52.227-19, or FAR 52.227-14(ALT III), as applicable.

12. Export procedures: Customer is informed that sale and delivery of Items in an export situation may be subject to export regulations of the United States or other countries. Customer warrants that it will not export or re-export directly or indirectly, any Item in violation of any law or regulation, (including, without limitation, any law or regulation of the United States Government or any agency), or to embargoed or otherwise restricted countries, or sell Items to companies listed on the denied persons list published by the United States Department of Commerce. Customer further warrants that it will not export or re-export, directly

or indirectly, any Item with knowledge that it will be used in the design, development, Production or use of chemical, biological, nuclear or ballistic weapons. Laws and regulations change frequently. It is Customer's responsibility to know the law pertaining to export/import procedures in the country of destination of the Item. Customer will defend, indemnify and hold APS harmless against any liability (including attorneys' fees) arising out of Customer's failure to comply with the terms of this paragraph.

13. Default: APS reserves the right, by written notice of default, to cancel or indefinitely suspend an accepted Item order if: (i) Customer defaults in the performance of its obligations hereunder, or otherwise breaches the contract, or (ii) Customer ceases business operations or enters into any bankruptcy, insolvency, receivership or like proceeding not dismissed within thirty (30) days, or assigns its assets for the benefit of creditors.

14. Applicable law - Settlement of Disputes:

These terms and conditions will be governed by and construed in accordance with the laws of the State of California and applicable United States federal law, without reference to "conflicts of laws" provisions or principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The venue for any action or proceeding arising out of or in connection with these terms and conditions, the Items provided under an order, or the commercial relationship of the parties shall be in the applicable state or federal court located in Los Angeles County, California, and Buyer hereby waives any objection it may have to such venue, including, without limitation, an objection based on the assertion that this venue is an inconvenient forum. No dispute or legal action arising under this Agreement, may be brought by either party more than one (1) year after such cause of action accrued, except that an action for nonpayment may be brought within two (2) years of the date of the last payment.

15. Severability: These terms and conditions may be severable and the invalidity, illegality or unenforceability in whole or in part of any provision shall not affect the validity of other provisions.

16. Force Majeure: Neither party shall be liable to the other for failure to perform its obligations hereunder (except the payment of sums due) to the extent caused by an event beyond such party's reasonable control, including, without limitation, government regulations or orders, state of emergency, acts of God, war, warlike hostilities, terrorism, riots, epidemics, fire, strikes, lockouts, or similar cause(s), provided that such party promptly notifies the other in writing of such occurrence and makes its best efforts to promptly eliminate the effect thereof.

17. Notices: Any notice or other communication given by either party to the other regarding these terms and conditions will be deemed given and served when personally delivered, delivered by reputable international courier requiring signature for receipt, or five (5) business days after mailing (postage prepaid), addressed to the party at its notice address. Either party may change its notice address by written notice to the other. Customer's notice address shall be its address appearing on the accepted purchase order. APS's notice address shall be: Advanced Public Safety, Inc., Attn : President, 500 Fairway Drive, Suite 204, Deerfield Beach, FL 33441, with copy to Trimble Navigation Limited, Attn: General Counsel, 935 Stewart Drive, Sunnyvale, CA 94085.

Agency:

Advanced Public Safety:

Signature



Signature

Name

JACK SIMES

Name

Date

JUNE 14, 2011

Date

Exhibit A

Software & Hardware Purchased

APS Price Proposal: Colton Police Department E-Citation System (NM-10-001)			
Quantity	Item/Description	Unit Cost	Total Cost
	Software:		
20	PocketCitation Software (<u>Notice to Appear</u> & <u>Administrative</u> electronic citation software for the handheld devices)	\$999	\$19,980
1	SmartNumber Software (Automatic citation numbering software for both citations)	\$7,500	\$7,500
1	SmartExport Software to Spillman RMS (electronic transfer of citation data)	\$7,500	\$7,500
1	Import Software by Spillman to upload APS citations into Spillman RMS	\$18,115	\$18,115
1	SmartExport Software to County Court System (electronic transfer of citation data)	included **	included **
10	QuickTicket Software (patented electronic citation software for the mobile computers)	included	included
10	QuickVoice Software (patented voice response of NCIC & CLETS queries)	included	included
	Total Software		\$53,095
	Hardware:		
20	MC75A Bundle with Bluetooth, WLAN 802.11 A/B/G, 2D Imager, Camera, 256MB/1GB, 1.5 Extended Battery, QWERTY Keypad, & GPS, Windows Mobile 6.5, Single Slot USB Cradle, Line Cord, 110 volt Power Supply, and USB-USB Mini	\$1,879	\$37,580
20	Motorola MC75 Magstripe Reader	\$179	\$3,580
20	Motorola MC75 12 volt power supply	\$115	\$2,300
20	Zebra RW420 Printer with Bluetooth and 110 volt power supply	\$679	\$13,580
5	Zebra RW420 Case of Thermal Paper	\$79	\$395
Optional	Motorola MC75 Biometric Fingerprint Attachment (cost not included in total, only unit cost provided)	\$499	
	Total Hardware		\$57,435

	Support/Maintenance:		
1	Annual Software Maintenance/Support	\$9,342	\$9,342
1	Project Management	\$1,950	\$1,950
1	Training	\$1,500	\$1,500
	Total Support/Maintenance/Training		\$12,792
	Total		\$123,322

Please Note:

** APS is including the SmartExport software to the San Bernardino County Court System because we currently send citations to the Court System with other agencies inside of San Bernardino County.

Pricing is valid for 90 days from the RFP closing date. APS's standard payment terms are 50% due upon receipt of purchase order, 40% due upon initial software delivery & 10% due upon software acceptance & final hardware delivery.

Year one of software annual maintenance is included in the total cost above. The only additional costs associate with the project are the second year annual maintenance cost of \$9,342.

EXHIBIT "B"

CITY OF COLTON INSURANCE REQUIREMENTS FOR CONSULTANTS

Consultant shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage:

Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability:* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability:* Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); (3) *Workers' Compensation and Employers' Liability:* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability:* \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Contract/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* \$1,000,000 per accident for bodily injury and property damage; (3) *Workers' Compensation and Employer's Liability:* Workers' compensation limits as required by the Labor Code of the State of California. Employers' Liability limits of \$1,000,000 per accident for bodily injury or disease

Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

General Liability. (1) The City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the Work or operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it.

Automobile Liability. (1) The City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it.

Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the consultant.

All Coverages. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers.

Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers.

Professional Liability Insurance. All architects, engineers, consultants or design professionals shall also procure and maintain, for a period of five (5) years following completion of the Contract, errors and omissions liability insurance with a limit of not less than \$1,000,000 per occurrence. This insurance shall name the City, its directors, officials, officers, employees, agents and volunteers as additional and insureds with respect to Work performed, and shall otherwise comply with all requirements of this Section.

Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

Verification of Coverage. Consultant shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Subcontractors. All subcontractors shall meet the requirements of this Section before commencing Work. In addition, Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.