

City of Las Cruces®

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Council Action and Executive Summary

Item # 3 Ordinance/Resolution# 11-099 Council District: All

For Meeting of November 1, 2010

(Adoption Date)

TITLE: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES ON BEHALF OF THE LAS CRUCES POLICE DEPARTMENT (LCPD) TO ACCEPT THE SYSTEM IMPLEMENTATION AGREEMENT WITH MASYS CORPORATION (FORMERLY "POSITRON FRONT LINE") TO PROVIDE SOFTWARE LICENSES FOR VIPER MOBILE SOFTWARE, SOFTWARE MAINTENANCE SERVICES AND USER TRAINING ACCORDING TO THE SCHEDULE AS DEFINED IN THE CONTRACT AND TO RATIFY THE CITY MANAGER'S SIGNATURE ON THE CONTRACT TO MEET IMPLEMENTATION DEADLINES.

PURPOSE(S) OF ACTION: This contract will provide the software, software maintenance, and user training to support the mobile data terminals in LCPD vehicles and all Region VI first responder interoperability partners.

Drafter and Staff Contact: Auguie Henry III		Department: LCPD / GAO		Phone: (575) 541-2281	
Department	Signature	Phone	Department	Signature	Phone
LCPD, Chief of Police		528-4200	Budget		541-2107
GAO		541-2281	Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: The US Dept. of Justice (DOJ) FY2005 Community Oriented Policing Services (COPS) Technology program provided funding for LCPD to purchase mobile data terminals (MDT's) for installation in the LCPD fleet, as well as the vehicles from Region VI Interoperability area partner law enforcement and other first responders vehicles. A second grant from the DOJ FY2007 COPS Technology Program for \$570,303 (with a City match of \$190,101 for a total project cost of \$760,404) provided funding to purchase software licenses to operate the MDT's in the LCPD and other partner first responder vehicles. This contract with Masys Corporation for \$601,473 will provide the final step in the process of upgrading LCPD and all its Region VI partners to interoperability communications. This application/contract will also tie MVRDA, LCPD, and the other participants into one communications net providing expanded public safety connectivity.

(Continue on additional sheets as required)

SUPPORT INFORMATION:

1. Resolution
2. Exhibit "A" contract with Masys Corporation
3. Exhibit "B" letter requesting "Sole Source" authorization from DOJ

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
	<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)	
			<input type="checkbox"/> Proposed funding is from fund balance in the (# and Fund Name) Fund.
Does this action create any revenue	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: (Fund #) in the amount of \$ _____ for FY ____.
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

FUND EXPENDITURE SUMMARY

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
2470 Department of Justice Programs	24147050-722112-37004	\$601,473	\$678,901	\$77,428	Remaining funds are to be utilized for any contingency needed to complete the contract.

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; and this contract will immediately be in effect and allow LCPD to continue with completion of the project and expenditure of the 2007 DOJ COPS grant funds.

(Continue on additional sheets as required)

2. Vote "No"; and this contract will be terminated under the agreement terms and this phase of the interoperability program will be suspended.
3. Vote to "Amend"; is not an option at this time as the contract was agreed and signed to meet operational implementation deadlines.
4. Vote to "Table"; is not a viable option at this time as the contract has begun implementation to meet contractual milestones.

REFERENCE INFORMATION

1. **Resolution 06-144** A resolution authorizing the City of Las Cruces to accept grant funds awarded in the amount of \$981,360 to the Las Cruces Police Department, from the U.S. Department of Justice, Office of Community Oriented Policing Services, and to adjust the fiscal year 2005/2006 budget.
2. **Resolution 08-165** Resolution for the City of Las Cruces to accept the award of funds from the US Department of Justice, COPS FY 2007 Technology Program (TECH) in the amount of \$570,303.00 and amend the FY 2007/2008 budget.

RESOLUTION NO. 11-099.

TITLE:

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES ON BEHALF OF THE LAS CRUCES POLICE DEPARTMENT (LCPD) TO ACCEPT THE SYSTEM IMPLEMENTATION AGREEMENT WITH MASYS CORPORATION (FORMERLY "POSITRON FRONT LINE") TO PROVIDE SOFTWARE LICENSES FOR VIPER MOBILE SOFTWARE, SOFTWARE MAINTENANCE SERVICES AND USER TRAINING ACCORDING TO THE SCHEDULE AS DEFINED IN THE CONTRACT AND TO RATIFY THE CITY MANAGER'S SIGNATURE ON THE CONTRACT TO MEET IMPLEMENTATION DEADLINES.

The City Council is informed that:

WHEREAS, the City of Las Cruces on behalf of the Las Cruces Police Department (LCPD) has entered into a contract with Masys Corporation; and

WHEREAS, the contract will provide the software package, software maintenance, and user training, for the final phase of the interoperability connectivity by use of mobile data terminals in first responder vehicles and MVRDA.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT, the Las Cruces Police Department is authorized to proceed with execution of the contract with Masys Corporation.

(II)

THAT, the City Council does hereby ratify and approve the City Manager's signature approving acceptance of the contract to meet implementation deadlines.

(III)

THE City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 1st day of November, 2010.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by: _____

Seconded by: _____

Approved as to Form:



City Attorney

SYSTEM IMPLEMENTATION AGREEMENT

This System Implementation Agreement (*this "Agreement"*) is entered into this 30th day of SEPTEMBER 2010 (*the "Effective Date"*), by and between City of Las Cruces (*the "Client"*) and Masys Corporation, a Minnesota company, formerly doing business as Positron Front Line, having its primary place of business at 6200 Stoneridge Mall Road, Suite 400, Pleasanton, California 94588 (*"Masys"*).

RECITALS

WHEREAS, the Client has determined that it requires the implementation of an automated computer system as specified herein; and

WHEREAS, Masys is qualified to provide the services specified in this Agreement and, subject to the terms and conditions set forth in this Agreement, Masys desires to provide such services;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Client and Masys hereby agree as follows:

AGREEMENT

1.0 Definitions

Capitalized terms used herein and in any exhibit hereto shall have the definitions set forth on Exhibit 1 attached hereto and incorporated herein by this reference, unless otherwise defined herein.

2.0 Scope of Work

Masys shall provide all design, development, installation, consulting, system integration, project management, training and technical services set forth in the Quote Document attached hereto as Exhibit 2 and incorporated herein by this reference (*the "Quote Document"*) in connection with the delivery and implementation of the System.

3.0 Term of Agreement

- 3.1 This Agreement shall take effect on the Effective Date after (i) it has been fully executed by duly authorized representatives of both parties, and (ii) Masys has received written notification from the Client that any certification or approval of this Agreement required by statute, ordinance, or established policy of the Client has been obtained.
- 3.2 The schedule for the implementation of the System shall be governed by a mutually agreed to project schedule.
- 3.3 Unless earlier terminated as provided for in Section 12 hereof, this Agreement will remain in effect from the Effective Date until all tasks set forth in the Quote Document have been completed and all amounts payable hereunder have been paid in full.

4.0 Contract Price

The Client shall pay to Masys the total amount set forth in the Quote Document for those products and services purchased by the Client (*the "Contract Price"*) in consideration for the delivery and implementation of the System in accordance with the Quote Document and specifically excludes all sales

tax(s). The Client hereby represents and warrants that it has duly appropriated or otherwise set aside funds in an amount at least equal to the Contract Price to satisfy its payment obligations hereunder.

5.0 Payments

- 5.1 The Client shall make payments to Masys (*the "Milestone Payments"*) in accordance with the Milestone Payment Schedule as set forth in the Quote Document (*the "Milestone Payment Schedule"*). The amount to be paid by the Client shall be based on the specified price assigned to each deliverable as listed in the Quote Document.
- 5.2 Masys shall prepare and submit invoices for payment by the Client under this Agreement. Invoices for payments hereunder shall be submitted to the following address:

City of Las Cruces
 Attention: Deputy Chief Jaime Montoya
 217 E. Picacho Ave.
 Las Cruces, NM 88001

All payments shall be made within thirty (30) days from the date of invoice by electronic funds transfer to Masys's account specified in writing, or by check made payable to "Masys Corporation" and delivered to 6200 Stoneridge Mall Road, Suite 400, Pleasanton, California 94588, or by such other means as may be mutually acceptable to the parties.

- 5.3 Unless specified in the Quote Document, the prices set forth herein do not include any federal, state or local excise, sales, or lease taxes now in force or which may be enacted in the future, all such amounts being the sole and independent responsibility of the Client for direct payment to such taxing authority. The prices are inclusive of any gross income or similar taxes and any amount of withholding taxes, Social Security, insurance, and unemployment insurance with respect to Masys employees.
- 5.4 Failure to pay any amount owing hereunder when such amount is due shall constitute a material default under this Agreement and could result in the termination of this Agreement. The Client shall reimburse Masys for all collection fees, including reasonable attorneys' fees and expenses, incurred by Masys in connection with the collection of any amount owing hereunder.

6.0 Client Responsibilities

The Client agrees to provide those services and facilities necessary for the completion of this project which are set forth as the Client's obligations or responsibilities (*the "Client Responsibilities"*) in the Quote Document. The Client acknowledges that the dates mutually agreed to for completion of the services to be provided by Masys under this Agreement depend upon the timely fulfillment of the Client Responsibilities. Masys shall not be responsible for any delays in the directly and primarily caused by the Client's failure to perform the Client Responsibilities. The Client's failure to perform the Client Responsibilities shall constitute a material default under the Agreement. The Client shall respond within ten (10) business days to any written request submitted by Masys for information, clarification or approval of any designs, specifications, documents, or proposed change orders or amendments. The Client's failure to respond within this 10-day response period shall constitute a material default under this Agreement.

7.0 Project Manager and Client Representative

- 7.1 Masys shall designate, in a written notice delivered in accordance with Section 33 hereof, a single individual to act as the project manager (*the "Project Manager"*). The Project Manager shall ensure Masys's compliance with, and shall coordinate appropriate schedules in connection with, Masys's

obligations hereunder. Masys may change the individual designated hereunder by providing the Client with advance written notice delivered in accordance with Section 33 hereof designating the new individual authorized to act as the Project Manager.

- 7.2 The Client shall designate, in a written notice delivered in accordance with Section 33 hereof, a single individual to act as the Client's authorized representative for purposes of this Agreement (*the "Client Representative"*). Such individual (a) must be authorized to act on the Client's behalf with respect to all matters relating to this Agreement; (b) shall ensure the Client's compliance with its responsibilities under this Agreement; and (c) shall coordinate appropriate schedules in connection with Masys's services under this Agreement. The Client may change the individual designated hereunder by providing Masys with advance written notice delivered in accordance with Section 33 hereof designating the new individual authorized to act as the Client Representative.

8.0 Changes

The scope and schedule of services and materials provided under this Agreement may only be changed by a written change order (a *"Change Order"*) mutually agreed upon and signed by duly authorized representatives of each of the parties. When a change causes a modification to the Contract Price or the amount of time needed to complete such change, the Milestone Payment Schedule and Project Schedule shall be amended, as necessary.

9.0 Software License and Transfer

- 9.1 Except as specifically provided herein, Masys shall at all times retain all title and interest in and to each of the Masys Applications and all Derivative Works, Maintenance Modifications, Enhancements and Documentation with respect thereto and all Masys Confidential Information.
- 9.2 Upon payment of the appropriate fees, Masys will grant to the Client a limited right to use the Masys Application, in Object Code only, pursuant to, and subject to the terms of, a software license agreement substantially in the form attached hereto as Exhibit 3 (the *"Software License Agreement"*).
- 9.3 Masys may provide to the Client certain third-party software applications in the quantities requested by the Client pursuant to this Agreement (*the "Third-Party Software"*). The right to use any such Third-Party Software may be granted to the Client under the Software License Agreement or pursuant to a separate software license agreement with the developer of such Third-Party Software. The Client shall have no right to use such Third-Party Software until the Client has executed the Software License Agreement or a separate software license agreement with the developer of such Third-Party Software, as applicable, and until the Client has paid for all license or sublicense fees in connection therewith. Masys will integrate such Third-Party Software into the System and such Third-Party Software will constitute a deliverable for purposes of this Agreement. If for any reason it is determined that insufficient licenses or sublicenses for such Third-Party Software have been purchased, or that for any reason more licenses or sublicenses are required for System operation, the Client shall be responsible for any additional costs associated with obtaining such additional licenses and the costs and fees associated with integration of such additional Third-Party Software into the System. The Client shall have no right to the Source Code with respect to any Third-Party Software.

10.0 Confidential Information

- 10.1 All Client Confidential Information (*as defined below*) shall be held in strict confidence by Masys, and Masys shall not, without the Client's prior written consent, (a) disclose such information to any person or entity other than to Masys's employees or consultants legally bound to abide by the terms hereof and having a need to know such information in connection with Masys's performance of its obligations hereunder, or (b) use such information other than in connection with the performance of

its obligations hereunder. The term "Client Confidential Information" shall include all Client data and other written information of a confidential nature clearly labeled by the Client as being confidential. Masys understands and agrees that the unauthorized use or disclosure of Client Confidential Information may irreparably damage the Client. In the event of Masys's breach or threatened breach of any of the provisions in this Section 10.1, the Client shall be entitled to an injunction obtained from any court having appropriate jurisdiction restraining Masys from any unauthorized use or disclosure of any Client Confidential Information.

- 10.2** All Masys Confidential Information (*as defined below*) shall be held in strict confidence by the Client, and the Client shall not, without Masys's prior written consent, (a) disclose such information to any person or entity other than to the Client's employees or consultants legally bound to abide by the terms hereof and having a need to know such information in connection with the Client's performance of its obligations hereunder, or (b) use such information other than in connection with the performance of its obligations hereunder. The term "Masys Confidential Information" shall include the Masys Applications and all other software applications developed by Masys, whether or not licensed to the Client, as well as any written information disclosed by Masys to the Client under this Agreement, including, but not limited to, any trade secrets, confidential knowledge, data, information relating to Masys products, processes, know-how, designs, formulas, methods, developmental or experimental work, improvements, discoveries, plans for research, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers, information obtained through contact with Masys's customers, proprietary information of Masys's customers, and information regarding the skills and compensation of Masys's employees or other consultants. The Client understands and agrees that the Masys Confidential Information constitutes a valuable business asset of Masys, the unauthorized use or disclosure of which may irreparably damage Masys. In the event of the Client's breach or threatened breach of any of the provisions in this Section 10.2, Masys shall be entitled to an injunction obtained from any court having appropriate jurisdiction restraining the Client from any unauthorized use or disclosure of any Masys Confidential Information.
- 10.3** Notwithstanding Section 10.1 or Section 10.2 hereof, neither Client Confidential Information nor Masys Confidential Information shall include information which the recipient can demonstrate by competent written proof (a) is now, or hereafter becomes, through no act or failure to act on the part of the recipient, generally known or available or otherwise part of the public domain; (b) is rightfully known by the recipient without restriction on use prior to its first receipt of such information from the disclosing party as evidenced by its records; (c) is hereafter furnished to the recipient by a third party authorized to furnish the information to the recipient, as a matter of right and without restriction on disclosure; or (d) is the subject of a written permission by the disclosing party to disclose.
- 10.4** Notwithstanding Section 10.1 or Section 10.2 hereof, disclosure of Client Confidential Information or Masys Confidential Information shall not be precluded if:
- (a) such disclosure is in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof; provided, however, that the recipient of such confidential information shall first have given notice to the other party and shall have made a reasonable effort to obtain a protective order requiring that the information to be disclosed be used only for the purposes for which the order was issued;
 - (b) such disclosure is necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary for such purpose; or
 - (c) the recipient of such confidential information received the prior written consent to such disclosure from the disclosing party, but only to the extent permitted in such consent.

- 10.5 The obligations hereunder with respect to each item of Client Confidential Information and Masys Confidential Information shall survive the termination of this Agreement.
- 10.6 Failure of either party to adhere to this section shall constitute a material default of this Agreement.
- 10.7 Notwithstanding previous sections 10.01 through 10.06, the Client shall disclose all documents that are subject to the Inspection of Public Records Act of New Mexico.

11.0 Informal Dispute Resolution

- 11.1 The parties to this Agreement shall exercise their best efforts to negotiate and settle promptly any Dispute that may arise with respect to this Agreement in accordance with the provisions set forth in this Section 11.1.
 - (a) If either party (*the "Disputing Party"*) has a Dispute, that party shall bring the matter to the attention of the other party at the earliest possible time via a Dispute Notice, in order to resolve such Dispute.
 - (b) If such Dispute is not resolved, or a mutually agreed to schedule which adherence to would resolve the Dispute (*the "Resolution Schedule"*) is not agreed to by the Project Manager's within ten (10) business days, the Disputing Party shall deliver to both second levels of representatives, below, a Dispute Notice.
 - (c) Receipt by the second level of representatives of a Dispute Notice shall commence a time period within which the respective representatives shall communicate with one another in good faith in order to resolve the Dispute. If the respective representatives cannot resolve the Dispute or develop a mutually agreed to Resolution Schedule within the given time period, the Dispute shall be escalated to the next higher level of representatives in the sequence as set forth below.
 - (d) If the third level of representative, below, are unable to resolve the Dispute or develop a mutually agreed to Resolution Schedule in accordance with the escalation procedures set forth below, the parties may assert their rights under this Agreement.

Escalation Timetable (<u>Business Days</u>)	Masys <u>Representative</u>	Client <u>Representative</u>
0 to 10 th	Project Manager	DC Jaime Montoya, LCPD
11th to 15th	Operations Manager	Hugo Costa, MVRDA
16th to 20th	Executive Officer	Auguie Henry, CLC GAO

- 11.2 Notwithstanding the fact that the parties may be attempting to resolve a Dispute in accordance with the informal dispute resolution procedures set forth in Section 11.1 hereof, the parties agree to continue without delay all their respective responsibilities under this Agreement that are not affected by the Dispute.
- 11.3 In the event that the parties are unable to resolve a Dispute by complying with the informal Dispute resolutions procedures set forth in Section 11.1 hereof, the Dispute shall be settled in accordance with the terms set forth herein.
- 11.4 Notwithstanding the foregoing, either party may, before or during the exercise of the informal dispute resolution procedures set forth in Section 11.1, apply to a court having jurisdiction for a

temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of such informal dispute resolution procedures.

11.5 Failure of either party to adhere to this section shall constitute a material default of this Agreement.

12.0 Termination

12.1 Termination for Default. Subject to completion of the dispute resolution procedures set forth in Section 11.1 hereof, in the event that either party hereto materially defaults in the performance of any of its obligations hereunder, the other party may, at its option, terminate this Agreement by providing the defaulting party thirty (30) days' prior written notice of termination delivered in accordance with Section 33 hereof, which notice shall identify and describe with specificity the basis for such termination, and allow the non-terminating party to either cure the default or develop a mutually agreed to Resolution Schedule. If, prior to the expiration of such notice period, the defaulting party cures such default to the satisfaction of the non-defaulting party (*as evidenced by written notice delivered by the non-defaulting party in accordance with Section 33 hereof*), termination shall not take place.

12.2 Termination Without Cause. The Client may terminate this Agreement without cause by providing Masys at least thirty (30) days' prior written notice of termination delivered in accordance with Section 33 hereof.

12.3 Consequences of Termination. Upon termination of this Agreement for whatever reason:

- (a) Masys shall be under no further obligation to provide services hereunder;
- (b) Masys shall return to the Client all Client Confidential Information in Masys's possession and shall certify in a written document signed by an officer of Masys that all such information has been returned;
- (c) the Client shall return to Masys all Masys Confidential Information in the Client's possession (*including, without limitation, all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment or other documents or property relating to such Masys Confidential Information and all copies of any of the foregoing (in whatever medium recorded)*) and all Third Party Products in its possession not yet accepted and not yet paid for in full together with all copies of documentation and other material related thereto, and shall certify in a written document signed by the Client Representative identified in Section 7.2 hereof that all such information and material has been returned;
- (d) the Client shall cause payments to be made to Masys within thirty (30) days of receipt of invoice for all outstanding invoices submitted to the Client prior to the effective date of the termination and for all costs and expenses incurred prior to the effective date of the termination to the extent not invoiced prior to the effective date of the termination, based upon Masys's then-current labor rates;
- (e) in the event of termination by the Client for convenience under Section 12.2 hereof, the Client shall cause payments to be made to Masys within thirty (30) days of receipt of invoice for all cancellation, restocking or residual fees resulting from the cancellation or return of Third Party Products ordered from or shipped by the vendor thereof prior to the effective date of the termination.
- (f) in the event of termination by the Client for convenience under Section 12.2 hereof, any license fees paid prior to the effective date of the termination shall be forfeited by the Client.

- (g) All provisions of this Agreement that by their nature would reasonably be expected to continue after the termination of this Agreement shall survive the termination of this Agreement.

13.0 Indemnification

Masys agrees to protect, defend, indemnify, and save the Client, its agents, officials, employees, or any firm, company, organization, or individual to whom the Client may be contracted, harmless from and against any and all claims, demands, actions, and causes of action of which Masys is given prompt notification and over which Masys is given control to resolve (*the "Indemnified Matters"*), which may arise on account of illness, disease, loss of property, services, wages, death or personal injuries resulting from Masys's negligence in the performance of the services hereunder; provided, however, that in no event shall Masys be liable for any loss or damages related to the operation, delay or failure of software or equipment provided by Masys or for the accuracy or completeness of data, and under no circumstances shall Masys be liable for special, incidental or consequential damages. Masys agrees to further indemnify the Client for all reasonable expenses and attorney's fees incurred by the Client in connection with the Indemnified Matters.

14.0 Insurance

14.1 Masys shall procure and maintain in effect during the term of this Agreement the following insurance coverages, naming Client as an additional insured, with an insurance company or companies authorized to do business in the State of California and approved by the Client with a Best rating of no less than A:VII:

- (a) Workers' Compensation and Employers Liability insurance in accordance with the laws of the State of California with liability limits of Five Hundred Thousand Dollars (\$500,000.00) per accident.
- (b) Comprehensive General Liability and Broad Form Comprehensive General Liability or Commercial General Liability including bodily injury, personal injury, and property damage in the amount of a combined single limit of One Million Dollars (\$1,000,000), each occurrence, and Two Million Dollars (\$2,000,000) in aggregate limit.
- (c) Comprehensive Auto Liability including bodily injury, personal injury and property damage in the amount of a combined single limit of One Million Dollars (\$1,000,000.00). Coverage must include all automobiles utilized by Masys in connection with its performance of the services hereunder.

14.2 Thirty (30) days prior written notice will be given to the Client in the event of any material change in or cancellation of the policy.

14.3 Masys shall give prompt written notice to the Client of all known losses, damages, or injuries to any person or to property of the Client or third persons that may be in any way related to the services being provided hereunder or for which a claim might be made against the Client. Masys shall promptly report to the Client all such claims that Masys has noticed, whether related to matters insured or uninsured. No settlement or payment for any claim for loss, injury or damage or other matter as to which the Client may be charged with an obligation to make any payment or reimbursement shall be made by Masys without the prior written approval of the Client.

15.0 Shipping and Risk of Loss

All sales and deliveries are F.O.B. Destination at which time risk of loss shall pass to the Client. Masys shall retain risk of loss for equipment, goods and materials delivered to Masys's possession at its development facilities for purposes of System development and integration until such equipment, goods and materials have been delivered to the Client's facilities. Deliveries to the Client shall be addressed to

the address set forth in Section 33 hereof unless the Client designates a different address in a written notice delivered in accordance with Section 33 hereof. Masys reserves the right to make deliveries to the Client in installments, and this Agreement shall be severable as to such installments.

16.0 Equipment Compatibility

- 16.1** The Masys Applications will not fail to perform in accordance with the performance standards set forth in the Quote Document as a result of the equipment specified in the Pricing Summary and provided by Masys under this Agreement. Masys shall not be responsible for the performance of the Masys Applications in combination with any other products, elements, or components not supplied by Masys except to the extent that Masys has provided the interface between such equipment and non-Masys products, elements or components pursuant to this Agreement.
- 16.2** For any equipment specified in the Pricing Summary and provided by Masys under this Agreement that is no longer available due to model changes or other reasons beyond the reasonable control of Masys, Masys shall provide equipment of same or equal quality, performance and capacity.
- 16.3** THE CLIENT SHALL BE RESPONSIBLE FOR ANY EQUIPMENT NOT PROVIDED DIRECTLY BY Masys UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE CONDITION, OPERATION, AND PERFORMANCE IN THE SYSTEM OF SUCH EQUIPMENT, AND FOR THE INSTALLATION OF SUCH EQUIPMENT AND ASSOCIATED SOFTWARE, INTEGRATION INTO ANY APPLICABLE COMMUNICATIONS NETWORK, COMPATIBILITY WITH Masys SOFTWARE, PERFORMANCE AND DATA CAPACITIES, Masys PERSONNEL COSTS AND RELATED EXPENSES DUE TO TIME LOST DUE TO PROBLEMS WITH CLIENT-PROVIDED SOFTWARE OR EQUIPMENT, AND ANY IMPACT ON Masys SOFTWARE OR EQUIPMENT WHICH IMPACTS OVERALL SYSTEM OPERATION OR PERFORMANCE. Masys WILL UNDERTAKE THE AFOREMENTIONED RESPONSIBILITIES FOR CLIENT-PROVIDED EQUIPMENT ONLY UPON THE PAYMENT OF ADDITIONAL INTEGRATION FEES EXPRESSLY AND SPECIFICALLY DESIGNATED FOR SUCH PURPOSE IN THIS AGREEMENT OR BY A CHANGE ORDER HERETO.

17.0 Limited Warranty

- 17.1** Masys warrants that each Masys Application shall, for a period as stated in accordance with the Quote Document, conform to the User Guide with respect to such Masys Application.
- 17.2** As specified in the Quote Document, the Client shall receive warranty, maintenance and support services in accordance with Masys's then-current Maintenance and Support Guidelines (*the "Maintenance and Support Guidelines"*), pursuant to which Masys will provide warranty support and, upon expiration of the warranty period and payment of the applicable annual support fee, extended support for such Masys Applications. The terms and provisions of the Maintenance and Support Guidelines are hereby attached to this Agreement as Exhibit 4, and incorporated herein by this reference. The foregoing warranty is in lieu of all other warranties, written or oral, statutory, express or implied, including without limitation any warranty of merchantability, warranty of fitness for a particular purpose or against infringement.
- 17.3** Masys makes no warranty with respect to any Third-Party Products. Warranty coverage for Third-Party Products shall be provided in accordance with the original manufacturers' warranty provisions.

18.0 Limitation of Liability

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF PROFIT OR BUSINESS, OR FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER ARISING IN AN ACTION OF CONTRACT, TORT OR

OTHER LEGAL THEORY AND REGARDLESS OF WHETHER SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THE LAWS IN SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, AND THE ABOVE LIMITATION OR EXCLUSION SHALL BE CONSTRUED SO AS TO GIVE IT THE MAXIMUM PRACTICAL EFFECT WITHOUT VIOLATING SUCH LAWS. IF A COURT OF COMPETENT JURISDICTION DETERMINES THAT RELEVANT LAWS IN FORCE MAY IMPLY WARRANTIES AND LIABILITIES WHICH CANNOT BE EXCLUDED OR LIMITED OR WHICH CAN ONLY PARTLY BE EXCLUDED OR LIMITED, THEN THE LIMITS ON MASYS'S LIABILITY SET OUT IN THIS AGREEMENT SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. MASYS'S LIABILITY FOR ANY CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL AMOUNT PAID TO MASYS IN THE LAST SIX (6) MONTHS UNDER THIS AGREEMENT.

19.0 Non-Discrimination

Masys agrees that in performing its tasks under this Agreement, it shall not discriminate against any worker, employee, or applicant, or any member of the public, because of age, race, sex, creed, color, religion, or national origin, nor otherwise commit an unfair employment practice in violation of any state or federal law.

20.0 Conflict of Interest

Masys warrants that, to the best of its knowledge and belief, no person except bona fide employees, agents, consultants or representatives of Masys or any of its subcontractors has been employed or retained to solicit or secure this Agreement.

21.0 Independent Contractor Status

The Client and Masys are independent contractors under this Agreement, and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the parties hereto. Neither party shall have any authority to enter into agreements of any kind on behalf of the other and shall have no power or authority to bind or obligate the other in any manner to any third party. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Each party hereto represents that it is acting on its own behalf and is not acting as an agent for or on behalf of any third party.

22.0 Assignment

Neither party hereto may assign its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, that Masys may assign this Agreement to its successor in connection with a sale of its business without obtaining consent of any party. Subject to the foregoing, each and every covenant, term, provision and agreement contained in this Agreement shall be binding upon and inure to the benefit of the parties' permitted successors, executors, representatives, administrators and assigns.

23.0 Third Party Beneficiaries

This Agreement is entered into for the sole benefit of the Client and Masys and, where permitted above, their permitted successors, executors, representatives, administrators and assigns. Nothing in this Agreement shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries, property damage, or any other relief in law or equity in connection with this Agreement.

24.0 Governing Law

All questions concerning the validity, operation, interpretation, construction and enforcement of any terms, covenants or conditions of this Agreement shall in all respects be governed by and determined in accordance with the laws of the State of the Client's residence without giving effect to the choice of law principles thereof. The United Nations Convention on the International Sale of Goods shall not apply to any transactions contemplated by this Agreement.

25.0 This Section Intentionally Left Blank**26.0 Venue**

All legal proceedings brought in connection with this Agreement may only be brought in a state or federal court located in the County the Client resides in the State of the Client's residence. Each party hereby agrees to submit to the personal jurisdiction of those courts for any lawsuits filed there against such party arising under or in connection with this Agreement.

27.0 Advice of Counsel

Each party hereto has been afforded the opportunity to consult with counsel of its choice before entering into this Agreement. The parties agree that any ambiguity in this Agreement may not be construed against either party.

28.0 Amendment

No amendment or other modification of this Agreement shall be valid unless pursuant to a written instrument referencing this Agreement signed by duly authorized representatives of each of the parties hereto.

29.0 Waiver

In order to be effective, any waiver of any right, benefit or power hereunder must be in writing and signed by an authorized representative of the party against whom enforcement of such waiver would be sought, it being intended that the conduct or failure to act of either party shall imply no waiver. Neither party shall by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of this Agreement. No waiver of any right, benefit or power hereunder on a specific occasion shall be applicable to any facts or circumstances other than the facts and circumstances specifically addressed by such waiver or to any future events, even if such future events involve facts and circumstances substantially similar to those specifically addressed by such waiver. No waiver of any right, benefit or power hereunder shall constitute, or be deemed to constitute, a waiver of any other right, benefit or power hereunder. Unless otherwise specifically set forth herein, neither party shall be required to give notice to the other party, or to any other third party, to enforce strict adherence to all terms of this Agreement.

30.0 Force Majeure

Neither party will be liable for any failure or delay in the performance of its obligations under this Agreement (*and the failure or delay will not be deemed a default of this Agreement or grounds for termination*) if both of the following conditions are satisfied: (1) the failure or delay could not have been prevented by reasonable precautions, and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and (2) the failure or delay is caused, directly or indirectly, by reason of fire or other casualty or accident; strikes or labor disputes; inability to procure raw materials, equipment, power or supplies; war, terrorism or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency or intergovernmental body other than a party hereto; or any other act or condition

beyond the reasonable control of the non-performing party. Upon the occurrence of an event which satisfies both of the above conditions (a "Force Majeure Event"), the non-performing party will be excused from any further performance of those obligations under this Agreement affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay. Upon the occurrence of a Force Majeure Event, the non-performing party will immediately notify the other party by telephone (*to be confirmed by written notice within two (2) business days of the failure or delay*) of the occurrence of a Force Majeure Event and will describe in reasonable detail the nature of the Force Majeure Event.

31.0 Severability

If any provision of this Agreement shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of this Agreement shall remain in full force and effect.

32.0 Entire Agreement

This Agreement sets forth the final, complete and exclusive agreement and understanding between Masys and the Client relating to the subject matter hereof and supersedes all quotes, proposals understandings, representations, conditions, warranties, covenants, and all other communications between the parties (*oral or written*) relating to the subject matter hereof. Masys shall not be bound by any terms or conditions contained in any purchase order or other form provided by the Client in connection with this Agreement and any such terms and conditions shall have no force or effect. No affirmation, representation or warranty relating to the subject matter hereof by any employee, agent or other representative of Masys shall bind Masys or be enforceable by the Client unless specifically set forth in this Agreement.

33.0 Notices

All notices, requests, demands, or other communications required or permitted to be given hereunder must be in writing and must be addressed to the parties at their respective addresses set forth below and shall be deemed to have been duly given when (a) delivered in person; (b) sent by facsimile transmission indicating receipt at the facsimile number where sent; (c) one (1) business day after being deposited with a reputable overnight air courier service; or (d) three (3) business days after being deposited with the United States Postal Service, for delivery by certified or registered mail, postage pre-paid and return receipt requested. All notices and other communications regarding default or termination of this Agreement shall be delivered by hand or sent by certified mail, postage pre-paid and return receipt requested. Either party may from time to time change the notice address set forth below by delivering notice to the other party in accordance with this section setting forth the new address and the date on which it will become effective.

If to Masys:

Masys Corporation
6200 Stoneridge Mall Road, Suite 400
Pleasanton, California 94588
Attention: Contracts Administrator
Phone: 925-621-2700
Fax: 925-621-2791

If to the Client:

City of Las Cruces
Attention: Deputy Chief Jaime Montoya
217 E. Picacho Ave.

Las Cruces, NM 88001

34.0 Construction

The paragraph and section headings used in this Agreement or in any exhibit hereto are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement. Any term referencing time, days or period for performance shall be deemed calendar days and not business days, unless otherwise expressly provided herein.

35.0 Counterparts

This Agreement may be signed in two or more counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

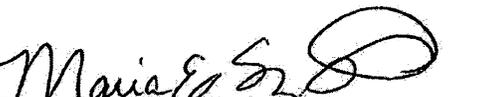
SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have hereunto set their hands as set forth below.

City of Las Cruces

Masys Corporation

By: 
Name: Terrence H. Moore
Title: City Manager

By: 
Name: MARIA SZYMANSKI
Title: CFO

APPROVED AS TO FORM:

City Attorney

EXHIBIT 1
To
System Implementation Agreement

DEFINITIONS

This Exhibit is attached to, incorporated into, and forms a part of the System Implementation Agreement, dated _____, 20__ between Masys and the Client (*herein referred to as the "Agreement"*). Capitalized terms used in the Agreement or any exhibit thereto shall have the definitions set forth herein unless otherwise defined in the Agreement. In the event of conflict between the terms and conditions set forth herein and those set forth in the Agreement, the terms and conditions set forth in the Agreement shall prevail.

1. **"As-Built Specifications"** shall mean, with respect to any of the Masys Applications, the specifications for such Masys Application delivered to the Client upon the Client's acceptance of such Masys Application in accordance with the Quote Document.
2. **"Client"** is defined in the preamble to the Agreement.
3. **"Client Confidential Information"** is defined in Section 10.1 of the Agreement.
4. **"Client Representative"** is defined in Section 7.2 of the Agreement.
5. **"Contract Price"** is defined in Section 4 of the Agreement.
6. **"Derivative Works"** shall mean, with respect to any Masys Application, any translation, abridgement, revision, modification, or other form in which such Masys Application may be recast, transformed, modified, adapted or approved after the Client's acceptance of the Masys Application in accordance with the Quote Document.
7. **"Dispute"** shall mean, with respect to an unresolved issue or controversy concerning a party's performance under this Agreement, which the non-Disputing Party has been made aware of through a Dispute Notice, which shall be delivered to the non-Disputing Party within a reasonable amount of time from the date the actions or inaction causing the Dispute occurred.
8. **"Dispute Notice"** shall mean, with respect to a writing signed by a duly authorized representative of the Disputing Party, titled "Dispute Notice", describing the Dispute in detail, including any time commitment and any fees or other costs involved, delivered in accordance with Section 33 of the Agreement.
9. **"Disputing Party"** is defined in Section 11.1 of the Agreement.
10. **"Documentation"** shall mean, with respect to any Masys Application, those printed instructions, manuals, and diagrams pertaining to and furnished with such Masys Application.
11. **"Effective Date"** is defined in the preamble to the Agreement.
12. **"Enhancement"** shall mean, with respect to any Masys Application, a computer program modification or addition, other than a Maintenance Modification, that alters the functionality of, or adds new functions to, such Masys Application and that is integrated with such Masys Application after the Client's acceptance of the Masys Application in accordance with the Quote Document, or that is related to such Masys Application but offered separately by Masys after the Client's acceptance of the Masys Application in accordance with the Quote Document.

13. **"Error"** shall mean, with respect to any Masys Application, a defect in the Source Code for such Masys Application that prevents such Masys Application from functioning in substantial conformity with the As-Built Specifications pertaining thereto.
14. **"Force Majeure Event"** is defined in Section 30 of the Agreement.
15. **"Initial Project Schedule"** is defined in Section 3.2 of the Agreement.
16. **"Indemnified Matters"** is defined in Section 13 of the Agreement.
17. **"Maintenance Modifications"** shall mean, with respect to any Masys Application, a computer software change to correct an Error in, and integrated into, such Masys Application, but that does not alter the functionality of such Masys Application and that is provided to the Client after the Client's acceptance of such Masys Application in accordance with the Quote Document under the Support Agreement relating to such Masys Application.
18. **"Milestone Payments"** is defined in Section 5.1 of the Agreement.
19. **"Milestone Payment Schedule"** is defined in Section 5.1 of the Agreement.
20. **"Object Code"** shall mean computer programs assembled or compiled from Source Code in magnetic or electronic binary form on software media, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse-compiling, or reverse-engineering.
21. **"Masys Application"** shall mean each software application developed by Masys and delivered to the Client under this Agreement and in accordance with the As-Built Specifications relating thereto, including all Maintenance Modifications thereto, all Derivative Works thereof, and all related Documentation.
22. **"Masys Confidential Information"** is defined in Section 10.2 of the Agreement.
23. **"Pricing Summary"** is defined in Section 5.1 of the Agreement.
24. **"Project Manager"** is defined in Section 7.1 of the Agreement.
25. **"Project Schedule"** is defined in Section 3.2 of the Agreement.
26. **"Resolution Schedule"** is defined in Section 11.1 of the Agreement.
27. **"Software License Agreement"** shall mean any software license agreement between Masys and the Client delivered in accordance with Section 9.2 of the Agreement pursuant to which Masys grants a limited license to use any of the Masys Applications in accordance with the terms and conditions thereof, as the same may be amended or otherwise modified from time to time.
28. **"Source Code"** shall mean computer programs written in higher-level programming languages, sometimes accompanied by English language comments. Source Code is intelligible to trained programmers and may be translated to Object Code for operation on computer equipment through the process of compiling.
29. **"Quote Document"** is defined in Section 2 of the Agreement.

30. **"Support Agreement"** shall mean any support agreement between Masys and the Client delivered in accordance with Section 17.2 of the Agreement pursuant to which Masys provides warranty and extended support for any of the Masys Applications in accordance with the terms and conditions thereof, as the same may be amended or otherwise modified from time to time.
31. **"System"** shall mean the Client's computer automated system consisting of the Masys Applications combined with deliverables specified in the Pricing Summary to be delivered and installed by Masys under the Agreement, including without limitation servers and other computer and network hardware and equipment, operating systems, any database or other third party software products, any PC or other workstation equipment having access to any of the Masys Applications, any communications interfaces and any wiring, cabling and connections.
32. **"Third-Party Products"** shall mean all software and hardware components specified in the Pricing Summary and delivered by Masys under this Agreement for integration into the System other than the Masys Applications.
33. **"Third-Party Software"** is defined in Section 9.3 of the Agreement.

**EXHIBIT 2
To
System Implementation Agreement**

QUOTE DOCUMENT

This Exhibit is attached to, incorporated into and forms part of the System Implementation Agreement, dated _____, 20__, between the Client and Masys (*herein referred to as the "Agreement"*). Capitalized terms used herein shall have the definitions set forth in the Agreement, unless otherwise defined herein. In the event of conflict between the terms and conditions set forth herein and those set forth in the Agreement, the terms and conditions set forth in the Agreement shall prevail.

This Exhibit Shall Follow This Cover Page.

A Tiburon Company

PositronFrontLine

GeoMobile Licenses
for
Las Cruces PD, NM

Summary

Item	Price
VIPER Mobile Licenses	\$442 260,00
Software Subtotal	\$442 260,00
Software Maintenance - Year 1	Included
Software Maintenance - Year 2	\$79 606,80
Software Maintenance - Year 3	\$79 606,80
Maintenance Subtotal	\$159 213,60
 GRAND TOTAL	 \$601 473,60

Project Scope of work:

- Software License for VIPER Mobile only (quantity 378)
- No installation, training, configuration or additional hardware
- Customer to provide all computer hardware.
- GPS equipment and in-vehicle communication modem are not included in this quote
- No other software or hardware will be installed
- Software Maintenance Services are included in price for Year 1.
- Software Maintenance Services includes:
 - Major releases of the purchased software. (Remote installation services not included.)
 - Hot fixes as required. Remote installation services included.
 - 24 x 7 Help Desk technical support (refer to Software Maintenance Contract)
- Software Maintenance Services do not include:
 - Support and upgrades to HW, operating system and 3rd party softwares

Model #	Description	Qty	List Price	Discounted Price	Total
	VIPER Mobile Software				
	VIPER Mobile Licenses	378			
				Subtotal	\$442 260,00
	TOTAL				\$442 260,00

Terms

- PRICING** All prices are in U.S. Funds.
Taxes, if applicable, are extra.
FOB Positron, Montreal. Shipping costs are prepaid and charged.
- PAYMENT** - \$110,565 payable within thirty (30) days of receipt of an invoice to be delivered upon completion of the update to the demo unit
- \$110,565 payable within thirty (30) days of receipt of an invoice to be delivered upon completion of the deployment of the initial production unit and mobile training
- \$221,130 payable within thirty (30) days of receipt of an invoice to be delivered upon completion of cutover

DELIVERY NA

VALIDITY 60 days

- No installation, training, configuration or additional hardware
- Customer to provide all computer hardware.
- GPS equipment and in-vehicle communication modem are not included in this quote
- No other software or hardware will be installed
- Software Maintenance Services includes:
 - Major releases of the purchased software. (Remote installation services not included.)
 - Hot fixes as required. Remote installation services included.
 - 24 x 7 Help Desk technical support (refer to Software Maintenance Contract)
- Software Maintenance Services do not include:
 - Support and upgrades to HW, operating system and 3rd party softwares

Revision History

Revision Level	Reason for Revision	Date Revised
-	Original	March 12, 2010
C	Changed payment terms and extended validity for another 60 days	July 16, 2010
D	Changed payment terms and extended validity for another 60 days	September 24, 2010

EXHIBIT 3
To
System Implementation Agreement

SOFTWARE LICENSE AGREEMENT

This Exhibit is attached to, incorporated into and forms part of the System Implementation Agreement, dated _____, 20___, between the Client and Masys (*herein referred to as the "Agreement"*). Capitalized terms used herein shall have the definitions set forth in the Agreement, unless otherwise defined herein. In the event of conflict between the terms and conditions set forth herein and those set forth in the Agreement, the terms and conditions set forth in the Agreement shall prevail

1. **License Grant.** Subject to these Terms and the Agreement, Masys grants to Client a personal, non-exclusive, non-transferable, non-sublicensable, license to use the Masys Application(s) at the location ("Site") and on the number of servers, workstations and users or other applicable metric set forth in the Quote (the "Permitted Workstation(s)" or "Permitted Use"), solely for Client's internal purposes, which shall include use on the Mesilla Valley Regional Dispatch Authority System, to copy the Masys Application(s) onto a storage device attached to each Permitted Workstation, and to make one copy solely for backup and disaster recovery purposes.
2. **Ownership.** Nothing herein will transfer or convey to Client any right, title or interest in or to the intellectual property rights in the Equipment or the Masys Application(s). The Masys Application(s) will be deemed Masys intellectual property, and all right, title and interest in and to the Masys Application(s) are vested in and will remain the property of Masys or its licensors. All ideas, concepts, methods, know-how and techniques related to the Masys Application(s) will remain the sole property of Masys. The Masys Application(s) is being licensed to Client only. Client agrees not to claim or contest the title or ownership of Masys or its licensors in or to the Masys Application(s) or the intellectual property rights therein.
3. **Restrictions.** Client will not itself, or through any Affiliate, agent or other third party: (a) sell, lease or sublicense or otherwise transfer the Masys Application(s); (b) decompile, disassemble, reverse engineer or otherwise attempt to derive Source Code from the Masys Application(s); (c) modify or enhance the Masys Application(s) or write or develop any derivative Masys Application(s) or any other functionally compatible, substantially similar or competitive products; (d) network the Masys Application(s) or use the Masys Application(s) to provide processing services to third parties, commercial timesharing, rental or sharing arrangements or otherwise use the Masys Application(s) on a service bureau basis; (f) provide, disclose, divulge or make available to, or permit use of the Masys Application(s) by any third party without Masys' prior written consent; or (g) use copy the Masys Application(s) except as permitted hereunder.
4. **Term and Termination.** The license granted hereby will remain in force until the terminated, if at all, due to a material breach by Client that is not cured within 15 days following notice. Termination of the license granted hereby will not limit Masys from pursuing all remedies available to it, including injunctive relief, nor will such termination relieve Client's obligation to pay all fees that have accrued or are otherwise owed by Client under the Agreement. Upon termination, Client will to the extent applicable (a) cease using the Masys Application(s), and (b) certify to Masys within one month after termination that Client has destroyed or has returned to Masys the Masys Application(s) and all copies. This requirement applies to copies in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other materials.

5. **Audit.** Upon forty-five (45) days written notice, Masys may audit Client's use of the Masys Application(s). Client agrees to cooperate with Masys' audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Client's normal business operations. Client agrees to pay within thirty (30) days of written notification any fees applicable to Client's use of the programs in excess of Client's license rights. If Client does not pay, Masys can end Client's maintenance and support, licenses and/or the Agreement. Client agrees that Masys shall not be responsible for any of Client's costs incurred in cooperating with the audit.

EXHIBIT 4
To
System Implementation Agreement

MAINTENANCE AND SUPPORT GUIDELINES

This Exhibit is attached to, incorporated into and forms part of the System Implementation Agreement, dated _____, 20__, between the Client and Masys (*herein referred to as the "Agreement"*). Capitalized terms used herein shall have the definitions set forth in the Agreement, unless otherwise defined herein. In the event of conflict between the terms and conditions set forth herein and those set forth in the Agreement, the terms and conditions set forth in the Agreement shall prevail

This Exhibit Shall Follow This Cover Page.

Maintenance and Support Terms and Conditions

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Applicability

These Maintenance and Support Terms and Conditions ("Maintenance and Support Terms and Conditions") applies if the Client has ordered any of the services detailed herein pursuant to the receipt of a Price Quote from Positron Front Line. Any services detailed herein that have not been ordered by the Client shall not apply or be provided to the Client by Positron Front Line.

These terms represent Positron Front Line's standard terms. These terms apply unless superseded by a specific Client agreement.

Term

Upon payment of the appropriate annual maintenance and support fees, Positron Front Line shall provide the Client with maintenance and support services as set forth in these Maintenance and Support Terms and Conditions for a twelve (12) month period commencing on the anniversary date of final acceptance and shall be automatically renewed for additional twelve (12) month periods until terminated in accordance with its terms.

Warranty

The following warranty coverage applies to newly purchased Positron Front Line products during the warranty period as well as to Positron Front Line Clients who purchase Help Desk Services after the warranty period. During the warranty period, Help Desk Services are included as part of the purchase price of Positron Front Line products.

Software Warranty

The following statement applies to Positron Front Line's licensed proprietary software:

Subject to the terms and conditions of the applicable Positron Front Line agreement, and or relevant license agreement, Positron Front Line warranties, for a 12 month period from the date of final acceptance of the system, that its proprietary licensed software will perform in accordance with the functional specifications described in the applicable product documentation.

This licensed software warranty includes workmanship, materials and fixes that Positron Front Line determines to be applicable to the Client. Licensed software warranty does not include software upgrades and new product releases.

Positron Front Line shall have no obligation under this warranty if the licensed software has been used other than in accordance with Positron Front Line's defined operating specifications; modified by a third party other than Positron Front Line; combined with hardware or software not certified by Positron Front Line as being compatible with the licensed software. If failure of the software is the result of causes outside of Positron Front Line's responsibility including but not limited to Acts of God, improper handling of equipment, improper storage of equipment, power / grounding issues, misuse of products, 3rd party hardware / software malfunction (e.g. Hardware, Operating System, SQL database, Network), computer security breach, virus attack or failure to comply with Positron Front Line maintenance guidelines and/or 3rd party product maintenance guidelines, Positron Front Line shall not be obligated to replace the licensed software or carry out the work to bring the system back into service.

Positron's software warranty covers the resolution of issues of priority 1, 2 and 3 (see Table A). Issues of lower priority will be addressed by Positron Front Line at its discretion on a best effort basis.

Client shall assist Positron Front Line in characterizing, documenting or replicating any alleged error or defect in the licensed software. In the event that Positron Front Line determines that such error or defect was not caused by the licensed software, but was the result of the Client's operating environment or for some other cause outside

of Positron Front Line's control, Positron Front Line shall be entitled to payment from the Client, including applicable expenses as per the then current Positron Front Line price list for time and materials expended by Positron Front Line in identifying and rectifying such error or defect. Positron Front Line will not be held responsible for correcting reported defects to licensed software which cannot be reproduced on either Positron Front Line's or the Client's systems.

Third Party Products Warranty

Positron will pass through to the Client any and all warranties provided by third parties products supplied to the Client by Positron Front Line. Third party products may include hardware and software products that Positron Front Line may install on behalf and for the Client on the hardware purchased by the Client from Positron Front Line. All third party warranties may be modified from time to time at the manufacturer's sole discretion. Issues arising after Positron Front Line's warranty to the Client has expired, but before the third-party product's warranty has expired will be handled by Positron at additional cost to the Client on a time and materials basis. Third party warranties may be one, two, or three years in length based on individual manufacturer defined warranty programs. Individual manufacturer restrictions, terms, durations and exclusions shall apply. Positron Front Line cannot guarantee the accuracy of 3rd party warranty information, nor how long individual 3rd party warranty programs shall remain unchanged.

First point of contact: the Client shall contact Positron to obtain warranty support service for a third party product and Positron Front Line shall promptly refer the Client to the appropriate warranty service provider.

Description of Technical Support Services

Technical Support Services

Positron Front Line's Technical Support Services department consists of technical specialists dedicated to providing the highest level of technical support services to its Clients.

Technical Support Services include the Help Desk Service, Software Updates Program, Product Specialist Services and Training Services.

The Help Desk Service and Software Updates Program are provided on a per-product basis and available on an annual or multi-year basis as detailed in the Client Quotation.

Help Desk Service

The Help Desk service includes technical support on products purchased from Positron Front Line including Positron Front Line licensed products and 3rd party products.

The Help Desk provides 24 x 7 technical support to Clients for all Positron Front Line products. The Help Desk is staffed by technical specialists, backed by 24 x 7 engineering support to handle high priority issues.

High priority issues that cannot be addressed expediently by the technical specialists alone are assigned to the 24 x 7 engineering support staff. If the issue cannot be addressed within the defined service level agreement (SLA) in Table A, an escalation process is automatically triggered involving senior management in order to take immediate action calling upon product experts as needed. This level of specialized technical support ensures timely, accurate and effective support for Positron Front Line's Clients.

For urgent and high priority tickets (see Table A), Clients are requested to contact the Help Desk by phone in order to obtain immediate technical support using the following toll-free number; **1 (877) 441-4648**.

For routine and lower priority tickets (see Table A), Clients are encouraged to send an email to support@positronfrontline.com which includes caller contact information, site identification, affected product and a

short problem description. An email reply will acknowledge that Positron Front Line has received the Client's email. A Help Desk representative will contact the Client with a ticket # and status within the timeframes defined in the SLA (see below for details).

Help Desk Call Taking Process

When a Help Desk call is received, it is answered by a Help Desk representative. The representative takes the caller's general information such as caller contact information, site identification, affected product and a short problem description. Based on the priority definitions detailed in Table A, the caller advises the Help Desk representative on the priority of the issue. The caller is given a ticket reference number and is passed onto a Help Desk technical specialist for problem investigation and resolution. If there are no Help Desk technical specialists available to immediately take the call, the caller is called back within the agreed upon SLA.

The Help Desk technical specialist will work over the phone and through remote high speed facilities (e.g. Cisco VPN, Sonic Wall, Remotely Anywhere, Remote Desktop) to troubleshoot and resolve the issue. The ticket is only 'closed' by Positron Front Line upon positive confirmation from the Client.

Escalation Procedure

When the call-back SLA specified in Table A is not met, the Help Desk is instructed to escalate the ticket to the people identified below and advise the Client that this escalation is in progress. Should the Client not receive a call from the Help Desk within the call-back SLA, the Client is free to contact the following escalation contacts directly (in the order indicated):

TITLE	PHONE
Help Desk Team Leader	(514) 916-3547
Sr. Manager Technical services	(514) 804-9334
Sr. Manager, SW Development	(514) 916-3995
VP Products	(514) 916-0423

Internal escalation is automatically triggered in the timeframes defined in the last two columns of Table A in order to ensure that high priority tickets are resolved as quickly as possible.

Note:

The call-back time is defined as the interval of time from the moment Positron Front Line Help Desk received a call for service to the moment a Positron Front Line technical specialist contacts the site.

Table A: Ticket Priorities and the Service Level Agreement (SLA)

The following table defines our standard ticket priorities and their respective response service level agreement (SLA):

PRIORITY	PRIORITY DEFINITION	SLA FOR CALL BACK BY TECHNICAL SPECIALIST WITHIN	PROBLEM RESOLUTION	TEAM LEADER ESCALATION (FROM CALL BACK TIME)	SENIOR MANAGEMENT ESCALATION (FROM CALL BACK TIME)
(1) URGENT	<u>Severe Operational Impact:</u> The system is not operational or the Client's operation is severely impaired.	15 MINUTES	Technical specialists are mobilized immediately and work 24 x 7 to provide a workaround. If applicable, a permanent solution is worked on as a high priority until delivered.	IMMEDIATE	1 HOUR
(2) HIGH PRIORITY	<u>Major Operational Impact:</u> The loss of functionality that impairs the Client's normal operation but essential services are still supported.	1 HOUR	Technical specialists are mobilized immediately and work 24 x 7 to provide a workaround. If applicable, a permanent solution is worked on to be delivered in the next available release.	4 HOURS	START OF NEXT BUSINESS DAY
(3) ROUTINE	<u>Limited Operational Impact:</u> The loss of a non-essential functionality or a failure that is limited to a subset of users.	8 HOURS	Technical specialists are mobilized during office hours. If applicable, a permanent solution is scheduled to be delivered in a future product release.	NOT APPLICABLE	NOT APPLICABLE
(4) LOW	<u>No Operational Impact:</u> The loss of a non-essential functionality or a failure that has no operational impact.	NEXT BUSINESS DAY	Technical specialists are mobilized during office hours. If applicable, a permanent solution is scheduled to be delivered in a future product release or a commercially reasonable effort is made to provide a workaround solution.	NOT APPLICABLE	NOT APPLICABLE
(5) INQUIRY	<u>Request for Information</u> General questions and technical inquiries on the expected behavior and capabilities of the product and/or enhancement recommendations.	2 BUSINESS DAYS	Technical specialists respond during office hours.	NOT APPLICABLE	NOT APPLICABLE

Software Updates Program

If the Client has purchased the Software Updates Program, the Client will be entitled to receive new General Availability (GA) releases of the Positron Front Line licensed software products purchased by the Client.

The Software Updates Program provided hereunder does not include any of the following:

- (a) Installation, configuration and training services. Upon reasonable notice from the Client, Positron Front Line will provide a Price Quote to the Client on a time and materials basis at Positron Front Line's then current rates for such services.
- (b) Modifications or customization of the Software other than corrections of Defects made or provided under these Maintenance and Support Terms and Conditions;
- (c) Consultation for new programs or equipment;
- (d) Correction of problems, and assistance regarding problems, caused by operator errors, including but not limited to the entry of incorrect data and the maintenance of inadequate backup copies and improper procedures; and/or
- (e) Correction of errors attributable to software other than the licensed Software.

Upgrade of the Client's Hardware, Operating System, and/or third party software may be required from time to time to support New Releases, Maintenance Releases or Upgrades of the Software. The Client shall be solely responsible for the cost of such upgrades unless expressly stated otherwise.

Product Specialist and Training Services

Clients can contact the Help Desk to request the services of Product Specialists and Trainers. The Help Desk will direct the call to the appropriate technical services representative to provide details on the services offered and their associated rates and to schedule resource availability.

Client Responsibilities

- (a) **Technical Service Tickets** The Client shall provide all information requested by Positron Front Line necessary to complete its Technical Support Services form for each request for technical services, Enhancements, and Out of Scope Services.
- (b) **Remote Access** The Client will facilitate high speed 512Kbps or greater remote VPN access for Positron Front Line to access the servers and workstations at the Client Site. Remote access will require the use of interactive applications including but not limited to PC Anywhere, Remote Desktop, VNC, telnet, *secure shell* (ssh), and application-level TCP/IP socket connectivity as determined necessary by Positron Front Line. Positron Front Line personnel will require local administrative control of all servers and workstations involved in Positron Front Line implementation. In addition, Positron

Front Line requires the ability to dynamically upload/download files to the server(s) without third-party intervention. Positron Front Line technicians may need remote access to the System to analyze the System configuration, aid in problem analysis or to modify the System configuration for a problem work-around. Remote access may also be used for transmission of Software updates to the Client. Remote access must be available twenty-four (24) hours a day, seven (7) days a week.

Positron Front Line's request to halt any System functionality shall require the Client's appropriate management approval. Positron Front Line shall not perform any service-affecting activity without informing the Client's appropriate management in advance and receiving proper authorization.

Positron Front Line recognizes the need for security of remote access facilities. Positron Front Line shall work within the Client's security guidelines whenever possible. If the Client's remote access facility is dysfunctional, Positron Front Line shall not be held liable for response times.

Positron Front Line shall not be responsible for any costs relating to the procurement, installation, maintenance and use of such equipment and all associated telephone use charges. Positron Front Line shall use the data connection solely in connection with the provision of its services hereunder. The Client may be required to run tests deemed necessary by Positron Front Line following each remote access as requested by Positron Front Line.

(c) **Access** The Client shall provide Positron Front Line's personnel or its local service provider with full access to their site at all required times.

(d) **Maintenance and Back-Ups** The Client shall ensure that maintenance and back-up activities relating to the Positron Front Line proprietary software and the System, including without limitation backing up databases and journal logs, purging out of date records and running reports and performing diagnostics, are timely carried out.

(e) **Data Input** The Client shall enter, update and maintain the input data as required for satisfactory operation of the Positron Front Line proprietary software, and be responsible for the accuracy of all Client-provided data.

(f) **Third-Party Product Support** Unless otherwise agreed, the Client shall obtain, pay for and maintain in effect during the term of these Maintenance and Support Terms and Conditions the technical support contracts for certain third party products as specified by Positron Front Line, and shall ensure that, in addition to authorizing the Client to request support services there under, each such support contract also expressly authorizes Positron Front Line to request support services there under on the Client's behalf.

(g) **System Security** The Client shall ensure that the security of the System conforms in all respects to the federal, state, and/or local mandated law enforcement telecommunications requirements.

(h) **System Change, Alteration, or Modification** The Client shall ensure that, with respect to the Positron Front Line proprietary software, such software is installed only on the authorized server and workstations and only at the authorized site. The Client shall ensure that each authorized site conforms in all respects to the site specifications as required by Positron Front Line. The Client shall ensure that no change, alteration or modification is made to the System configuration without the express prior written consent of Positron Front Line; provided, however, that said consent is not intended to constitute in

any manner Positron Front Line's approval, certification, endorsement, or warranty of the System configuration or System performance.

(i) **Database Administration Change Authorization** Client shall maintain a system to ensure that only authorized personnel have the ability to perform database administration activities and that a list of all such authorized personnel (and any updates thereto) be promptly delivered to the Positron Front Line's Technical Support Services department. Database administration shall be in compliance with Positron Front Line provided guidelines. Positron Front Line cannot assist Client personnel other than those on the most current authorization list.

(j) **Authorized Client Representative** The Client shall designate, in a written notice a single individual to act as the Client's authorized representative for purposes of these Maintenance and Support Terms and Conditions. Such individual (a) must be authorized to act on the Client's behalf with respect to all matters relating to these Maintenance and Support Terms and Conditions; (b) shall ensure the Client's compliance with its responsibilities under these Maintenance and Support Terms and Conditions; and (c) shall coordinate appropriate schedules in connection with Positron Front Line's services under these Maintenance and Support Terms and Conditions. The Client may change the individual designated hereunder by providing Positron Front Line advance written notice designating the new individual authorized to act as the Client Representative.

(k) **Technical Support Coordinators** The Client shall designate, in a written notice one or more individuals to act as the Client's technical support coordinator (a "Technical Support Coordinator"). The Client shall ensure that each Technical Support Coordinator designated hereunder shall have received the appropriate Positron Front Line proprietary software and System training and shall otherwise be familiar with the Positron Front Line proprietary software and the System. The Client shall ensure that, at all times, a Technical Support Coordinator is available (a) to screen operational assistance calls and handle operational problems, where appropriate; (b) to provide access to the System as required; and (c) to provide on-site technical assistance as required by Positron Front Line to aid Positron Front Line in performing its services hereunder. The Client may change any individual designated hereunder by providing Positron Front Line with advance written notice designating the new individual authorized to act as a Technical Support Coordinator.

(l) **Training** The Client shall ensure that all Technical Support Coordinators and other personnel have received appropriate training on the Positron Front Line proprietary software and the System, and otherwise maintain sufficient personnel with sufficient training and experience to perform its obligations under these Maintenance and Support Terms and Conditions.

(m) **Error Reproduction** Upon detection of any error in any of the Positron Front Line proprietary software applications, the Client shall provide Positron Front Line a listing of command input, resulting output and any other data, including databases and back-up systems, that Positron Front Line may reasonably request in order to reproduce operating conditions similar to those present when the error occurred.

Termination

(a) **Termination for Payment Defaults** In the event that the Client fails to pay when due all or any portion of the annual maintenance and support fees required, Positron Front Line may immediately, and without further notice to the Client, terminate these Maintenance and Support Terms and Conditions or suspend all or any portion of the services hereunder for all or any portion of the Positron Front Line proprietary software applications until the Client's account is brought current.

(b) **Termination for Other Defaults** In the event that either party hereto materially defaults in the performance of any of its obligations hereunder (other than payment defaults covered above), the other party may, at its option, terminate these Maintenance and Support Terms and Conditions, by providing the defaulting party thirty (30) days' prior written notice of termination, which notice shall identify and describe with specificity the basis for such termination. If, prior to the expiration of such notice period, the defaulting party cures such default to the satisfaction of the non-defaulting party (as evidenced by written notice delivered by the non-defaulting party, termination shall not take place.

(c) **Termination Without Cause** Either party hereto may terminate this Agreement without cause by providing the other party at least ninety (90) days' prior written notice of termination. The effective date for any termination pursuant to this subsection shall be the next occurring maintenance renewal date.

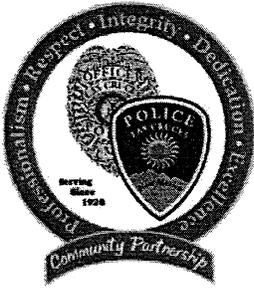
(d) **Consequences of Termination** Upon termination of this Agreement for whatever reason, (a) Positron Front Line shall be under no further obligation to provide support or any other services hereunder; (b) Positron Front Line shall return to the Client all Client confidential information in Positron Front Line's possession and shall certify in a written document signed by an officer of Positron Front Line that all such information has been returned; (c) the Client shall return to Positron Front Line all Positron Front Line confidential information in the Client's possession (including, without limitation, all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment or other documents or property relating to such Positron Front Line confidential information and all copies of any of the foregoing (in whatever medium recorded) but not including any such information licensed to and paid for by the Client and shall certify in a written document signed by the authorized Client representative that all such information has been returned.

Exclusions to Technical Support Services

The following services are outside the scope of the Technical Support Services provided by Positron Front Line and may result in additional charges, on a time and material basis:

- (a) Repair of damage or the increase in service time due to any cause external to the System which adversely affects its operability or serviceability, including but not be limited to, fire, flood, water, wind, lightning, and transportation of the System from one location to another;
- (b) Repair of damage or the increase in service time caused by failure to continually provide a suitable installation environment, including, but not limited to, the failure to provide adequate electrical power, air conditioning or humidity control, or the Client's improper use, management or supervision of the System including, without limitation, the use of supplies and accessories. Proper use and environmental requirements are determined by the Product documentation;
- (c) Repair of problems caused by the use of the System for purposes other than for which it is designed;

- (d) Repair of problems caused by changes to the Hardware and/or the network made without obtaining Positron Front Line's prior approval;
- (e) Repair or replacement of any item of the System which has been repaired by others, abused or improperly handled, improperly stored, altered or used with third party material, software or equipment, which material, software or equipment may be defective, of poor quality or incompatible with the System, and Positron Front Line shall not be obligated to repair or replace any component of the System which has not been installed by Positron Front Line or a Positron Front Line authorized technician;
- (f) Removal, relocation and/or reinstallation of the System or any component thereof;
- (g) Diagnosis time directly related to unauthorized components and/or misuse of the System, whether intentional or not;
- (h) Any design consultation such as, but not limited to, reconfiguration analysis, consultation with the Client for modifications and upgrades which are not directly related to a problem correction;
- (i) Provision of any operational supplies, including by not limited to, printer paper, printer ribbons, toner, printer cartridges, photographic paper, magnetic tape and any supplies beyond those delivered with the System;
- (j) Repair of problems caused by computer / network security breaches and/or virus attacks;
- (j) Repair or replacement of any Hardware not purchased from Positron Front Line and explicitly covered by a Positron Front Line warranty or maintenance program.



Las Cruces Police Department

*PO BOX 20000
217 E. Picacho
Las Cruces, New Mexico 88004*

Interim Chief Peter Bradley

Date: December 14, 2009

Shanelle Chambers
U.S. Department of Justice
Office of Community Oriented Policing Services
1100 Vermont Avenue, NW, 9th Floor
Washington, DC 20530

RE: Sole Source Justification for COPS Grant 2007CKWX0047

Section I.

The Mesilla Valley Regional Dispatch Authority (MVRDA) is the Public Safety Answering Point (PSAP) and emergency Dispatch Center for the Las Cruces Police and Fire Departments, the Doña Ana County Sheriff's Office, New Mexico State University, Sunland Park Police Department, Mesilla Valley Marshal's Office, Village of Hatch Police Department, American Medical Response, and numerous County Fire Agencies. These agencies recently completed the installation of Mobile Data Terminals via a COPS grant 2005INWX0014) and have tested their air card capability. Additionally, MRVDA is in the process of completing COPS Grant 2005CKWX0257 for the installation and implementation of a communications "gateway" known as ViperCad from Positron Public Safety to support the MDTs.

The City of Las Cruces is requesting that a portion of the 2007 technology Grant 2007CKWX0047 used for the purchase and installation of the software to support the mobile version of ViperCad to support the communications gateway be authorized for a Sole Source Procurement. The total amount requested as a Sole Source Procurement is \$442,260.00

The installation of the software that accompanies the Positron communications gateway will allow MDT units in the field to exchange dispatch, GIS mapping, and tracking data between field units and dispatching center.

Currently, MRVDA Dispatch Center, is installing a Computer Aided Dispatch (CAD) software package sold by Positron Public Safety. In order for the MDT units to communicate with the data from CAD, the software must be 100% compatible. Each CAD vendor produces proprietary software, and Positron produces a mobile version of

their CAD system that directly interfaces with the Dispatch Center gateway. The Sole Source Procurement would purchase the software licenses, annual maintenance costs, and a 4 year warranty for the IQ/Mobile-Positron product, GeoMobile Client necessary for interoperability with the MDTs. The Sole Source Procurement would purchase the required software to ensure connectivity with the gateway. Any other option would require purchasing interface systems with the existing gateway and would cost over \$400,000 in additional funds to ensure interoperability, and delay the project more than a year.

Sole Source Procurement Request

December 14, 2009

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Section II:

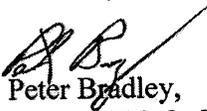
Sole Source Procurement is being requested as the required software licenses are available from only one source, that is compatible with the COPS grant funded ViperCad gateway, which is only available from Positron. The licenses are required to be compatible with the gateway to ensure interoperability.

Interoperability will allow the Mesilla Valley Regional Dispatch Authority to have a seamless "turn-key" solution that is compatible with its CAD system, Mobile Data Terminals and software licensure for connectivity. The data pushed out to the field units includes additional information from the dispatcher, mapping information and vehicle locator information and allow direct communications from the field units to the dispatchers vial the MDT and gateway.

Section III:

The City of Las Cruces and Mesilla Valley Regional Dispatch Authority believe that it is in the best interest of all agencies involved that a Sole Source Procurement of the Positron Licenses and warranties should be allowed for the MDT regional gateway project. This solution is deemed to be the timeliest, cost effective and ensures 100% compatibility with the ViperCad system currently installed at the dispatch center.

Sincerely,



Peter Bradley,
Interim Chief of Police