



Cory A. Booker
Mayor

Anna P. Pereira
Corporation Counsel

Department of Law

September 26, 2012

VIA Hand Delivery

Thomas W. Macleod
American Civil Liberties Union of New Jersey
P.O. Box 32159
Newark, NJ 07102

Re: OPRA Request No. BA-12-0015
Records Re. Automatic License Plate Recognition

Dear Mr. Macleod:

This is in response to the above request for records pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 *et seq.*, which was received by the City Clerk's Office on August 2, 2012 and marked by Clerk as SL-12-0015. Thank you for granting the City's August 8, 2012 and September 20, 2012 requests for an extension of time to respond to this request by September 27, 2012.

The above request should be granted in part and denied in part for the following reasons.

The City of Newark objects to your request to the extent that any part of it is requesting ALPR Data as the term is defined in the Attorney General Guidelines, on the grounds that these records are criminal investigatory records, which are exempt from disclosure under OPRA.

With respect to your request No. 1, regarding policies, procedures and other general guidelines for procuring and using Automated License Plate Readers ("ALPR") and storing, accessing and sharing data scanned, the City objects on the grounds that your requests are overbroad and do not specifically describe the exact documents you are seeking. OPRA is not intended to be used as a research tool that forces government officials to identify and siphon useful information. Indeed, a records custodian is not required "to conduct research among its records... and correlate data from various

government records in the custodian's possession." MAG Entertainment, LLC v. Div. of Alcohol Beverages Control, 375 N.J. Super 534, 546 (App. Div. 2005). See also Reda v. Tp. of West Milford, GRC Complaint No. 2002-58 (January 17, 2003). Accordingly, "a party requesting access to a public record under OPRA must specifically describe the documents sought" and "identify with reasonable clarity those documents that are desired, not generally data, information or statistics." Bent, 382 N.J. Super at 30. The government records you are seeking may or may not exist; however, without being more specific we are unable to make that determination.

Notwithstanding the above and without waiving any objections, the City of Newark has provided you with copies of the records it has located as a result of a broad search on ALPR technology. Please feel free to re-submit your request and specifically describe any particular document(s) sought and we will be happy to conduct another search. As to your request for policies, procedures and other general guidelines for procuring ALPR technology, you may refer to the New Jersey State Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq., which governs the purchase of goods and services by Municipalities.

As to request No. 2, regarding procurement of ALPR technology, your request is overbroad and does not specifically describe the exact documents you are seeking and the City objects for the same reasoning set forth in request No. 1 above. The City further objects to this request on the grounds that some of the records you are seeking are criminal investigatory records, which are exempt from disclosure under OPRA. Notwithstanding the above and without waiving any objections, the City of Newark has provided you with copies of the records it has located as a result of a broad search. Please feel free to re-submit your request and specifically describe any particular document(s) sought and we will conduct another search.

With reference to Requests Nos. 3, 4, 5 and 6 pertaining to the use of ALPR technology, the storage of data scanned with ALPR technology, accessing ALPR data, and sharing ALPR data, your request is overbroad and does not specifically describe the exact documents you are seeking and the City objects for the same reasoning set forth in request No. 1 above. Additionally, the City objects to Requests Nos. 3, 4, 5 and 6 as they are seeking information and not records. The Court's decision in Bent v. Township of Stafford, 381 N.J. Super 30 (App. Div. 2005) makes clear that, "OPRA only allows request for records, not requests for information." Id. at 37. Furthermore, ALPR data is criminal investigatory records, which are exempt from disclosure under OPRA. Notwithstanding the above and without waiving any objections, the City of Newark has provided you with copies of the records it has located as a result of a broad search. Please feel free to re-submit your request and specifically describe any particular document(s) sought and we will conduct another search.

With regard to your Request No. 7 pertaining to ALPR training materials, attached please find copies of copies of the records it has located.

If you have any questions please feel free to direct them to my attention or to the City of Newark OPRA department.

Very truly yours,
Anna P. Pereira,
CORPORATION COUNSEL

By: 

Guenther Waldow, Esq.
Assistant Corporation Counsel

Encl.

AUTOMATED LICENSE PLATE READERS

Attorney General Guidelines for the Use of Automated License Plate Readers (ALPRs) and Stored ALPR Data

DIRECTIVE NO. 2010-5

Effective January 18, 2011

TO: Director, Office of Homeland Security and Preparedness
Director, Division of Criminal Justice
Superintendent, New Jersey State Police
All County Prosecutors
All County Sheriffs
All Police Chiefs
All Law Enforcement Chief Executives

FROM: Paula T. Dow, Attorney General

DATE: December 3, 2010

SUBJECT: Law Enforcement Directive Promulgating
Attorney General Guidelines for the Use of
Automated License Plate Readers (ALPRs)
and Stored ALPR Data

In order to fulfill the mission of protecting the public, the New Jersey law enforcement community must take full advantage of new crime-fighting technologies as they become available. Automated license plate readers (ALPRs) are now being used by a number of law enforcement agencies around the nation, and a number of police agencies in New Jersey have recently acquired these devices or are planning to do so in the near future. License plate recognition technology can be used to support a wide range of law enforcement operations and activities, including homeland security, criminal and terrorist suspect interdiction, revoked/suspended driver interdiction, stolen property recovery, stay-away order enforcement and, of course, the apprehension of individuals who are subject to an outstanding arrest warrant.

These devices enable police officers to recognize and take immediate action against vehicles and persons who are subject to an investigative detention or arrest based on a "Be on the Lookout" bulletin. The data collected by ALPRs can also provide solid investigative leads if, for example, a device happened to be scanning license plates near a crime scene, allowing police to locate potential suspects, witnesses, or victims by identifying vehicles that were in the vicinity at the time of the offense. A careful analysis of stored ALPR data can also be used to detect suspicious activities that are consistent with the *modus operandi* of criminals. This new technology can in this way serve an

Automated License Plate Readers (ALPRs)

1 especially important role in protecting our homeland from terrorist
2 attack, as shown by the fact that many of the devices that are now or
3 soon will be in operation in this State were purchased with homeland
4 security grant monies.

5
6 While license plate recognition technology can help to protect public
7 safety, the widespread deployment and use of ALPRs, and especially
8 the collection and storage of data pertaining to individuals who are
9 not reasonably believed to be involved in unlawful activity, raise
10 legal and policy issues. Notably, the New Jersey Supreme Court has
11 held that while police are permitted to "run the plates" of any vehicle
12 they encounter while on patrol, and need not have a particularized
13 reason before checking a vehicle's license plates against a government
14 database, police in this State may not as a result of any such lookup be
15 shown personal identifying information about a motorist unless there
16 is a particularized basis for further police action. *See State v. Donis*,
17 157 N.J. 44 (1998). The Guidelines attached hereto are designed to
18 protect the legitimate privacy interests of motorists by implementing
19 the non-disclosure rule established in *Donis* and by adapting the *Donis*
20 Court's rationale to the context and capabilities of ALPR technology.

21
22 Recognizing that our experience with this new and evolving
23 technology is limited, and that we still have much to learn about how
24 best to incorporate these devices into our arsenal of investigative
25 techniques, it is appropriate for me as the State's chief law enforcement
26 officer to issue uniform statewide guidelines to ensure that ALPRs are
27 used only for *bona fide* law enforcement purposes, and that the data
28 collected by these devices are used in accordance with substantive
29 standards and procedural safeguards that appropriately balance the
30 need for law enforcement agencies to prevent and respond to terrorism
31 and other forms of crime against the legitimate privacy interests of
32 persons operating motor vehicles on the roadways of this State.

33
34 THEREFORE, I, Paula Dow, Attorney General of the State of New
35 Jersey, pursuant to the authority granted to me by the Constitution
36 of the State of New Jersey and by the Criminal Justice Act of 1970,
37 N.J.S. 52:17B-97 *et seq.*, and in consultation with the Director of the
38 New Jersey Office of Homeland Security and Preparedness, hereby
39 Direct the following:

40 41 1. Adoption of Guidelines

42
43 The "Attorney General Guidelines for the Use of Automated
44 License Plate Readers and Stored ALPR Data" (dated December
45 3, 2010) attached to this Directive and incorporated by reference
46 into this Directive are hereby adopted and shall be followed and
47 enforced by all law enforcement agencies and officers operating
48 under the authority of the laws of the State of New Jersey.

Automated License Plate Readers (ALPRs)

2. *Implementation*

Every law enforcement agency operating under the authority of the laws of the State of New Jersey that possesses or uses one or more automated license plate readers shall, within 45 days of the issuance of this Directive, promulgate and enforce a rule, regulation, standard operating procedure, directive, or order, in a form as may be appropriate given the customs and practices of the agency, which shall comply with and implement the provisions of the attached Guidelines, and which shall provide that any sworn officer or civilian employee of the agency who knowingly violates the agency's rule, regulation, standard operating procedure, directive, or order shall be subject to discipline. A law enforcement agency operating under the authority of the laws of the State of New Jersey that purchases an automated license plate reader on or after the effective date of this Directive shall not operate the device without having promulgated a rule, regulation, standing operating procedure, directive, or order in accordance with this section.

3. *Scope*

The provisions of this Directive and of the attached Guidelines pertaining to stored ALPR data apply to all law enforcement agencies operating under the authority of the laws of the State of New Jersey that access or use stored ALPR data, even if the agency does not own or operate an ALPR.

4. *Questions and Controversies*

All questions concerning the interpretation, implementation, or enforcement of this Directive, or of the attached Guidelines, shall be addressed to the Attorney General or his or her designee.

5. *Periodic Review*

The Director of the Division of Criminal Justice, in consultation with the Superintendent of the New Jersey State Police, the Director of the Office of Homeland Security, the County Prosecutors, the County Sheriffs, and the New Jersey Association of Chiefs of Police, shall, within one year of the effective date of this Directive, report to the Attorney General on the implementation of this Directive, and on any recommendations for revising the attached Guidelines.

Automated License Plate Readers (ALPRs)

6. *Effective Date*

This Directive shall take effect 45 days after it is issued in order to provide an opportunity for law enforcement agencies to comply with its requirements and to establish and enforce policies and procedures consistent with the attached Guidelines. Once effective, this Directive shall remain in force and effect unless and until a repealed, amended, or superseded by Order of the Attorney General.

/s/ Paula T. Dow

Attorney General

Attest: /s/ Carolyn Murray
Counsel to the Attorney General

Issued on December 3, 2010

Effective on: January 18, 2011

AUTOMATED LICENSE PLATE READERS

Attorney General Guidelines for the Use of Automated License Plate Readers (ALPRs) and Stored ALPR Data

Issued December 3, 2010

Effective January 18, 2011

1. PURPOSE AND SCOPE

1.1. *Reasons for Promulgating Uniform Statewide Guidelines*

The purpose of these Guidelines is to provide direction to law enforcement agencies and officers on the appropriate use of Automated License Plate Readers (ALPRs) and the data that are collected by these devices and stored for future law enforcement use. These Guidelines are not intended to serve as a comprehensive operational manual. Rather, they are meant to ensure that ALPRs and ALPR-generated data are used in an appropriate manner and only for *bona fide* public safety purposes.

The following Guidelines, which are promulgated pursuant to Attorney General Law Enforcement Directive 2010-5, should be interpreted and applied so as to achieve the following objectives:

- to ensure that "BOLO lists" (the compilation of targeted license plates that an ALPR is "on the lookout" for) that are programmed into the internal memory of an ALPR or that are compared against stored ALPR data are comprised only of license plates that are associated with specific vehicles or persons for which or whom there is a legitimate and documented law enforcement reason to identify and locate, or for which there is a legitimate and documented law enforcement reason to determine the subject vehicle's past location(s) through the analysis of stored ALPR data;
- to ensure that data that are captured by an ALPR can only be accessed by appropriate law enforcement personnel and can only be used for legitimate, specified, and documented law enforcement purposes;
- to permit a thorough analysis of stored ALPR data to detect crime and protect the homeland from terrorist attack while safeguarding the personal privacy rights of motorists by ensuring that the analysis of stored ALPR data is not used as a means to disclose personal identifying information about an individual unless there is a legitimate and documented law enforcement reason for disclosing such personal information to a law enforcement officer or civilian crime analyst; and

Automated License Plate Readers (ALPRs)

- to ensure that stored ALPR data are purged after a reasonable period of time so as to minimize the potential for misuse or accidental disclosure.

1.2. Applicability of Guidelines

These Guidelines apply to all law enforcement agencies that operate under the authority of the laws of the State of New Jersey that own or operate one or more ALPRs, that collect and maintain ALPR data, and/or that receive or are provided access to ALPR data collected by another agency.

1.3. Non-Enforceability of Rights by Third Parties

These Guidelines are issued pursuant to the Attorney General's authority under the Criminal Justice Act of 1970, *N.J.S. 52:17B-97 et seq.*, to ensure the uniform and efficient enforcement of the laws. These Guidelines impose limitations on the exercise of law enforcement discretion and the use of and access to ALPR-related data that may extend beyond the requirements of the United States and New Jersey Constitutions, and federal and state statutory law. Nothing in these Guidelines should be construed in any way to create any rights beyond those established under the Constitutions, statutes, and regulations of the United States and the State of New Jersey. The provisions of these Guidelines are intended to be implemented and enforced by law enforcement agencies that possess or use ALPRs, the New Jersey Office of Homeland Security and Preparedness, the County Prosecutors, and the Department of Law and Public Safety, and these provisions do not create any rights that may be enforced by any other persons or entities.

3. DEFINITIONS

As used in these Guidelines:

"Automated License Plate Reader" or "ALPR" means a system consisting of a camera, or cameras, and related equipment that automatically and without direct human control locates, focuses on, and photographs license plates and vehicles that come into range of the device, that automatically converts digital photographic images of scanned license plates into electronic text documents, that is capable of comparing scanned license plate text data with data files for vehicles on a BOLO (be on the lookout) list programmed into the device's electronic memory, and that notifies police, whether by an audible alert or by other means, when a scanned license plate matches the license plate on the programmed BOLO list. The term includes both devices that are placed at a stationary location (whether permanently mounted, or portable devices positioned at a stationary location) and mobile devices affixed to a police vehicle and capable of operating while the vehicle is in motion.

Automated License Plate Readers (ALPRs)

1 "*BOLO (Be on the Lookout)*" or "*BOLO situation*" refers to a
2 determination by a law enforcement agency that there is a legitimate
3 and specific law enforcement reason to identify or locate a particular
4 vehicle, or, in the case of a post-scan BOLO, there is a legitimate and
5 specific reason to ascertain the past location(s) of a particular vehicle.
6

7 "*BOLO list*," sometimes referred to colloquially as a "*hot list*," is
8 a compilation of one or more license plates, or partial license plates,
9 of a vehicle or vehicles for which a BOLO situation exists that is
10 programmed into an ALPR so that the device will alert if it captures
11 the image of a license plate that matches a license plate included on
12 the BOLO list. The term also includes a compilation of one or more
13 license plates, or partial license plates, that is compared against stored
14 license plate data that had previously been scanned and collected by
15 an ALPR, including scanned license plate data that is stored in a
16 separate data storage device or system.
17

18 "*Initial BOLO list*" refers to the BOLO list that was programmed
19 into an ALPR at the time that the device was being used to scan license
20 plates in the field.
21

22 "*Post-Scan BOLO list*" refers to a BOLO list that is compared
23 against stored data collected by an ALPR, including scanned license
24 plate data that has been transmitted to another device or data storage
25 system.
26

27 "*Stored data*" refers to all information captured by an ALPR and
28 stored in the device's memory or in a separate data storage device or
29 system. The term includes the recorded image of a scanned license
30 plate and optical character recognition data, a contextual photo (i.e.,
31 a photo of the scanned vehicle and/or occupants), global positioning
32 system ("GPS") data (when the ALPR is equipped with a GPS receiver)
33 or other location information, and the date and time of the scan. The
34 term applies to both alert data and non-alert data that has been
35 captured and stored by an ALPR or in a separate data storage device
36 or system.
37

38 "*Alert data*" means information captured by an ALPR relating to a
39 license plate that matches the license plate on an initial BOLO list or
40 a post-scan BOLO list.
41

42 "*Immediate alert*" refers to an alert that occurs when a scanned
43 license plate matches the license plate on an initial BOLO list and
44 that is reported to the officer operating the ALPR, by means of an
45 audible alarm or by any other means, at or about the time that the
46 subject vehicle was encountered by the ALPR and its license plate was
47 scanned by the ALPR.
48

49 "*Non-encounter alert*" refers to an immediate alert where the officer
50 operating the ALPR is instructed to notify the agency that put out
51 the BOLO without initiating an investigative detention of the subject
52 vehicle or otherwise revealing to the occupant(s) of that vehicle that its

Automated License Plate Readers (ALPRs)

1 location has been detected or that it is the subject of law enforcement
2 attention (e.g., a Violent Gang or Terrorist Organization File (VGTOF)
3 alert).

4
5 *"Personal identifying information"* means information that identi-
6 fies one or more specific individuals, including an individual's name,
7 address, social security number, vehicle operator's license number, or
8 biometric records. The term includes personal identifying information
9 that is included within the data comprising a BOLO list, as well as
10 personal identifying information that is learned by checking a license
11 plate scanned by an ALPR against the Motor Vehicle Commission da-
12 tabase or any other data system that contains personal identifying in-
13 formation.

14
15 *"Scan"* refers to the process by which an ALPR automatically
16 focuses on, photographs, and converts to digital text the license plate
17 of a vehicle that comes within range of the ALPR.

18
19 *"Authorized user"* means a sworn or civilian employee of a law
20 enforcement agency who has been authorized by the chief of the
21 agency, or by the Attorney General or a county prosecutor or his or her
22 designee, to operate an ALPR, or to access and use ALPR stored data,
23 and who has successfully completed training provided by the agency
24 on the agency's ALPR policy and on these Guidelines.

25
26 *"Designated supervisor"* means a superior officer assigned by the
27 chief of a law enforcement agency to oversee and administer, or to
28 assist in overseeing and administering, the agency's use of ALPRs and
29 stored ALPR data. A law enforcement agency may have more than one
30 designated supervisor.

31
32 *"Chief"* of a department or agency means the highest ranking sworn
33 officer of a law enforcement agency.

34
35 *"Post-Scan BOLO query"* refers to the process of comparing a post-
36 scan BOLO list against stored ALPR data.

37
38 *"Crime scene query"* refers to the process of accessing and reviewing
39 stored ALPR data that had been originally scanned at or about the
40 time and in the vicinity of a reported criminal event for the purpose
41 of identifying vehicles or persons that might be associated with that
42 specific criminal event as suspects, witnesses, or victims.

43
44 *"Criminal event"* means a specific incident, or series of related
45 specific incidents, that would constitute an indictable crime under
46 the laws of the State of New Jersey, whether or not the incident(s)
47 have occurred or will occur within the State of New Jersey. The term
48 includes an attempt or conspiracy to commit a crime, or actions taken
49 in preparation for the commission of the crime, such as conducting a
50 surveillance of the location to identify and evade or thwart security
51 measures, or conducting a rehearsal of a planned crime. The term
52 includes two or more separate criminal acts or episodes that are
linked by common participants or that are reasonably believed to have

Automated License Plate Readers (ALPRs)

1 been undertaken by a criminal organization or as part of an ongoing
2 conspiracy.

3
4 "*Crime trend analysis*" refers to the analytical process by which
5 stored ALPR data is used, whether alone or in conjunction with
6 other sources of information, to detect crime patterns by studying
7 and linking common elements of recurring crimes; to predict when
8 and where future crimes may occur; and to link specific vehicles
9 to potential criminal or terrorist activity. The term includes an
10 automated process in which a computer program analyzes stored data
11 to identify potentially suspicious activity or other anomalies involving
12 one or more scanned vehicles and where such automated analysis is
13 done without disclosing personal identifying information about any
14 individual to an authorized user or any other person except as may be
15 authorized pursuant to Section 10.2.3 of these Guidelines.

16 17 4. DEPLOYMENT OF ALPRS

18 19 4.1. *Restricted Uses*

20
21 An ALPR and data generated by an ALPR shall only be used for
22 official and legitimate law enforcement business.

23 24 4.2. *ALPR Scanning Limited to Vehicles Exposed to Public View*

25
26 An ALPR shall only be used to scan license plates of vehicles that
27 are exposed to public view (e.g., vehicles on a public road or street, or
28 that are on private property but whose license plate(s) are visible from
29 a public road, street, or a place to which members of the public have
30 access, such as the parking lot of a shopping mall or other business
31 establishment).

32 33 4.3. *Supervisory Approval of All ALPR Deployments*

34
35 An ALPR shall not be deployed in the field unless the deployment
36 has been authorized by the chief of the department or a designated
37 supervisor, or by the Attorney General or designee or a county
38 prosecutor or designee. Such authorization may be given for repeated
39 or continuous deployment of an ALPR (e.g., mounting the device
40 on a particular police vehicle, or positioning the ALPR at a specific
41 stationary location), in which event the deployment authorization
42 shall remain in force and effect unless and until rescinded or modified
43 by the chief or designated supervisor, or the Attorney General or
44 county prosecutor or designee.

45 46 4.4. *Trained Operators and Analysts*

47
48 A sworn officer or civilian employee of the department may operate
49 an ALPR or access or use ALPR stored data only if the person has been
50 designated as an authorized user by the chief of the department, or by
51 the Attorney General or designee or a county prosecutor or designee,
52 and has received training from the department on the proper use
and operation of ALPRs, the requirements of Attorney General Law

Automated License Plate Readers (ALPRs)

Enforcement Directive 2010-5, and these Guidelines, and any policies and procedures governing the use of ALPRs and ALPR data issued by the department pursuant to Attorney General Directive 2010-5 and Section 14 of these Guidelines.

5: MAINTENANCE OF RECORDS

5.1. *Records Documenting the Deployment of ALPRs*

Each department that owns or operates an ALPR shall maintain a written or electronic record that documents the following information:

- date and time when the ALPR was deployed;
- whether the ALPR was mobile, or was stationed at a fixed specified location;
- the identity of the operator;
- whether ALPR data was transferred to any other database or data storage device or system.

5.2. *Records Documenting the Use of Stored ALPR Data*

Each department that stores ALPR data shall maintain a record of all access to stored ALPR data. The department's ALPR data record keeping system, which may be automated, shall document the following information:

- the date and time of access, and, in the case of access to stored non-alert data, the type of access authorized by Section 10.2 of these Guidelines (*i.e.*, post-scan BOLO query, crime scene query, or crime trend analysis);
- the authorized user who accessed the stored data;
- whether an automated software program was used to analyze stored data;
- the designated supervisor who reviewed and approved any disclosure of personal identifying information based upon crime trend analysis when such approval is required by Section 10.2.3 of these Guidelines;
- the designated supervisor who approved any use of an automated crime trend analysis computer program that would automatically alert and disclose personal identifying information in accordance with Section 10.2.3;
- any other information required to be documented pursuant to Section 10.2 or any other provision of these Guidelines.

Automated License Plate Readers (ALPRs)

5.3. Maintenance of Records

All written or electronic records of ALPR activity and access to ALPR data shall be maintained by the department for a period of five years, and shall be kept in a manner that makes such records readily accessible to any person authorized by these Guidelines to audit the department's use of ALPRs and ALPR-generated data. When a department employs an automated system to record any information that is required to be documented pursuant to these Guidelines, it shall not be necessary for the department to maintain duplicate records of any events or transactions that are documented by the automated record-keeping system.

6. CONTENT AND APPROVAL OF BOLO LISTS

6.1. Criteria for and Examples of Legitimate BOLO Situations

A license plate number or partial license plate number shall not be included in an ALPR initial BOLO list unless there is a legitimate and specific law enforcement reason to identify or locate that particular vehicle, or any person or persons who are reasonably believed to be associated with that vehicle. A license plate or partial license plate number shall not be included in a Post-Scan BOLO list unless there is a legitimate and specific law enforcement reason to ascertain the past location(s) of that particular vehicle, or of any person or persons who are reasonably believed to be associated with that vehicle.

Examples of legitimate and specific reasons include, but are not limited to: persons who are subject to an outstanding arrest warrant; missing persons; AMBER Alerts; stolen vehicles; vehicles that are reasonably believed to be involved in the commission of a crime or disorderly persons offense; vehicles that are registered to or are reasonably believed to be operated by persons who do not have a valid operator's license or who are on the revoked or suspended list; vehicles with expired registrations or other Title 39 violations; persons who are subject to a restraining order or curfew issued by a court or by the Parole Board, or who are subject to any other duly issued order restricting their movements; persons wanted by a law enforcement agency who are of interest in a specific investigation, whether or not such persons are themselves suspected of criminal activity; and persons who are on any watch list issued by a State or federal agency responsible for homeland security.

6.2. Batch Downloading of BOLO List Data

BOLO list information may be downloaded in batch form from other databases, including but not limited to the National Crime Information Center (NCIC), National Insurance Crime Bureau, United States Department of Homeland Security, and Motor Vehicle Commission database.

Automated License Plate Readers (ALPRs)

6.3. Updates to BOLO Lists

An initial BOLO list may be revised at any time. In the event that an initial BOLO list is constructed, in whole or in part, with sets of data downloaded from another database, so as to account for any changes that may have been made in the data maintained in those other databases, updates to the initial BOLO list shall, in the case of a mobile unit attached to a police vehicle, be made at the start of each shift, and in the case of an ALPR positioned at a stationary location, be made as frequently as is practicable, and on not less than a daily basis. Information concerning any license plate that is referenced in an AMBER Alert activated by the New Jersey State Police shall be added to the initial BOLO list as expeditiously as possible, and shall remain in the initial BOLO list until the AMBER Alert expires or is withdrawn.

6.4. Special Instructions for Immediate Alert Response

When practicable, the reason for placing a vehicle on BOLO list shall be included with the BOLO and shall be disclosed to the officer who will react to an immediate alert. If for any reason an officer reacting to an immediate alert should not initiate an investigative detention (e.g., where the license plate was included in the BOLO list because the department or any other agency wanted to be notified of the location of the subject vehicle without alerting the driver/occupants that they are the subject of law enforcement attention, such as in the case of Violent Gang or Terrorist Organization File (VGTOF) alert), to the extent feasible, the information attached to the license plate on the BOLO list shall be entered in such a way as to cause the ALPR to clearly designate an immediate alert as a "non-encounter" alert, and shall provide specific instructions to the officer as to who to notify of the alert. *See* Section 7, *infra*.

7. POLICE ACTIONS IN RESPONSE TO AN IMMEDIATE ALERT

When an officer operating a vehicle equipped with an ALPR receives an immediate alert, the officer shall take such action in response to the alert as is appropriate in the circumstances. An officer alerted to the fact that an observed motor vehicle's license plate is on the BOLO list may be required to make a reasonable effort to confirm that a wanted person is actually in the vehicle before the officer would have a lawful basis to stop the vehicle. *See State v. Parks*, 288 N.J. Super. 407 (App. Div. 1996) (police do not have reasonable suspicion to justify a stop based on a computer check that shows that the operator's license of the registered owner of the vehicle is suspended unless the driver generally matches the owner's physical description (e.g., age and gender)).

An officer reacting to an immediate alert shall consult the database to determine the reason why the vehicle had been placed on the BOLO list and whether the alert has been designated as a non-encounter alert. In the event of a non-encounter alert, the officer shall follow any

Automated License Plate Readers (ALPRs)

instructions included in the alert for notifying the law enforcement or homeland security agency that had put out the BOLO. *See* Section 6.4, *supra*.

8. SECURITY OF STORED ALPR DATA

8.1. Physical Security and Limited Access

All ALPR stored data shall be kept in a secure data storage system with access restricted to authorized persons. Access to this stored data shall be limited to the purposes described in Section 10 of these Guidelines.

8.2. Differentiation of Stored Positive Alert Data From Non-Alert Data

Stored ALPR data shall be maintained electronically in such a manner as to distinguish alert data from non-alert data so as to ensure that access to and use of non-alert data and any disclosure of personal identifying information resulting from the analysis of non-alert data occurs only as may be authorized pursuant to section 10.2 of these Guidelines. Positive alert data may, as appropriate, be transferred to the appropriate active investigation file, *see also* Section 10.1, *infra*, and may as appropriate be placed into evidence in accordance with the department's evidence or records management procedures.

9. RETENTION PERIOD AND PURGING OF STORED DATA

Each law enforcement agency shall, pursuant to the provisions of Section 14 of these Guidelines, establish and enforce procedures for the retention and purging of stored ALPR data in accordance with this Section. ALPR stored data shall be retained for a period of five years, after which, the data shall be purged from the agency's data storage device or system. A law enforcement agency may purge ALPR data before the expiration of the five-year retention period only if the data has been transferred to the State Police Regional Operations Intelligence Center (R.O.I.C.) or any other system that aggregates and stores data collected by two or more law enforcement agencies in accordance with the provisions of these Guidelines. Any ALPR data transferred to another agency shall indicate the date on which the data had been collected by the ALPR so that the receiving agency may comply with the five-year retention and purging schedule established in this Section. *See also* Section 11.1 and 11.2, *infra*.

10. LIMITATIONS ON ACCESS TO AND USE OF STORED ALPR DATA

10.1. Access to Positive Alert Data

An authorized user may access and use stored ALPR alert data as part of an active investigation or for any other legitimate law

Automated License Plate Readers (ALPRs)

enforcement purpose, including but not limited to a post-scan BOLO query, a crime scene query, or crime trend analysis. A record shall be made of the access to the data, which may be an automated record, that documents the date of access, and the identity of the authorized user. An authorized user need not obtain approval from the chief or designated supervisor, or Attorney General or county prosecutor or designee, for each occasion on which he or she accesses and uses stored ALPR data. Once positive alert data has been accessed and transferred to an investigation file, it shall not be necessary thereafter to document further access or use of that data pursuant to these Guidelines.

10.2. Access to Non-Alert Data

Access to and use of stored non-alert ALPR data is limited to the following three purposes: a post-scan BOLO query, a crime-scene query, and crime trend analysis. An authorized user does not need to obtain approval from the chief or a designated supervisor, or Attorney General or county prosecutor or designee, for each occasion on which he or she accesses and uses stored non-alert data pursuant to this Section.

10.2.1. Post-Scan BOLO Query

A law enforcement agency is authorized to compare a post-scan BOLO list against stored ALPR data where the results of the query might reasonably lead to the discovery of evidence or information relevant to any active investigation or ongoing law enforcement operation, or where the subject vehicle might be placed on an active initial BOLO list. (For example, a law enforcement agency may review stored non-alert data to determine whether a specific vehicle was present at the time and place where the ALPR data was initially scanned for the purpose of confirming or dispelling an alibi defense, or to develop lead information for the purpose of locating a specified vehicle or person. A law enforcement agency may also check stored data to determine whether a vehicle that was only recently added to an initial BOLO list had been previously observed in the jurisdiction before it had been placed on an initial BOLO list.)

10.2.2. Crime Scene Query.

a. A law enforcement agency is authorized to access and use stored non-alert data where such access might reasonably lead to the discovery of evidence or information relevant to the investigation of a specific criminal event as defined in these Guidelines. Note that if the law enforcement agency has reason to believe that a specific person or vehicle was at or near the location of the specific crime at the time of its commission, non-alert stored data might also be examined under the authority of Section 10.2.1 as part of post-scan BOLO query.

Automated License Plate Readers (ALPRs)

b. A crime scene query may not be conducted to review stored non-alert data based on general crime patterns (*i.e., e.g.*, to identify persons traveling in or around a "high crime area"), but rather is limited to situations involving specific criminal events as that term is defined in these Guidelines.

c. The crime scene query of non-alert stored data shall be limited in scope to stored non-alert data that is reasonably related to the specified criminal event, considering the date, time, location, and nature of the specified criminal event. For example, a crime that reasonably involves extensive planning and possible "rehearsals," such as a terrorist attack, would justify examining stored non-alert data that had been scanned and collected days or even weeks or months before the criminal event, and that may have been scanned at a substantial distance from the site of the crime or intended crime (*e.g.*, at any point along a highway leading to the intended crime site). A spontaneous crime, in contrast, might reasonably justify examination of stored non-alert data that was scanned and collected on or about the time of and in closer physical proximity to the criminal event.

d. The law enforcement agency shall document the specific crime or related crimes constituting the criminal event and the date(s) and location(s) of the specific crime(s).

10.2.3. Crime Trend Analysis

a. A law enforcement agency may access and use stored non-alert data for purposes of conducting crime trend analysis, as that term is defined in these Guidelines, when such access and analysis is approved by a designated supervisor and where such analysis is undertaken to produce analytical products that are intended to assist the agency in the performance of its duties. A designated supervisor may authorize one or more authorized users to conduct a method or methods of crime trend analysis on a repeated or continuous basis, in which event such authorization shall remain in force and effect unless and until modified or rescinded by the supervisor. A designated supervisor may also approve the use of an automated software program to analyze stored data to look for potentially suspicious activity or other anomalies that might be consistent with criminal or terrorist activity.

b. Crime trend analysis of stored non-alert data, whether automated or done manually, shall not result in the disclosure of personal identifying information to an authorized user or any other person unless:

- 1) the agency can point to specific and articulable facts that warrant further investigation of possible criminal or terrorist activity by the driver or occupants of a specific vehicle (*i.e.*, unusual behavior consistent with the *modus operandi* of terrorists or other criminals), and access to the

Automated License Plate Readers (ALPRs)

personal identifying information based on those specific and articulable facts has been approved by a designated supervisor. Such approval may be given by a designated supervisor in advance when the crime trend analysis reveals the existence of specified suspicious circumstances that would warrant further investigation and that would justify disclosure of personal identifying information to the authorized user conducting the analysis under the "specific and articulable facts that warrant further investigation" standard of proof established in this Section. The supervisor shall document any and all specified suspicious circumstances for which disclosure of personal identifying information is pre-approved if those suspicious circumstances are revealed by authorized crime trend analysis. When an automated crime trend analysis computer program is used, specified suspicious circumstances that would warrant further investigation and that would justify disclosure of personal identifying information to an authorized user under this Section may also be pre-approved by a designated supervisor and built into the computer program so that if the program identifies the existence of the pre-determined suspicious circumstances, it will automatically alert the authorized user of the suspicious activity and provide to him or her the relevant personal identifying information in accordance with the "specific and articulable facts that warrant further investigation" standard of proof established in this Section; or

2) Disclosure of personal identifying information concerning any vehicle plate scanned by the ALPR is authorized by a grand jury subpoena.

c. Nothing in this Section shall be construed to prohibit a computer program from accessing and comparing personal identifying information of one or more individuals who are associated with a scanned vehicle as part of the process of analyzing stored non-alert data, provided that such personal identifying information is not disclosed to a person unless the "specific and articulable facts that warrant further investigation" standard is satisfied. The "specific and articulable facts that warrant further investigation" standard set forth in this Section applies only to the crime trend analysis of non-alert data, and nothing in this Section shall be construed to limit disclosure of personal identifying information of a person who is the registered owner of a vehicle that is on an initial or post-scan BOLO list (*i.e.*, alert data).

d. For the purposes of this Section, the "specific and articulable facts that warrant further investigation" standard required for the disclosure of personal identifying based upon crime trend analysis of stored non-alert data is intended to be comparable to the "specific and articulable facts that warrant heightened caution" standard developed by the New Jersey Supreme Court in *State v. Smith*, 134 N.J. 599, 616-19 (1994) (establishing the level of individualized

Automated License Plate Readers (ALPRs)

suspicion required before an officer may order a passenger to exit a motor vehicle stopped for a traffic violation).

e. The law enforcement agency accessing stored non-alert ALPR data for purposes of conducting crime trend analysis shall document: the nature and purpose of the crime trend analysis; the persons who accessed stored non-alert ALPR data for use in conducting that analysis; and the designated supervisor who approved access to ALPR non-alert data. In any instance where personal identifying information is disclosed based upon crime trend analysis of stored non-alert data, the agency shall document the specific and articulable facts that warrant further investigation and the designated supervisor who reviewed those facts and approved the disclosure of personal identifying information, or who pre-approved disclosure of personal identifying information based upon specified circumstances identified by an automated crime trend analysis computer program, or, where applicable, the fact that access to personal identifying information was authorized by a grand jury subpoena.

11. SHARED LAW ENFORCEMENT ACCESS TO STORED ALPR DATA

11.1. *Authorization to Share and Aggregate Data*

Any ALPR data that may in conformance with these Guidelines be accessed and used by the law enforcement agency that collected the data may be shared with and provided to any other law enforcement agency. Stored ALPR data may be combined with ALPR data collected by two or more law enforcement agencies (e.g., collection of stored data by the State Police Regional Operations Intelligence Center), provided that such aggregated data shall only be retained, accessed, and used in accordance with the provisions of these Guidelines.

11.2. *Record of Shared Access and Responsibilities of the Receiving Agency*

When ALPR data is made accessible to or otherwise shared with or transferred to another law enforcement agency, the agency that collected the ALPR data shall document the identity of the other agency and the specific officer(s) or civilian employee(s) of that agency who were provided the information. When the transfer of stored ALPR data is done periodically as part of a system for aggregating data collected by two or more law enforcement agencies (e.g., the scheduled and routine transmittal of data to the State Police Regional Operations Intelligence Center), each agency contributing data to the combined database shall maintain a record of the data transfer, which may be an automated record, and shall have and keep on file a memorandum of understanding or agreement or other memorialization of the arrangement for maintaining and populating a database comprised of stored ALPR data collected by multiple law enforcement agencies. Any agency provided with access to or use of the ALPR data collected

Automated License Plate Readers (ALPRs)

by another agency shall comply with all applicable provisions of these Guidelines concerning stored ALPR data and disclosure of personal identifying information.

[12. Omitted in original.]

13. RELEASE OF ALPR DATA TO NON-LAW ENFORCEMENT PERSONS OR AGENCIES

Stored ALPR data shall be treated as "criminal investigatory records" within the meaning of *N.J.S. 47:1A-1 et seq.*, and shall not be shared with or provided to any person, entity, or government agency, other than a law enforcement agency, unless such disclosure is authorized by a subpoena or court order, or unless such disclosure is required by the Rules of Court governing discovery in criminal matters. Any agency receiving a subpoena or court order for the disclosure of ALPR data shall, before complying with the subpoena or court order, provide notice to the County Prosecutor, or to the Division of Criminal Justice in the case of any state-level law enforcement agency.

14. PROMULGATION AND ENFORCEMENT OF DEPARTMENTAL POLICIES

14.1. Required Contents of Departmental Policies

Pursuant to the requirements of Attorney General Law Enforcement Directive 2010-5, every law enforcement agency that possesses or uses an ALPR must promulgate and enforce a rule, regulation, standing operating procedure, directive, or order that establishes a comprehensive policy governing the operation of ALPRs, and governing access to, use, and retention of all stored ALPR data. The ALPR policy promulgated by the department must be consistent with the standards and procedural safeguards established in these Guidelines, and each ALPR policy must include the following provisions:

a. The ALPR policy shall provide that the chief of the department will designate one or more superior officers to oversee and administer the agency's ALPR program. These designated supervisors will be authorized to: provide or oversee the training of all officers and civilian employees who are authorized to operate an ALPR or to access or use ALPR stored data; review and approve requests to access and use stored ALPR data to conduct crime trend analysis and/or to access personal identifying information based upon crime trend analysis; and generally to ensure compliance with the department's ALPR policy and these Guidelines.

b. The ALPR policy shall provide that the chief of the department shall designate all authorized users, and that no officer or civilian employee will be authorized to operate an ALPR, or to access or use ALPR stored data, unless the officer or civilian employee has received training by the department on the proper operation of

Automated License Plate Readers (ALPRs)

these devices, and on the provisions of the department's ALPR policy and these Guidelines.

c. The ALPR policy shall implement and enforce the five-year retention period for ALPR stored data established in Section 9 of these Guidelines, and must provide for the purging of all ALPR stored data at the expiration of the five-year term.

d. The ALPR policy shall provide for the documentation of all ALPR-related activities and decisions that are required to be documented by Section 5 or any other provision of these Guidelines, which may be done by an automated record-keeping system, and shall provide that such records documenting the use of ALPRs and ALPR stored data shall be maintained for 5 years and shall be kept in a place and in a manner as to facilitate a review and audit of the department's ALPR program by the County Prosecutor or by the Attorney General or his or her designee.

e. The ALPR policy shall provide that any sworn officer or civilian employee of the agency who knowingly violates the agency's policy, or these Guidelines, shall be subject to discipline.

f. The ALPR policy shall provide that all significant violations of the agency's policy, or of these Guidelines, including but not limited to all instances involving the unauthorized access or use of ALPR stored data, must be reported to the County Prosecutor, or to the Director of the Division of Criminal Justice in cases involving a state-level agency, upon discovery of the violation. Unless the County Prosecutor or Director elects to conduct or oversee the investigation of the violation, such notification of the violation shall be followed up with a report, approved by the chief of the department, explaining to the County Prosecutor, or to the Director, the circumstances of the violation, and the steps that are being taken to prevent future similar violations.

14.2. Notice of ALPR Policies and Revisions Provided to County Prosecutors or the Division of Criminal Justice

The chief of the department shall provide a copy of the agency's written ALPR policy to the County Prosecutor, or to the Division of Criminal Justice in the case of a state-level agency, at or before the time of promulgation, and shall provide to the County Prosecutor, or to the Division, copies of any amendments or revisions to the agency's ALPR policy at or before the time that such amendments take effect.

15. ALPR PROGRAM ACCOUNTABILITY

15.1. ALPR Program Audits

All ALPR records documenting the use of an ALPR, or access to or use of ALPR stored data, whether kept manually or by means of an automated record-keeping system, shall be subject to review and audit

Automated License Plate Readers (ALPRs)

by the County Prosecutor, or by the Attorney General or his or her designee.

15.2. Handling of Complaints

Any complaints about a department's ALPR program made by any citizen or entity shall be forwarded to the appropriate County Prosecutor, or to the Director of the Division of Criminal Justice in the case of a State-level agency, for appropriate review and handling. The County Prosecutor, or Director, may conduct an investigation, or may direct the agency that is the subject of the complaint to conduct an investigation and to report back to the County Prosecutor or Director.

16. SANCTIONS FOR NON-COMPLIANCE

If the Attorney General or his or her designee has reason to believe that a law enforcement agency or officer or civilian employee is not complying with or adequately enforcing the provisions of these Guidelines, the Attorney General may temporarily or permanently suspend or revoke the authority of the department, or any officer or civilian employee, to operate an ALPR, or to gain access to or use ALPR stored data. The Attorney General or her designee may initiate disciplinary proceedings, and may take such other actions as the Attorney General in his or her sole discretion deems appropriate to ensure compliance with these Guidelines.

17. AUTHORITY OF ATTORNEY GENERAL TO GRANT EXEMPTIONS OR SPECIAL USE AUTHORIZATIONS

ALPRs, and all ALPR stored data, shall only be used and accessed for the purposes and in the manner authorized by these Guidelines. In recognition of the need to be able to address issues or circumstances that are not contemplated by these Guidelines, the Attorney General or his or her designee may grant an exemption from any provision of these Guidelines, and may authorize the specific use of an ALPR, or the data collected by or derived from an ALPR, that is not expressly authorized by these Guidelines. Any request by a department to use an ALPR or ALPR-generated data for a purpose or in a manner not authorized by these Guidelines shall be made to the Attorney General or his or her designee through the Director of the Division of Criminal Justice or his or her designee, who shall make recommendations on whether to grant the agency's specific request for an exemption or special authorization. Such requests shall be made in writing unless the circumstances are exigent, in which event the request by the agency and approval or denial by the Attorney General or his or her designee may be given orally, in which event the circumstances of the request and the approval or denial shall be memorialized in writing as soon thereafter as is practicable.

Refer
type.
In re
Comm
States
discus
which

A.A., ex rel.
Allen, State
Alston v. Ci
Ammar, Un
Andrews v.
Aristizabal
Asbury Park
Ocean Cou
Prosecutor
Atkinson v.
Banca v. Ph
Beck v. Pitts
Bell v. Wolf
Bent v. Tou
Biehunik v.

Blunt v. Klay

Bowling v. E
Branch, Sta
Breithaupt v
Brown, State
Bryant v. Bu
Bryson v. Un
Bull v. City
San Franc
Burlington I
Ellerth,
Caggiano v.
Caldwell v. I
Capua v. Cit



NEWARK POLICE DEPARTMENT GENERAL ORDER



SUBJECT: Automatic License Plate Recognition (ALPR) System		GENERAL ORDER NO. 09-10
SUPERCEDES: NEW	DATED: October 14, 2009	SECTION CODE: F-22

I. Purpose

The purpose of this order is to establish policy and procedures for Departmental use of a Automatic License Plate Recognition (ALPR) Scanner. ALPR technology employs cameras and computer software to discern the letters and numbers of vehicle license plates, and then compares them with records contained in state and federal databases.

II. Policy

It is the policy of the Newark Police Department to utilize technology in the furtherance of law enforcement efforts to locate and apprehend criminal suspects. It is further the policy of the Department to ensure that the use of technology devices such as the Automatic License Plate Recognition Scanner should not, intentionally or otherwise, compromise legitimate privacy concerns of law abiding citizens.

III. Definitions

- A. **ALPR** - an Automatic License Plate Recognition (ALPR) Scanner is a device that uses cameras and computer technology to compare digital images of license plates to lists of known plates of interest.
- B. **Scan File** - Lists or data obtained by ALPR of license plates viewed by the device, including potential images of the plates and vehicle on which it is displayed, and information regarding the location viewed by the ALPR Scanner.
- C. **Extract Download** - "Hot" lists of license plates associated with vehicles of interest from the associated database.

IV. ALPR Scanner Process

- A. The ALPR device works by taking extract downloads from various sources and creating a list of potential wanted vehicles or vehicles of interest. This list is uploaded weekly wirelessly from the main database located at the Technical Assistance Response Unit (TARU).
- B. The device, either mounted in a vehicle or mounted on a fixed position, then captures images of license plates that come into view and compares them to a list of vehicles of interest. The device alerts the officer of potential matches and the source database that provided the license plate for use in the device.



NEWARK POLICE DEPARTMENT

GENERAL ORDER



- C. Officers are reminded that since the information obtained within the database are not real time data, action other than following the identified vehicle is not justified until the information is verified via Central Communications.
- D. Officers should be aware that in certain cases, such as a match for a suspended driver's license or an NCIC record for a wanted person, the driver of the vehicle may not be the person for which the license plate is associated. In these instances, officers should obtain independent reasons for believing the operator is likely the suspended driver or the wanted person before initiating a motor vehicle stop.

V. Responsibilities

A. Police Officers

- 1. Inspect all components of the ALPR Scanner at the beginning of their tour of duty. This includes the mounted cameras, USB cables and the connection to the Mobile Data Computer (MDC).
- 2. Upon noticing any damage to the system or if the system is inoperative, immediately notify their field supervisor and submit an Administrative Submission Report (DP1:1001) documenting the damage.
- 3. If any component of the ALPR system is damaged as a result of an apparent malicious or criminal act, an Incident Report (DP1:802) shall be submitted and the Crime Scene Unit shall be notified to photograph the damage.

B. Field Supervisors

- 1. When notified of damage to the ALPR system, conduct a preliminary investigation and facilitate an Investigation of Personnel (I.O.P.) report.
- 2. If the ALPR system has been damaged as a result of an apparent malicious or criminal act, ensure that the Crime Scene Unit responds and documents the damage. Ensure that an Incident Report (DP1:802) and an Administrative Submission Report (DP1:1001) from the officer, is submitted to the Commanding Officer.
- 3. Notify TARU at (973) 733-4760 of the damage to the ALPR.
- 4. If the vehicle is involved in a motor vehicle accident and is taken out-of-service, in addition to notifying TARU, also notify Fleet Management at (973) 733-6066.

C. Technical Assistance Response Unit (TARU)

- 1. The commander of the TARU shall ensure that the ALPR database is updated on a daily basis and available for the wireless upload to all ALPR's.
- 2. Ensure the database of recorded plates from all ALPR's, are held for a period of at least one year.
- 3. Assist investigative units with any recorded information contained within their database that might be useful in their investigation.
- 4. Shall be responsible for the maintenance and repairs to all ALPR's.



NEWARK POLICE DEPARTMENT

GENERAL ORDER



D. Fleet Management

1. Shall coordinate with TARU regarding the repair of an ALPR equipped vehicle that has been taken out-of-service.

E. Police Academy

1. Shall develop and implement instruction for the use of the Automatic License Plate Recognition (ALRR) Scanner.
2. Shall maintain a database listing personnel who have been trained in the usage of the ALPR.

F. Operations Bureau

1. The Commander of the Operations Bureau shall have the discretion to deploy the ALPR equipped vehicle, in accordance with emerging crime trends.
2. The Commander of the Operations Bureau shall submit a weekly report describing the deployment and activities of the ALPR. This report shall be due every Tuesday in the Office of the Police Director. At a minimum, the weekly report shall include:
 - a. The days and times the ALPR was deployed.
 - b. The areas in which the ALPR was deployed.
 - c. Statistics summarizing the weekly productivity that has resulted from ALPR deployment. At a minimum, these statistics shall include:
 - i. Number and type of arrests,
 - ii. Number and type of vehicles recovered (e.g. felony, stolen, etc.),
 - iii. Number and type of any illegal firearms or contraband recovered,
 - iv. Number of moving and parking summons issued,
 - v. Number of field inquiries, and
 - vi. Number of motor vehicle stops.
 - d. A running tally of the total productivity that has resulted from ALPR deployment, both year-to-date and since inception of ALPR deployment.

BY ORDER OF:


GARRY F. MCCARTHY
POLICE DIRECTOR



NEWARK POLICE DEPARTMENT
DIRECTOR'S
MEMORANDUM



To: All Commands

Date: October 14, 2009

From: Garry F. McCarthy
Police Director

Number: 09-572
Tickler: 09-597

Subject: IMPLEMENTATION OF G.O. 09-10:
ALPR SYSTEM

File Reference: PUB 4
x EQU 10

Attached hereto is General Order 09-10, entitled Automatic License Plate Recognition (ALPR) System. This General Order shall take effect immediately.

The purpose of this Order is to establish policy and procedures for Departmental use of the Automatic License Plate Recognition (ALPR) Scanner. ALPR technology employs cameras and computer software to discern the letters and numbers of vehicle license plates, and then compares them with records contained in state and federal databases.

The ALPR equipped vehicle shall be deployed by the Commander of the Operations Bureau based upon emerging crime trends. The deployment of the ALPR technology shall enhance the Department's ability to apprehend wanted persons, and to recover stolen and other felony vehicles.

All Department members shall familiarize themselves with the contents of this General Order. This Order shall be the subject of roll call training for a period of three (3) weeks.

All Bureau Commanders shall forward a signed copy of this Memorandum, indicating receipt, understanding and compliance, to the Office of the Police Director on or before November 13, 2009.

BY ORDER OF:


GARRY F. MCCARTHY
POLICE DIRECTOR

GFM:ASP:DSL:bo

Newark

Cory A. Booker
Mayor

LIA 3-2



Police Department
Office of the Director of Police
31 Green Street, 4th Floor
Newark, New Jersey 07102
973-733-6007

Garry F. McCarthy
Director of Police

To : Police Director Garry F. McCarthy
Newark Police Department

From: Mr. John Tedona
PIPS Technology
804 Innovation Drive
Knoxville, Tennessee 37932

Date: June 26, 2008

Re: Check Received from Community Foundation of New Jersey

By my signature, I acknowledge receipt of Check #16102 in the amount of \$6,500.00 issued by the Community Foundation of New Jersey (Newark Police Foundation) for payment of the BOSS Server (Quote 040408) for the Newark Police Department.

I understand that the equipment shall be released to the Newark Police Department, Office of the Police Director upon receipt of the check.

Received by: _____

(Signature)

Date: _____

6-26-08

(Print name)



**PIPS
TECHNOLOGY**
A Federal Signal Company

Customer Quotation

804 Innovation Drive
Knoxville, TN 37932
P (865) 392-5540
F (865) 392-5599
www.pipstechnology.com

Customer: Newark Police Department

Date: 4/4/08

Attention: Det. Louis Plaza

Address: 31 Green Street

City: Newark

ST NJ

ZIP 07102

Project Description: BOSS Server

Quote Number: 040408 NEWARK SERVER

Item #	Part #	Description	Unit Price	Quantity	Total Price
1	PIPS-SRVC-FLDENG	Field Engineering services priced on a per day basis (Per day, Travel and living included)	\$ 2,000.00	2	\$ 4,000.00
2	BOSS-SRVR	PIPS Server Hardware Platform for use with BOSS (Back Office System Software) for customer data storage and application functionality. Main server elements include Quad Core 2 GHz Processor configuration with 4 GB main memory, 750GB Hard Drive, and Windows Server 2003 OS. Includes three-year service agreement from date of equipment purchase.	\$ 4,500.00	1	\$ 4,500.00

Subtotal: \$ 8,500.00

Less: Services Discount

\$ 2,000.00

Total: \$ 6,500.00

Quote Prepared By:

John Tedona

Assumptions and Notes:

- 1 This quote is subject to the attached PIPS' standard terms, conditions and warranties.

PIPS Technology - www.pipstechnology.com

The world leader of automated license plate recognition technology - why trust anyone else?

- One-stop shop: design, manufacture, installation and support of cameras, processors, software, OCR engines, other services.
- Headquarters in Knoxville, TN with sales/support offices in California, Texas, New Jersey, and the United Kingdom.
- Experience in Law Enforcement, Security, Access Control, Parking, Tolling, and Intelligent Transportation
- Performance related patents including Platefinder and TripleFlash.
- Recipient of numerous Innovation and technology awards.
- Over 11,000 cameras deployed worldwide.

This quotation is valid for 120 days, and may be rescinded at any time.

COMMUNITY FOUNDATION OF NEW JERSEY

35 KNOX HILL ROAD P.O. BOX 338
MORRISTOWN, NJ 07963-0338
(973) 267-5533

WACHOVIA BANK, N.A.
55-2-212

NO.

05/22/2008

DATE

\$*****6,500.00

AMOUNT

PAY * Six Thousand Five Hundred and no/100 *

TO
THE
ORDER
OF

PIPS Technology
804 Innovation Drive
Knoxville, TN 37932

PLEASE CASH PROMPTLY • VOID AFTER 180 DAYS
TWO SIGNATURES REQUIRED OVER \$10,000.00

[Signature] *[Signature]*

⑈00016102⑈ ⑆021200025⑆ 2000017955007⑈

COMMUNITY FOUNDATION OF NEW JERSEY

1610

73917 PIPS Technology 05/22/2008 016102

040408	05/22/2008 NWKPOL BOSS Server Quote	040408 Newark Server	6,500.00
	BOSS Server Quote	040408 Newark Server	6,500.00

CHECK TOTAL: \$*****6,500.00

COMMUNITY FOUNDATION OF NEW JERSEY

35 KNOX HILL ROAD P.O. BOX 338
MORRISTOWN, NJ 07963-0338
(973) 267-5533

WACHOVIA BANK, N.A.
55-2-212

NO.

16102

DATE

05/22/2008

AMOUNT

\$*****6,500.00

PAY * Six Thousand Five Hundred and no/100 *

TO
THE
ORDER
OF

PIPS Technology
804 Innovation Drive
Knoxville, TN 37932

PLEASE CASH PROMPTLY • VOID AFTER 180 DAYS
TWO SIGNATURES REQUIRED OVER \$10,000.00

[Signature] *[Signature]*

Details on back
Security Features Included.

⑈00016102⑈ ⑆021200025⑆ 2000017955007⑈

COMMUNITY FOUNDATION OF NEW JERSEY

16102

73917

PIPS Technology

05/22/2008 016102

040408

05/22/2008 NWKPOL BOSS Server Quote 040408 Newark Server
BOSS Server Quote 040408 Newark Server

6,500.00

6,500.00



**PIPS
TECHNOLOGY**
A Federal Signal Company

Customer Quotation

804 Innovation Drive
Knoxville, TN 37932
P (865) 392-5540
F (865) 392-5599
www.pipstechnology.com

Customer: Newark Police Department

Date: 4/4/08

Attention: Det. Louis Plaza

Address: 31 Green Street

City: Newark

ST NJ

ZIP 07102

Project Description: BOSS Server

Quote Number 040408 NEWARK SERVER

Item #	Part #	Description	Unit Price	Quantity	Total Price
1	PIPS-SRVC-FLDENGR	Field Engineering services priced on a per day basis (Per day, Travel and living included)	\$ 2,000.00	2	\$ 4,000.00
2	BOSS-SRVR	PIPS Server Hardware Platform for use with BOSS (Back Office System Software) for customer data storage and application functionality. Main server elements include Quad Core 2 GHz Processor configuration with 4 GB main memory, 750GB Hard Drive, and Windows Server 2003 OS. Includes three- year service agreement from date of equipment purchase.	\$ 4,500.00	1	\$ 4,500.00
Subtotal:					\$ 8,500.00
Less: Services Discount					\$ 2,000.00
Total:					\$ 6,500.00

Quote Prepared By:

John Tedona

Assumptions and Notes:

- 1 This quote is subject to the attached PIPS' standard terms, conditions and warranties.

PIPS Technology - www.pipstechnology.com

The world leader of automated license plate recognition technology - why trust anyone else?

- One-stop shop: design, manufacture, installation and support of cameras, processors, software, OCR engines, other services.
- Headquarters in Knoxville, TN with sales/support offices in California, Texas, New Jersey, and the United Kingdom.
- Experience in Law Enforcement, Security, Access Control, Parking, Tolling, and Intelligent Transportation
- Performance related patents including PlateFinder and TripleFlash.
- Recipient of numerous innovation and technology awards.
- Over 11,000 cameras deployed worldwide.

This quotation is valid for 120 days, and may be rescinded at any time.

Plaza, Louie

From: Tedona, John [jtedona@federalsignal.com]
Sent: Wednesday, April 02, 2008 4:54 PM
To: Plaza, Louie
Subject: ALPR Price Quote

Louis,

I'd like to have a conference call with you and one of my ALPR technicians to discuss the final price quote requirements. Will you be available for a phone call on Friday and is there a particular time that works best for you?

Thanks,

John Tedona
Regional Sales Manager
Public Safety Systems
Federal Signal Corporation
201-841-6237 Mobile
jtedona@federalsignal.com



Terms, Conditions and Warranties

In these Conditions of Sale, "PIPS" shall mean PIPS Technology, Inc.; "the Customer" shall mean the purchaser of the goods including all agents, employees, contractors, subcontractors, and other people acting on the customer's behalf under these conditions; the "Goods" shall mean the goods referred in the quotation supplied by PIPS.

1. **Acceptance** – This is to acknowledge receipt of your ("Purchase") order for the PIPS goods ("Goods") and/or licensed software and/or firmware, which are preloaded, or to be loaded into Goods ("Software") and/or performance of services ("Services"). Performance of any Services or sale of Goods or Software by PIPS is expressly conditioned upon the terms and conditions herein. Acceptance of offers to purchase Goods, license Software or perform Services is expressly conditioned upon Purchaser's assent to the terms and conditions contained herein, which assent is acknowledged by Purchaser upon accepting shipment, and shall prevail as the final expression for the parties in the event of conflict.

These terms and conditions take precedence over Purchaser's additional or different terms and conditions, to which notice of objection is hereby given. Neither commencement nor delivery by PIPS shall be acceptance of Purchaser's additional or different terms and conditions. PIPS expects, and Purchaser acknowledges, that if Purchaser disagrees with the terms contained herein, Purchaser will immediately (i.e., prior to use) return the Goods or Software to PIPS or cancel performance of Services before PIPS commences the performance of such Services.

2. **Validity** – PIPS reserves the right to amend any errors and/or unintentional omissions on quotations at the time of acceptance of order. Quotations by PIPS do not constitute an offer and PIPS reserves the right to withdraw or amend the same at any time prior to the issue by PIPS of any acceptance of order. No binding contract shall come into effect until the Customer's order has been accepted in writing, facsimile or E-mail by PIPS. The Uniform Laws on International Sales are hereby excluded.
3. **Price** – PIPS reserves the right to increase prices to allow for any increase in cost of appropriate federal, state and/or local taxes, surcharges, handling and/or shipping fees, labor and/or materials which may occur before delivery of the goods. The prices do not include any export duties or tariffs payable in respect to the goods nor any costs of insurance relating thereto. Prices for Goods and Software are FOB shipping point and remain in effect for thirty (30) days from quotation date. Prices quoted for Services shall remain in effect for the period stated in PIPS' written quotation or proposal for such Services, or, if none is stated, for ninety (90) days after the quotation is given. In all other respects, the quotation and solicitation for offers/orders for Goods, Software or Services may be withdrawn or modified at any time prior to acceptance by PIPS.
4. **Taxes** – Prices do not include any sales, use, excise, value-added or similar taxes. Liability for all taxes, licenses, or other fees imposed by any governmental authority upon the production, sale, shipment, or use of Goods or Software or the performance of Services covered by this solicitation shall be assumed and paid for by the Purchaser, and Purchaser shall indemnify PIPS against any such liability. Applicable sales or use taxes are billed by PIPS unless suitable exemption certificates are furnished by Purchaser before acceptance by PIPS.
5. **Insurance** – Where PIPS insures the goods at its discretion or at the Customer's request, charges for such insurance will be reflected on the invoice. PIPS liability shall be limited to be amount received by PIPS under such insurance or the value of the good whichever is less from which amount deduction may be made by PIPS in respect to any expenses incurred by PIPS. PIPS shall be under no liability to affect any insurance in respect of the good for any period after the passing of the risk as stated in paragraph 21 below, notwithstanding that title remains with PIPS.
6. **Shipment** – Shipping/freight is not included in the price, which is quoted FOB PIPS facility in Knoxville, TN. Shipping to the Customer's premises will, if required by the Customer, be



Terms, Conditions and Warranties

arranged by PIPS and charged as an extra. Any costs of insurance incurred by PIPS in respect of such shipping shall also be charged as an extra and reflected on the invoice.

7. **Payment** – Unless otherwise specified in PIPS' quotation and solicitation for offers, payment terms for Goods, Software and Services are net thirty (30) days from the date of PIPS' invoice, payable in United States dollars. Purchaser shall be billed monthly for Services performed. Upon PIPS' failure to receive payment within thirty (30) days, in addition to any other remedies, which PIPS may have, it shall have the right to (i) repossess Goods and Software as to which full payment has not been received (ii) suspend further performance under this and/or other agreements with Purchaser, and (iii) terminate this agreement and/or other agreements with Purchaser, which other agreements PIPS and Purchaser hereby amend accordingly. Purchaser shall be liable for all expenses, including attorney's fees, relating to the collection of past due amounts. On all currency-based transactions, interest of one and one-half percent (1-1/2%) per month, eighteen percent (18%) annually or, if lower, the maximum rate permitted by law, from the date on which it is due until it is paid, shall be added to past due accounts. Should Purchaser's financial responsibility become unsatisfactory to PIPS, cash payments or security satisfactory to PIPS may be required by PIPS for future deliveries of Goods or Software or performance of Services. If such cash payment or security is not provided, in addition to PIPS' other rights and remedies, PIPS may discontinue deliveries of Goods or Software and/or suspend performance of Services without liability. Customer shall be responsible for payment upon receipt of an invoice, and PIPS shall not be responsible for sending Customer more than one invoice.
8. **Destination** – PIPS reserves the right to decline or cancel contracts received directly or indirectly where the ultimate destination of the goods is a country with which it is not lawful for a United States company to trade or where the law of the destination country prohibits the importation of the goods.
9. **Regulation** – The Customer, in placing the order with PIPS, is deemed to warrant compliance with every applicable legal or regulatory requirement of any government or other relevant authority and those necessary licenses or permits required in connection with the contract have been lawfully obtained by the Customer prior to the shipment of the goods.
10. **Consignment** – PIPS may make any extra charge as required to ship goods in consignments of smaller quantities than originally quoted.
11. **Illustrations and Brochures** – All descriptive literature and illustrations given are intended as a general guide of the goods described and none of these shall form part of the contract nor shall any provision contained therein be deemed to be a representation, warranty, term or condition of or relating to the contract or constitute a collateral contract. All drawings prepared by PIPS in connection with the goods and the copyright of such drawings shall remain at all times the property of PIPS.
12. **Specifications** – PIPS follows a policy of continual product or component development, which may be implemented without notice and without affecting the validity of this contract, and PIPS shall not be responsible for providing Customer with any product improvements that occur after the date of sale. PIPS shall not be liable for failure to attain performance figures stated in the contract unless these have been guaranteed within a specific margin of tolerance.
13. **Weights and Measurements** – PIPS drawings, descriptive matter, weights, dimensions, and shipping specifications are approximate only, unless specifically guaranteed. Cable is provided within $\pm 10\%$ of specified length.



Terms, Conditions and Warranties

14. **Cancellation** – Contracts may only be altered or cancelled by the Customer with the written consent of PIPS who shall, upon giving such consent, be entitled to invoice the customer for all and any costs and lost profits incurred or that would be incurred as a result of the cancellation.
15. **Limited Warranty – Hardware Limited Warranty:** Purchaser assumes the responsibility for the selection of a particular Good to achieve its intended results, and for the installation, use, and results obtained therefrom. Subject to the limitations of liability set forth in Section 16, PIPS warrants the hardware it manufactures to be free from defects in material and workmanship under normal use for a period of twelve (12) months from the date of purchase. PIPS' obligation under this warranty shall be limited to the repair or exchange of any part or parts which may prove defective under normal use and service within one (1) year from the date of purchase and which our examination shall disclose to our reasonable satisfaction to be defective. Any field engineering required to resolve a hardware warranty item will be billed to the customer on a labor rate per day basis plus travel and living expenses (billed in accordance with Paragraph 27).

THIS LIMITED WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON PIPS' PART, AND PIPS NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OF THE GOODS. BY USING THE GOODS, THE PURCHASER ACKNOWLEDGES THAT NO OTHER REPRESENTATIONS WERE MADE TO HIM OR RELIED UPON BY HIM WITH RESPECT TO THE QUALITY AND FUNCTION OF THE GOODS HEREIN SOLD.

This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than PIPS'), unauthorized modification or alteration, use beyond rate capacity, or improper installation, maintenance or application. To the extent that Purchaser or its agents has supplied specifications, information, representation of operating conditions or other data to PIPS in the selection or design of the Goods and the preparation of PIPS' quotation, and in the event that actual operating conditions or other conditions differ from those represented by Purchaser, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

If within thirty (30) days after Purchaser's discovery of any warranty defects within the warranty period, Purchaser notifies PIPS thereof in writing, PIPS shall, at its option, repair, correct or replace F.O.B. point of manufacture, or refund the purchase price for, that portion of the Goods found by PIPS to be defective. Failure by Purchaser to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Purchaser's claim for such defects. Goods repaired or replaced during the warranty period shall be covered by the foregoing warranty for the remainder of the original warranty period or ninety (90) days from the date of shipment, whichever is longer.

Purchaser assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, either alone or in combination with other products/components.

Software Limited Warranty: Subject to the limitations in Section 16, PIPS warrants the media (CD ROM, diskette, etc) upon which Software is furnished, but not the Software itself, to be free from defects in material, and workmanship for a period of ninety (90) days from the date of purchase. Our obligation under the software warranty shall be limited to repair or replacement of the defective media during the ninety (90) day period. Defective media shall be returned prepaid to PIPS for service. PIPS reserves the right to determine in its sole discretion whether to repair or replace the defective media.



Terms, Conditions and Warranties

PIPS MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ITS SOFTWARE, AND IT IS LICENSED "AS IS." THIS LICENSE IS MADE ON THE EXPRESS UNDERSTANDING THAT THERE IS NO IMPLIED WARRANTY, THAT THE SOFTWARE SHALL BE MERCHANTABLE, AND NO IMPLIED WARRANTY THAT THE SOFTWARE

SHALL BE FIT FOR ANY PARTICULAR PURPOSE. BY USE OF THE SOFTWARE, THE PURCHASER ACKNOWLEDGES THAT HE IS NOT RELYING ON PIPS' SKILL OR JUDGEMENT TO SELECT OR FURNISH PRODUCTS SUITABLE FOR ANY PARTICULAR PURPOSE AND THAT THERE ARE NO WARRANTIES ON SOFTWARE WHICH EXTEND BEYOND THE DESCRIPTION HEREOF.

Service Warranty: PIPS warrants to Purchaser that Services provided will be performed by trained personnel using proper equipment and instrumentation for the particular Service provided. Any analysis of data, subsequent recommendations and other Services will be in accordance with established industry standards and practices, as applicable.

EXCEPT AS SPECIFICALLY PROVIDED FOR ABOVE, PIPS EXTENDS NO WARRANTIES OF ANY KIND TO SERVICES, EQUIPMENT OR MATERIALS AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than PIPS'), unauthorized modification or alteration, use beyond rate capacity, or improper installation, maintenance or application. To the extent that Purchaser or its agents has supplied specifications, information, representation of operating conditions or other data to PIPS in the selection or design of the Services and the preparation of PIPS' quotation, and in the event that actual operating conditions or other conditions differ from those represented by Purchaser, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

Equipment Manufactured by Others: Computer equipment and peripherals sold by PIPS, but manufactured by other companies, carries the manufacturer's original warranty, and PIPS does not warrant and shall not be liable for equipment or instruments supplied by PIPS but manufactured by others.

16. **Limitation of Remedy and Liability** – THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR, CORRECTION REPLACEMENT, PROPER PERFORMANCE, OR REFUND OF THE PURCHASE PRICE AS NOTED IN SECTION 15. BECAUSE OF THE NATURE OF THE GOODS, SOFTWARE AND/OR SERVICES AND THE CIRCUMSTANCES PECULIAR TO IT OR THEM, THE PURCHASER ACKNOWLEDGES THAT THE EXCLUSION OF REMEDIES IS NEITHER UNREASONABLE NOR UNCONSCIONABLE.

PIPS SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL PIPS' LIABILITY TO PURCHASER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY PURCHASER FOR THE SPECIFIC GOODS, SOFTWARE AND/OR SERVICES PROVIDED BY PIPS GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. PURCHASER AGREES THAT IN NO EVENT SHALL PIPS' LIABILITY TO PURCHASER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use or revenue cost of capital or loss or damage to property or equipment.



Terms, Conditions and Warranties

It is expressly understood that any technical advice furnished by PIPS with respect to the use of the Goods, Software or in connection with the Services is given without charge, and PIPS assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Purchaser's risk.

17. **Inspection** – There shall be no special tests of the goods except as provided for either in PIPS quotation or in the Customer's order and, if the Customer fails, after fourteen (14) business days notice, to attend or to be represented at any such tests, they may be conducted by PIPS in the Customer's absence. Results of such tests will be binding upon the Customer. Further, if the goods fail to meet such tests, the Customer may reject the goods within ten (10) business days of the date of delivery to the Customer. After this time, if not rejected, the goods shall be deemed accepted. During the fourteen business day time period, the Customer must provide to PIPS in writing the specific reason/s the goods are being rejected. If no such writing is provided, the goods are deemed to have been accepted by the Customer.
18. **Indicated Delivery Dates** – Delivery dates are approximate only and PIPS shall be under no liability to the Customer in respect of any delay or non-delivery of the goods however caused.
19. **Partial Deliveries** – PIPS reserves the right to dispatch part of the order and each installment shall be separately invoiced and paid for when due without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve the Customer of the obligation to accept remaining deliverables. The order shall not be cancelable by the Customer for delays in delivery of any installment.
20. **Date and Place of Deliveries** – Delivery shall be FOB PIPS facility in Knoxville, TN. The Customer is responsible for all shipping costs to the final point of destination. Shipping shall take place when the Customer receives PIPS invoice addressed to the Customer informing the Customer that the goods are ready for dispatch. Where such invoice is sent to the Customer by the United States Postal Service, it shall be conclusively presumed to have been received by the Customer on the fifth working day after mailing in the United States.
21. **Risk** – The risk of loss in the goods will pass to the Customer on delivery in accordance with paragraph 20 above.
22. **Labeled and Listed Products** – Whenever the goods comprise products which have been certified as labeled and listed by approved certification authorities ("Labeled and Listed Products"), it is the sole responsibility of the Customer to ensure that the Labeled and Listed Products are operated and serviced only in accordance with the instructions contained in any relevant PIPS product user and maintenance manual in accordance with PIPS guidelines referred to in paragraph 15.
23. **Storage and Delayed Delivery** – If the Customer fails to give instructions for shipment within fourteen (14) days of received advice from PIPS that the goods are ready for shipment (as provided by paragraph 20 above), payment shall be due forthwith and PIPS shall be entitled to store the goods at any available place at the Customer's risk and expense.
24. **Property** – Ownership of goods will pass to the Customer when PIPS has received payment in full and, until such time as this shall occur, the goods shall be stored by the Customer separately from all other goods and shall be clearly marked by the Customer as being the property of PIPS.
25. **Shortage in Delivery or Damage or Loss in Transit** – PIPS shall in no way be responsible for any breakage or loss of goods in transit and shall be under no liability to affect any insurance in this respect unless otherwise previously agreed. Both the carrier concerned and PIPS must be advised in writing of all shortages in quantity delivered and any breakage or loss within three (3) days of the consignment. In the event of the goods failing to reach their destination, both the



Terms, Conditions and Warranties

carrier and PIPS must be notified of this in writing within seven (7) days after the date on which the Customer was advised that the goods had been shipped. As further security for payment of the price of the goods by Customer, Customer hereby grants to PIPS a security interest in the goods.

26. **Commissioning** – The quotation does not include commissioning and installation services unless expressly stated otherwise. If PIPS is requested to supply:
 - a) Descriptive literature or instructions other than one (1) copy in English for the operation of the equipment, or
 - b) The services of any PIPS' engineer on-site for the purpose of checking, servicing, or commissioning, an extra charge will be made. Any complaints regarding the quality of such service must be made to the President of PIPS within seven (7) business days of the said services being carried out.
27. **Subsistence and Other Travel Expenses** – Meals, transportation, lodging, and miscellaneous expenses are considered travel expenses and are billed at actual cost plus a ten percent (10%) administrative fee. If time required to complete work is extended at the Purchaser's request, travel and living expenses will also increase. Travel hours consumed by the PIPS engineer will be incorporated within the daily rate for services performed. The cost of shipping supplies required for Services are likewise charged at cost plus ten percent (10%). Payment of all travel and living expenses are in accordance with the payment terms defined in paragraph 7.
28. **Overseas Sales** – In any case where goods are sold CIF or on the basis of any other international trade terms contained in Incoterms (1980), such term shall apply as if expressly incorporated herein except so far as any part of the same is inconsistent with any of the provisions contained in these terms.
29. **Repairs** – Goods returned for repair must be sent to PIPS Technology, Inc., 10511 Hardin Valley Road, Knoxville, TN 37932-1565, with shipping paid by the Customer and, after repair or exchange, items will be shipped COD to the Customer. All repairs outside of the 12-month warranty are guaranteed for ninety (90) days.
30. **Force Majeure** – PIPS shall not be liable to the Customer for any loss or damage which may be suffered by the Customer as a direct or indirect result of PIPS being prevented, hindered or delayed in the manufacture of the goods by reason of any circumstances whatsoever outside the control of PIPS including but without limit to the generality of the foregoing: any act of God, riot, strike, lock-out, trade dispute or labor disturbance, accident, breakdown of PIPS facility or PIPS machinery, fire, flood, difficulty in obtaining workers, materials or transport or any foreign or domestic terrorism.
31. **Property Information and Copyright** – Any data supplied by PIPS is for use in support of its manufactured and supplied Goods, Software and/or Services only. Reproduction or use of supplied data for any other purpose is prohibited, except with the express written permission of PIPS. Any Software supplied is copyrighted. The Purchaser may copy the Software for backup or modification purposes in support of the Purchaser's use of the Software only.
32. **License** – PIPS grants to Purchaser a non-exclusive royalty free license to use PIPS Software on one computer at any one time. A separate license(s) is required for each additional computer on which the Software will be used. The Software may be transferred to other computers provided it is first deleted from the previous computer upon which the Software was loaded. All right, title, and interest in and to the Software shall at all times remain the sole and exclusive property of PIPS. Violation of these terms immediately terminates said license.
33. **Software Updates** – PIPS agrees to provide Purchaser, at no charge except for media, preparation and shipping charges, for (1) year from the date of purchase, updates to the Software made at the



Terms, Conditions and Warranties

sole discretion of PIPS. Should Purchaser desire to purchase Software maintenance for the next subsequent year following the initial year from the date of purchase, and thereafter on an annual basis, and if PIPS is still providing maintenance, Purchaser may purchase the same, annually, at the existing rate.

34. **Variation of Conditions** – No employee, servant, representative, agent, distributor or any other such person or organization is empowered to vary these conditions. The President of PIPS, Inc. can only expressly make any variation with this written agreement.
35. **Non-Assignment** – The benefit to the Customer of this contract shall not be assigned in whole or in part to any other person, company or agent except with the express prior written consent of PIPS.
36. **Default and Insolvency** – Each of the following shall constitute an "Event of Default" under this Agreement:
 - a) The Customer fails to perform or observe any term, covenant or undertaking in any agreement with PIPS (including failure to pay any amount due to PIPS) and such default continues for seven (7) calendar days after PIPS gives the Customer written or oral notice of such failure to perform.
 - b) The Customer files a voluntary petition under any bankruptcy, reorganization or insolvency law of any jurisdiction; the Customer consents to or applies for appointment of a trustee, receiver, custodian or similar official appointed to take possession of all or substantially all of the Customer's assets and shall not be dismissed within thirty (30) days after appoint; the Customer makes any assignment for the benefit of creditors or other arrangement or composition under any laws for the benefit of insolvents; an order for relief is entered against the Customer under any bankruptcy, reorganization or insolvency law of any jurisdiction or in any case, proceeding or other action seeking such order remains undismissed for thirty (30) days after its filing; or any writ of attachment, garnishment or execution is levied against all or substantially all of the Customer's assets; or all or substantially all of the Customer's assets become subject to any attachment, garnishment, execution or other judicial seizure, and the same is not satisfied, removed, released or bonded within thirty (30) days after date the writ was levied or date of the attachment, garnishment, execution or other judicial seizure.
 - c) If the Customer is an individual, the Customer shall die.

Upon the occurrence of an Event of Default:

- a) The Customer shall forthwith, upon demand, deliver to PIPS any goods which are in the possession or control of the Customer the property in which remains with PIPS and, in default thereof, PIPS shall be entitled to repossess the same and for such damage caused thereby and the Customer shall indemnify PIPS from, and against all actions, proceedings, claims and such like arising; and;
- b) PIPS shall be entitled by notice in writing to the Customer to declare that all amounts due are immediately payable (whether under this or any other contract) and all such amounts shall bear interest in accordance with paragraph 25 from date of notice until payment.
- c) PIPS shall have the remedies provided under the Uniform Commercial Code of the State of Tennessee and other applicable laws of the State of Tennessee for any breach, default or nonperformance of and provision of this Agreement.
- d) No right or remedy given to PIPS hereunder is intended to be exclusive; each shall be cumulative and in addition to any other remedy provided herein or otherwise available at law or in equity. No failure by PIPS and no delay in exercising any right shall operate as a waiver of that right. Nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise of a right, power or privilege granted hereunder or otherwise.



Terms, Conditions and Warranties

37. **Headings** – The headings used in these Terms and Conditions of Sale are for convenience only and shall not affect the construction thereof.
38. **Entire Contract** – This writing constitutes the entire agreement and understanding between the parties as of the date of acceptance by PIPS and shall not thereafter be modified in any way except in writing by an authorized PIPS representative. No waiver of these terms and conditions shall be binding upon PIPS unless made in writing and signed by PIPS. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this agreement by PIPS' receipt, acknowledgement or acceptance or purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.
39. **United States Law** – The contract shall be governed by, construed, and interpreted in accordance with the laws of the United States of America and the State of Tennessee and, for the purpose of the determination of any dispute arising out of or in connection with the contract, the parties hereby submit to the jurisdiction of the Tennessee courts. Any controversy or claim arising out of or relating to this order shall be settled by arbitration held in Knox County, Tennessee, in accordance with the rules of the American Arbitration Association and judgment upon any arbitration award may be entered in any court having jurisdiction. In the event of a dispute under this contract, the prevailing party shall be entitled to recover its attorney's fees and costs from the other.