RESOLUTION APPROVING AND REQUESTING HARRISON COUNTY TO PURCHASE CAD SOFTWARE AND GEOGRAPHIC MAP DISPLAY FROM TYLER TECHNOLOGIES AS A NON-COMPETITIVE ITEM ONLY AVAILABLE FROM ONE SOURCE

WHEREAS, the Harrison County Emergency Communications Commission was created by the Board of Supervisors under the authority of Section 19-5-305 of the Mississippi Code of 1972 Annotated, and the Harrison County Emergency Communications Commission is governed and empowered according to Sections 19-5-301, et seq. Mississippi Code of 1972 annotated, as amended, and

WHEREAS, Harrison County, Mississippi is a governmental unit, body politic, and subdivision of the State of Mississippi governed by its Board of Supervisors and vested with certain statutory powers and general powers, including without limitation those powers vested under Sections 19-3-40, et seq. Mississippi Code of 1972, as amended, and

WHEREAS, the Harrison County Emergency Communications Commission, with the approval of the Harrison County Board of Supervisors, has implemented a county-wide integrated communications system administered by the Harrison County Emergency Communications Commission; and

WHEREAS, the Commissioners of the Harrison County Emergency Communications Commission have found that the county-wide integrated communications system includes various types of equipment which must be periodically monitored, maintained, upgraded, and/or replaced; and

WHEREAS, the Commissioners of the Harrison County Emergency Communications Commission find that as provided in the previous Interlocal Agreement attached hereto as Exhibit "A", until the county provides a consolidated dispatch facility,

the County has agreed to provide an adequate amount of infrastructure equipment for municipality to continue using existing centers; and

WHEREAS, the Commissioners of the Harrison County Emergency Communications Commission find that the City of Gulfport's current CAD software and Geographic Map Display is in need of replacement in order to efficiently and effectively respond to E-911 calls as more fully stated in the Memoranda from Chief Weatherford attached hereto and incorporated herein as Exhibit "B"; and

WHEREAS, the Commissioners of the Harrison County Emergency Communications Commission find that the purchase of CAD software and Geographic Map Display is reasonable and necessary for the purpose of maintaining the Computer Aided Dispatch Center for the City of Gulfport, as this dispatch center includes the law enforcement and fire service dispatch functions for the City of Gulfport; and

WHEREAS, the Commissioners of the Harrison County Emergency Communications Commission find that the purchase of new CAD software is necessary to support the county-wide integrated communications system and is necessary for carrying out the purposes of the E-911 Act (19-5-3-1, et seq. of the Mississippi Code of 1972 Annotated, as amended) within Harrison County; and

WHEREAS, the Commissioners of the Harrison County Emergency Communications Commission find that the primary need for this software is to respond to E-911 calls; however, it is recognized that incidental uses will include other public safety uses such as, routine law enforcement uses which are not generated by calls from E-911, and such incidental use will not cause the Commission to incur any additional cost; and

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WHEREAS, the Commissioners of the Harrison County Emergency Communications Commission find that Harrison County and the City of Gulfport have previously entered into the Interlocal Agreement which is attached to this Resolution as Exhibit "C", to establish a method by which the County and City of Gulfport can purchase and maintain the needed CAD software to continue to permit effective responses to the E-911 calls; and

WHEREAS, the Commissioners of the Harrison County Emergency Communications Commission find that it is in the best interest of the management, operation, development, and safety of Harrison County and its citizens to purchase the new CAD software and Geographic Map Display for the City of Gulfport's dispatch Center; and

WHEREAS, Tyler Technology Inc., has submitted to the Harrison County Emergency Communications Commission a proposed contract, a copy which is attached hereto and incorporated herein as Exhibit "D", for the purchase of Computed Aided Dispatch software and Geographic Map Display to be used by the City of Gulfport which is necessary to respond to E-911 calls and for carrying out the purposes of the E-911 Act (Section 19-5-301, *et seq.* of the Mississippi Code of 1972 Annotated), within Harrison County Emergency Communications Systems at a proposed cost of $174,700.00; and

WHEREAS, The Commissioners of the Harrison County Communication Commission find that as stated more fully in the Interlocal attached hereto, any necessary and/or upgrades for this software is the responsibility of the City of Gulfport. However, the same shall meet the specifications established by the Harrison County

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Emergency Communication Commission; and all software purchased will remain the property of the Commission and County; and

WHEREAS, the Commissioners of the Harrison County Emergency Communications Commission find that the proposed contract for the purchase of the CAD software and Geographic Map Display is reasonable and necessary for carrying out the purposes and intent of Section 19-5-301 through 19-5-319 of the Mississippi Code of 1972 Annotated; and

WHEREAS, As certified to the Harrison County Emergency Communications Commission, in the Memoranda which is attached hereto and incorporated herein as Exhibit "E", Robert G. Bailey, Deputy Director and Melissa Pope, County Purchasing Clerk, have certified that the purchase of the CAD software and Geographic Map Display is a non-competitive item only available from one source, as set forth in Section 31-7-13 m(viii), and that said source is Tyler Technology Inc.; and

WHEREAS, the Commissioners of Harrison Emergency Communications Commission find that the CAD software and Geographic Map Display, as stated in Exhibit "D" is a non-competitive item only available from one source and is further reasonable and necessary for carrying out the purpose of the E-911 Act within Harrison County; and

WHEREAS, the Commissioners of the Harrison County Emergency Communications Commission find that the not to exceed cost to the County and E-911 Commission of $208,700.00 for this software and implementation, is reasonable and customary, and is fair market value for the purchase of software and implementation; and

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WHEREAS, the Commissioners of the Harrison County Emergency Communications Commission find that the Commission has excess E-911 funds and monies available from Harrison County and is in the best interest of the safety and welfare of all citizens of Harrison County and in the best interest of all public safety entities in Harrison County to purchase this software that is proposed in Exhibit. **"D"**;

WHEREAS, the Commissioners of the Harrison County Emergency Communications Commission find that the terms and conditions set forth in the Contract for CAD Software and Implementation (Contract #2012-0230), attached hereto and incorporated herein collectively as Exhibit **"D"**, for the purchase and implementation of the subject software, contains certain language that is not enforceable under Mississippi law as to a governmental entity; and

WHEREAS, General Counsel for the Harrison County Emergency Communications Commission has notified Tyler Technologies Inc., in her letter of November 13, 2012, that the language is void under Mississippi law, as to governmental entities, as stated in said letter, a copy of which is attached hereto and incorporated herein as Exhibit **"F"**; and

WHEREAS, Tyler Technologies Inc., will not execute the Contact for CAD Software and Implementation (Contract #2012-0230) without such language, but will execute the Contact for CAD Software and Implementation (Contract #2012-0230) with such language, even with the knowledge the language is void; and

NOW, THEREFORE, BE IT RESOLVED, by the Commissioners of the Harrison County Emergency Communications Commission as follows:

SECTON I

The proposed contract for the purchase of CAD software and Geographic Map Display from Tyler Technology, Inc., for use by the City of Gulfport, attached hereto and incorporated herein as Exhibit "D", is approved, subject to and contingent upon approval by the Harrison County Board of Supervisors. The Harrison County Emergency Communications Commission recommends the Harrison County Board of Supervisors approve the aforestated proposed contract.

SECTION 2

The CAD software and Geographic Map Display, which is proposed in Exhibit "D", is declared a non-competitive item only available from one source and that source is Tyler Technology Inc. This declaration is subject to and contingent upon approval from the Harrison County Board of Supervisors, and the Harrison County Emergency Communications recommends such approval.

SECTION 3

Contingent upon approval of the Harrison County Board of Supervisors, the Chairman is authorized to execute any and all documents incidental to this software purchase, as an act of and on behalf of the Harrison County Emergency Communications Commission.

RESOLVED on this the _28th_ day of November, 2012.

The above and forgoing Resolution was introduced by

Commissioner _Bass_ , who moved the adoption of same. Said

Motion was seconded by Commissioner _Brisolara_ .

Upon being put to a vote, the results were as follows:

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Sheriff MELVIN BRISOLARA, Harrison County at Large   _AYE_

Chief JOHN MILLER, City of Biloxi   _AYE_

CLAY JONES, City of D'Iberville   _AYE_

Chief JOHN DUBUISSON, City of Pass Christian   _AYE_

Chief GEORGE BASS, City of Long Beach   _AYE_

Chief ALAN WEATHERFORD, City of Gulfport   Recused

STEVE DELAHOUSEY, Emergency Medical Services   _AYE_

WHEREUPON, Chairman _Delahousey_ declared the motion carried and the resolution adopted on the 28th day of _November_, 2012.

HARRISON COUNTY EMERGENCY

COMMUNICATIONS COMMISSION

BY: _Steven J. Delahousey_

ATTEST:

Paula E. Chisholm

7

TRITECH
SOFTWARE SYSTEMS

Date	July 10, 2012
Advisory #	VF001
Subject	VisionFIRE
Affected Versions	All

VisionFIRE 3 Platform – End of Updates

At the 2010 and 2011 User Conferences, VisionAIR announced plans to release the final update to the VisionFIRE 3.x product. The final update included the 2012 NFIRS changes to support NFIRS reporting compliance through 2012. VisionFIRE 3.6 update 6 was declared Generally Available on February 16, 2012 and is currently available for all VisionFIRE clients with an active maintenance contract. While TriTech will continue to offer telephone support for VisionFIRE, there will be no new scheduled updates to the VisionFIRE product now or in the future.

In anticipation of the retirement of the VisionFIRE product, current VisionFIRE RMS agencies should begin evaluating Fire Records alternatives. TriTech has built a relationship with a leading Fire RMS provider. This product is well positioned to meet the functional expectations of existing VisionFIRE customers and provide modern technology solutions to serve our Fire agencies in the future. TriTech has partnered with Emergency Technologies, Inc. (ETI) to offer a proven Fire RMS option that provides comparable capabilities to VisionFIRE and introduces new separately licensed capabilities such as NEMSIS reporting, TeleStaff integration and a robust inspection and violation module. The latest releases of VisionCAD and VisionMOBILE provide the ability to query and display site and pre-plan information from ETI's Visual Fire RMS. Emergency Technologies offers both an on premise and hosted offering. Please contact your Client Account Manager to learn more about the Visual Fire product and pricing details.

TriTech also has interfaces for both VisionCAD and VisionMOBILE to interact with other Fire RMS systems should your agency elect to go in another direction. Your Client Account Manager can also assist you with interface questions.

Thank you for your support of TriTech products. If you have any questions, please feel free to contact your Client Account Manager.

http://www.emergencytechnologies.com/

GULFPORT POLICE DEPARTMENT

OFFICE OF THE CHIEF OF POLICE

MAYOR COUNCIL FORM OF GOVERNMENT
2220 15TH STREET
P.O. DRAWER "5"
GULFPORT, MISSISSIPPI 39501
228.868.5959

George Schloegel
MAYOR

Alan Weatherford
CHIEF OF POLICE

To: Harrison County Emergency Communications Commission
From: Chief Alan Weatherford – Gulfport Police Department
Date: Monday, August 13, 2012
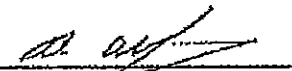RE: Funding Assistance for Computer Aided Dispatch Software

The Gulfport Police and Fire Departments are requesting funding assistance for the purchase of Computer Aided Dispatch (CAD) software. We are facing an upcoming dilemma because our current software provider, VisionAIR, has sold out to TriTech Software Systems, thus leaving us with an unknown future for our current system. The Gulfport Fire Department has been notified by TriTech that their current Vision Fire Records System has reached the end of its service life and will no longer be supported after January 1, 2013. (This notice is attached for review) VisionAir has also stopped supporting certain components of the Police Mobile CAD system which the Gulfport Police Department has used for several years. Multiple attempts have been made to contact TriTech to ascertain the future support of their Vision CAD and police Vision Mobile CAD products with no definitive responses.

Other challenges are Vision CAD and Tyler RMS systems are not fully integrated and are not capable of full functionality because they are two separate software vendors. Working with two separate vendors causes several challenges in any upgrades of the software because of a necessary software "bridge" between Vision CAD and Tyler RMS. This bridge has to be rebuilt each time an update from either company is received and poses challenges to the real time call and crime tracking system the city of Gulfport has developed. This bridge rebuilding will not be necessary with the implementation of Tyler CAD, as Tyler CAD and Gulfport's existing Tyler RMS are fully integrated. Tyler CAD will also use the City of Gulfport's own ARC GIS "real time" mapping system versus Vision CAD which uses a third party mapping system which Vision has also stopped supporting.

Over the past few months we have been working with Tyler Public Safety about using them as a possible CAD replacement. After much diligent work, we have determined that this is the most efficient and effective move that we can make. The purchase of this software will standardize the software used by the City of Gulfport without having bridges between our CAD and RMS systems as well as improving the capability of our mobile CAD and mapping systems. This CAD purchase will improve the safety and quality of service of our first responders. Additionally, we feel that it will help make current and future interagency data sharing more robust in Harrison County.
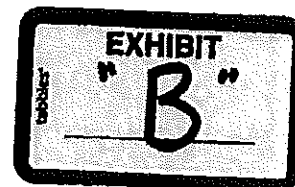
We are requesting assistance in the amount of $208,700 for the CAD portion of our migration.

Sincerely,

Alan Weatherford
Chief of Police
Gulfport Police Department

PAW/bf
cc: Deputy Chief Leonard Papania
Commander Rick Fisher
Master File

EXHIBIT
"B"

GULFPORT POLICE DEPARTMENT

OFFICE OF THE CHIEF OF POLICE

MAYOR COUNCIL FORM OF GOVERNMENT
2220 15TH STREET
P.O. DRAWER "9"
GULFPORT, MISSISSIPPI 39501
228.868.5959

George Schloegel
MAYOR

Alan Weatherford
CHIEF OF POLICE

Tuesday, July 10, 2012

To: Harrison County Emergency Communications Commission

Re: Funding Assistance for Computer Aided Dispatch Software

The Gulfport Police and Fire Departments are requesting funding assistance for the purchase of Computer Aided Dispatch (CAD) software. We are facing an upcoming dilemma because our current software provider, VisionAIR, has sold out to TriTech Software Systems thus leaving us with an unknown future for our current system. Over the past few months we have been working with our current Records Management System (RMS) provider, Tyler Public Safety, about using them as a possible replacement. After much diligent work, we have determined that this is the most efficient and effective move that we can make. The purchase of this software will standardize the software used by the City of Gulfport without having bridges between our CAD and RMS systems. Additionally, we feel that it will help make current and future interagency data sharing more robust in Harrison County.

We are requesting assistance in the amount of $208,700 for the CAD portion of our migration.

Sincerely,

Alan Weatherford
Chief of Police
Gulfport Police Department

PAW/bf

cc: Deputy Chief Leonard Papania
        Commander Rick Fisher
        Master File

INTERLOCAL COOPERATION AGREEMENT BETWEEN HARRISON
COUNTY AND THE CITY OF GULFPORT, MISSISSIPPI TO PURCHASE
COMPUTER AIDED DISPATCH (CAD) SOFTWARE AND GEOGRAPHIC
MAP DISPLAY TO BE USED BY THE CITY OF GULFPORT'S DISPATCH CENTER

This Interlocal Cooperation Agreement is made and entered into by and between Harrison

County, Mississippi, (the "County"), and the City of Gulfport, Mississippi ("Municipality") in

accordance with and pursuant to the provisions of the Interlocal Cooperation Act of 1974, §17-

31-1, et seq., Mississippi Code of 1972, as amended (the "Code").

1.   DURATION. The agreement shall commence on the date this Agreement is approved by

the Attorney General of the State of Mississippi (the "Attorney General") as provided for

in §17-13-11 of the Code and shall continue so long as this software is used for the

purposes outlined in Miss Code Ann. §19-5-301 et seq. In the event the Attorney General

disapproves this Agreement, it shall be null and void ab initio.

2.   PURPOSE. The County and all Municipalities within the County, through the Harrison

County Emergency Communications Commission, have implemented a County-wide

communications system for all public safety entitles operating within Harrison County.

For purposes of this Agreement, public safety entities are defined as police, fire service,

emergency medical service, 911 communications, emergency management (Civil

Defense) and Medical Examiner. As provided in the previous Interlocal Agreement

attached hereto as Exhibit "A", until the County provides a consolidated dispatch facility,

the County has agreed to provide an adequate amount of infrastructure equipment for

municipality to continue using existing dispatch centers.

The Municipality is in need of new CAD software for it's dispatch equipment

and the purpose of this Agreement is to establish a method by which the parties to this

EXHIBIT

"C"

Agreement can purchase the needed CAD software to continue to effectively respond to the E911 calls and to otherwise set forth the various responsibilities of the parties. The County Agrees to purchase the CAD software as set forth in this Agreement, and the Municipality agrees to be responsible for any upgrades and for maintenance of this software.

3. CITATION OF STATUTORY AUTHORITY. Harrison County is a political subdivision of the State of Mississippi whose powers and authorities are set forth generally in Title 19 of the Code, the specific authority for this Agreement is found in the provisions of Sections 19-5-301 through 19-5-319, specifically including Section 19-5-313, and a local and private Act of 1984, being Chapter 933 thereof. Gulfport is a municipal corporation whose powers are set forth generally in Title 21 of the Code. The specific authority for this Agreement is found in the provisions of Sections 19-5-301 through 19-5-319, specifically including Section 19-5-313, and a local and private Act of 1984, being Chapter 933 thereof.

4. FINANCING. Financing of the County's portion of the costs for this software shall be from funds received by the County from excess proceeds of the emergency telephone service charges assessed by the County as provided for in Section 19-5-313 of the Code. To the extent maintenance and/or upgrades are needed, the Municipality's portion of the costs shall be paid from its general fund monies or other funds which may be available for this purpose. There will be not joint funds to be administered pursuant to this Agreement.

5. TERMINATION OR AMENDMENT. Amendments to the Agreement may be made with the consent and approval of both parties. The Agreement can be terminated at any time

by the official action of either party provided it is done prior to the purchase and/or other commitment of the County for the purchase of this software.

6.   ADMINISTRATION. This joint undertaking shall be administered by the Harrison County Emergency Communications Commission and Harrison County, Mississippi and Harrison County, Mississippi will comply with all state public purchasing laws.

7.   GENERAL PROVISIONS.

7.1.   The maintenance of this software and any needed upgrades shall be the responsibility of the Municipality and the same shall meet the specifications established by the Harrison County Emergency Communications Commission. All software purchased with County funds will remain the property of the County even though it may be assigned to the Municipality. The County shall retain a license to this software. In the event this Agreement is terminated, the property shall be returned to the party owning same.

7.2.   The Municipality agrees to be responsible for all expenses associated with the software and any end-user equipment owned by the County which is assigned to the Municipality and the equipment owned by the Municipality. This includes, but is not limited to the following: maintenance costs; insurance; repairs; replacements; and upgrades.

7.3.   The Municipality agrees to maintain the software purchased and the necessary equipment in good working order. In the event any this software is lost or destroyed, the Municipality shall replace same at its expense and the same shall be deemed to be County property with County retaining a license to such.

7.4.   All property and/or software purchased pursuant to the terms of this Agreement

shall be used for the purposes outlined in Miss. Code Ann. § 19-5-301, et. seq., and as established by the Rules and Regulations of the Harrison County Emergency Communications Commission. All software being used Inconsistent with this paragraph shall be surrendered to the Harrison County Emergency Communications Commission and for Harrison County, Mississippi, upon their request. The primary need for this software is to respond to E-911 calls; however, it is recognized that incidental uses will include other public safety uses such as, routine law enforcement uses which are not generated by calls from E-911. Such incidental use will not cause the County to incur any additional cost.

7.5. This agreement was not intended to supersede, modify or affect any obligations between the parties under pre-existing covenants, agreements or contracts related to the communications system. In the event an irreconcilable conflict should arise with other agreements, then the provisions of this agreement should control.

8. MISCELLANEOUS PROVISIONS.

8.01. Governing Law. This Agreement shall be governed by and construed in accordance with the provisions of the laws of the State of Mississippi.

8.02. Severability. If any provision of this Agreement or the application of any provision to any person or circumstance is or become invalid or unenforceable to any extent, then the remainder of this Agreement and the application of such provisions to any other person or circumstances shall not be affected by such invalidity or un-enforceability and shall be enforced to the greatest extent permitted by law.

8.03. Counterparts/Entire Agreement. This Agreement may be executed in multiple

counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. This Agreement contains the sole and entire understanding between and among the parties hereto with respect to the subject matter hereof. All promises, inducements, offers, letters of intent, solicitation, agreements, commitments, representations and warranties made between such parties prior to this Agreement are superseded by this Agreement.

8.04. Captions. Captions, Sections and Article headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope of this Agreement nor the intent of any provision hereof.

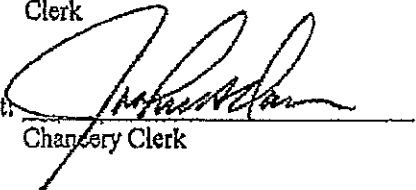WITNESSETH the signatures of the parties, this the 19th day of September, 2012.

HARRISON COUNTY

By: _____
     President

Attest: _____
        Clerk

Attest: _____
        Chancery Clerk

CITY OF GULFPORT

By: _____
     Mayor

Attest: _____
        Clerk

AGREEMENT

This agreement ("Agreement") is made this _____ day of _____ 2012 ("Effective Date") by and between Tyler Technologies, Inc., a Delaware corporation with offices at 5519 53rd Street, Lubbock, Texas 79414 ("Tyler") and Harrison County, Mississippi by and through the Harrison County Board of Supervisors, with offices at 1801 23rd Avenue, Gulfport, Mississippi 39501 and the Harrison County Emergency Communications Commission, with offices at 15309 B Community Road, Gulfport, Mississippi 39503 (hereinafter collectively referred to as "Client").

WHEREAS Client selected Tyler to furnish, deliver, install, and implement the products set forth in the investment summary attached hereto as Exhibit 1 ("Investment Summary");

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth herein, Tyler and Client agree that Tyler shall provide products and services, and Client shall pay prices, as set forth in this Agreement.

SECTION A – SOFTWARE LICENSE AGREEMENT

1. <u>License Grant</u>.
a) Upon the Effective Date, Tyler hereby grants to Client a non-exclusive, non-transferable, royalty-free, revocable license to use the Tyler software products set forth in the Investment Summary and related interfaces (collectively, the "Tyler Software Products") and documentation provided in or with the Tyler Software Products ("Documentation") for use by the City of Gulfport, Mississippi (the "City") for the City's internal business purposes, and potentially Client's internal business purposes at a later date upon execution of a mutually agreed addendum to this Agreement, and otherwise subject to the terms and conditions of this Agreement. Should Client seek to utilize the Tyler Software Products at a later date, there will not be any additional fees for use of the same number of seats/positions as stated in Exhibit 1. This license is revocable by Tyler if Client fails to comply with the terms and conditions of this Agreement, including without limitation, Client's failure to timely pay the Software fees in full. Upon Client's payment in full for the Tyler Software Products, this license will become irrevocable, subject to the restrictions on use and other terms set forth in this Agreement.
b) Tyler shall retain ownership of, including all intellectual property rights in and to, the Tyler Software Products and Documentation.
c) The Tyler Software Products are not licensed to perform functions or processing for subdivisions or entities that were not disclosed to Tyler prior to the Effective Date.
d) The right to transfer the Tyler Software Products to a replacement hardware system is included in this Agreement. Client shall pay Tyler for the cost of new media or any required technical assistance to accommodate the transfer. Client shall provide advance written notice to Tyler of any such transfer.
e) Client acknowledges and agrees that the Tyler Software Products and Documentation are proprietary to Tyler and have been developed as trade secrets at Tyler's expense. Client shall use best efforts to keep the Tyler Software Products and Documentation confidential and to prevent any misuse, unauthorized use or unauthorized disclosure of the Tyler Software Products or Documentation by any party.
f) The Tyler Software Products may not be modified by anyone other than Tyler. If Client modifies the Tyler Software Products without Tyler's prior written consent, Tyler's obligations to provide maintenance services on, and the warranty for, the Tyler Software Products will be void. Client shall not perform decompilation, disassembly, translation or other reverse engineering on the Tyler Software Products.
g) Client may make copies of the Tyler Software Products for archive purposes only. Client shall repeat any and all proprietary notices on any copy of the Tyler Software Products. Client may make copies of the Documentation for internal use only.
h) Tyler maintains an escrow agreement with an escrow services company under which Tyler places the source
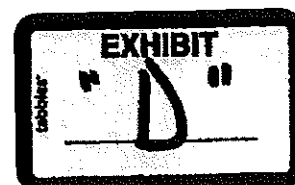
code of each major release of the Tyler Software Products. At Client's request, Tyler will add Client as a beneficiary to such escrow agreement. If Client requests to be added as a beneficiary to such escrow agreement, Client will pay the annual beneficiary fee and is solely responsible for maintaining its status as a beneficiary.

2. <u>Limited Warranty</u>. For the purposes of this Agreement, a "Defect" is defined as a failure of the Tyler Software Products to substantially conform to the then-current specifications and the functional descriptions of the Tyler Software Products in Tyler's written proposal to Client. In the event of conflict between the afore-mentioned documents, the then-current specifications will control. A Tyler Software Product is "Defective" if it contains a Defect. For as long as a current Maintenance Agreement is in place, Tyler warrants that the Tyler Software Products will not contain Defects. If the Tyler Software Products do not perform as warranted, Tyler will use reasonable efforts, consistent with industry standards, to cure the Defect in accordance with Tyler's then-current support call process.

3. <u>Intellectual Property Infringement Indemnification</u>.
a) Tyler's Obligations. Tyler shall defend and indemnify Client against any claim by an unaffiliated third party of this Agreement that a Tyler Software Product, if used within the scope of this Agreement, directly infringes that party's registered United States patent, copyright or trademark issued and existing as of the Effective Date or as of the distribution date of a release to the Tyler Software Product, and will pay the amount of any resulting adverse final judgment issued by a court of competent jurisdiction or of any settlement made by Tyler in writing.
b) Client's Obligations. Tyler obligations in this section are contingent on the Client performing all of the following in connection with any claim as described herein:
> i. Promptly notifies Tyler in writing of any such claim;
> ii. Gives Tyler reasonable cooperation, information, and assistance in connection with the claim; and
> iii. Consents to Tyler's sole control and authority with respect to the defense, settlement or compromise of the claim.

c) Exceptions to Tyler's Obligations. Tyler will have no liability hereunder if the claim of infringement or an adverse final judgment rendered by a court of competent jurisdiction results from:
> i. Client's use of a previous version of a Tyler Software Product and the claim would have been avoided had Client used the current version of the Tyler Software Product;
> ii. Client's combining the Tyler Software Product with devices or products not provided by Tyler;
> iii. Use of a Tyler Software Product in applications, business environments or processes for which the Tyler Software Product was not designed or contemplated, and where use of the Tyler Software Product outside such application, environment or business process would not have given rise to the claim;
> iv. Corrections, modifications, alterations or enhancements that Client made to the Tyler Software Product and such correction, modification, alteration or enhancement is determined by a court of competent jurisdiction to be a contributing cause of the infringement;
> v. Use of the Tyler Software Product by any person or entity other than Client or Client's employees or the City or the City's employees; or
> vi. Client's willful infringement, including Client's continued use of the infringing Tyler Software Product after Client becomes aware that such infringing Tyler Software Product is or is likely to become the subject of a claim hereunder.

d) Remedy.
> i. In the event a Tyler Software Product is, by a court of competent jurisdiction, finally determined to be infringing and its use by Client is enjoined, Tyler will, at its election:
>> (a) Procure for Client the right to continue using the infringing Tyler Software Products; or
>> (b) Modify or replace the infringing Tyler Software Products so that it becomes non-infringing.
> ii. The foregoing states Tyler's entire liability and Client's sole and exclusive remedy with respect to the subject matter hereof.

SECTION B – PROFESSIONAL SERVICES AGREEMENT

1. <u>Expenses</u>. All expenses are the responsibility of the City.

2. Cancellation of Services. In the event Client or the City cancels services less than two (2) weeks in advance, Client is liable to Tyler for hourly fees associated with the canceled services if Tyler is unable to re-assign its personnel.

3. Additional Services. The Investment Summary contains a good faith estimate of service fees. Training and/or consulting services utilized in excess of those set forth in the Investment Summary and additional related services not set forth in the Investment Summary, including those caused by the City's action or inaction, or an expansion of the project scope, will be billed to the City at Tyler's then-current rates. Tyler will notify Client and the City in writing immediately upon becoming aware of a potential need for additional services. Notwithstanding anything to the contrary herein, Tyler will hold the Implementation Services rate of $125 per hour in place for six (6) months from the Effective Date.

4. Services Warranty. Tyler warrants that it shall perform services in a professional, workmanlike manner, consistent with industry standards. In the event Tyler provides services that do not conform to this warranty, Tyler will re-perform the services at no additional cost to Client.

SECTION C – MAINTENANCE AGREEMENT

1. Maintenance Services. All maintenance fees are the responsibility of the City. The City is contracting directly with Tyler for maintenance services on the Tyler Software Products.

SECTION D – THIRD PARTY PRODUCT AGREEMENT

1. Agreement to License or Sell Third Party Products.
a) For the price set forth in the Investment Summary, Tyler agrees to license or sell and deliver to Client, and Client agrees to accept from Tyler the hardware ("Hardware") and third party software ("Third Party Software") set forth in the Investment Summary (collectively, the "Third Party Products").
b) Third Party Product Warranties. Client acknowledges and agrees that Tyler is not the manufacturer of the Third Party Products. As such, Tyler does not warrant or guarantee the Third Party Products. Tyler hereby grants and passes through to Client any warranty adjustments that Tyler may receive from the developer, manufacturer or supplier of the Third Party Products ("Developer").
c) Third Party Software Maintenance.
> i) In the event Client elects not to purchase through Tyler maintenance services on the Third Party Software, it shall be the responsibility of the City to repair and maintain the Third Party Software and purchase enhancements as necessary after installation.
> ii) In the event Client elects to purchase through Tyler maintenance services on the Third Party Software, Tyler will facilitate resolution of a defect in Third Party Software with the Developer.
> iii) In the event the Developer charges a fee for future Third Party Software release(s), City shall be required to pay such fee.

SECTION E – GENERAL TERMS AND CONDITIONS

1. Taxes. The fees set forth in the Investment Summary do not include any taxes, including, without limitation, sales, use or excise tax. All applicable taxes shall be paid by Tyler to the proper authorities and shall be reimbursed by Client to Tyler. In the event Client possesses a valid direct-pay permit, Client will forward such permit to Tyler on the Effective Date, in accordance with Section E (21). In such event, Client will be responsible for remitting all applicable taxes to the proper authorities. If tax-exempt, Client will provide Tyler with Client's tax-exempt certificate.

2. Force Majeure; Client Assistance. "Force Majeure" is defined as an event beyond the reasonable control of a party, including governmental action, war, riot or civil commotion, fire, natural disaster, labor disputes, restraints affecting shipping or credit, delay of carriers, inadequate supply of suitable materials or any other cause which could not with reasonable diligence be foreseen, controlled or prevented by the party. Neither party shall be liable

for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure.

Force Majeure will not be allowed unless:

a) Within ten (10) business days of the occurrence of Force Majeure, the party whose performance is delayed thereby provides the other party or parties with written notice explaining the cause and extent thereof, as well as a request for a time extension equal to the estimated duration of the Force Majeure events.

b) Within ten (10) business days after the cessation of the Force Majeure event, the party whose performance was delayed provides the other party written notice of the time at which Force Majeure ceased and a complete explanation of all pertinent events pertaining to the entire Force Majeure situation.

Either party will have the right to terminate this Agreement if Force Majeure suspends performance of scheduled tasks by one or more parties for a period of one hundred-twenty (120) or more days from the scheduled date of the task. This paragraph will not relieve Client of its responsibility to pay for services and goods provided to Client and expenses incurred on behalf of Client prior to the effective date of termination.

In addition, Client acknowledges that the implementation of the Tyler Software Products is a cooperative process requiring the time and resources of Client and City personnel. The City shall use all reasonable efforts to cooperate with and assist Tyler as may be reasonably required to meet the project deadlines and other milestones agreed to by the parties for implementation. Tyler shall not be liable for failure to meet such deadlines and milestones when such failure is due to Force Majeure (as defined above) or to the failure by Client or City personnel to provide such cooperation and assistance (either through action or omission).

3. Indemnification. Tyler shall indemnify and hold harmless Client and its agents, officials and employees from and against any and all direct claims, losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) for personal injury or property damage arising from Tyler's negligence or willful misconduct.

4. Limitation of Liability. To the extent provided by Mississippi law, in no event shall Tyler be liable for special, indirect, incidental, consequential, or exemplary damages, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with the use of the Tyler Software Products, Services, or Third Party Products. To the extent provided by Mississippi law, Tyler's liability for damages and expenses arising from the Tyler Software Products or Services, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the Fees set forth in the Investment Summary related to the defective product or service. To the extent provided by Mississippi law, Tyler's liability for damages and expenses arising from the Third Party Products, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the license fee/purchase price of the Third Party Products. Such fees reflect and are set in reliance upon this limitation of liability.

5. Disclaimer. TO THE EXTENT PROVIDED BY MISSISSIPPI LAW, THE RIGHTS, REMEDIES, AND WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS, REMEDIES, AND WARRANTIES EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND SYSTEM INTEGRATION, WHICH ARE HEREBY DISCLAIMED BY TYLER.

6. Dispute Resolution. The parties agree to notify each other within fifteen (15) business days of becoming aware of a dispute under this Agreement ("Dispute Notice Date").

The parties further agree that, before resorting to any formal dispute resolution process, they will first engage in good faith negotiations in an effort to find a solution that serves their respective and mutual interests. Party principals agree to participate directly in these negotiations. Unless otherwise agreed in writing, the parties shall have fifteen (15) business days from the Dispute Notice Date to begin these negotiations, and thirty (30) days from the Dispute Notice Date to complete these negotiations. All such negotiations will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Civil Procedure 408 and/or any similar applicable state rule.

In the event the parties fail to resolve the dispute as set forth above, the dispute will be referred to non-binding mediation. Thereafter, either party may assert its other rights and remedies under this Agreement within a court of competent jurisdiction.

Nothing in this Article will prevent a party from applying to a federal or state court of competent jurisdiction to obtain injunctive relief pending resolution of the dispute through the dispute resolution procedures set forth herein.

7. No Intended Third Party Beneficiaries. This Agreement is entered into solely for the benefit of Tyler, Client and the City's use. No third party other than the City will be deemed a beneficiary of this Agreement, and no third party other than the City will have the right to make any claim or assert any right under this Agreement.

8. Governing Law. This Agreement will be governed by and construed in accordance with the laws of Mississippi and venue shall be in Harrison County, Mississippi.

9. Severability. If any term or provision of this Agreement or the application thereof, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable will not be affected thereby, and each term and provision of this Agreement will be valid and enforced to the fullest extent permitted by law.

10. No Waiver. In the event that the terms and conditions of this Agreement are not strictly enforced by Tyler or Client, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent Tyler or Client from enforcing each and every term of this Agreement thereafter.

11. Amendment. This Agreement may only be modified by written amendment signed by authorized representatives of both parties.

12. Termination.
a) Termination for Cause. Client may terminate this Agreement for cause in the event Tyler does not cure a material breach of this Agreement within thirty (30) days of receiving notice of such breach from Client. Upon such termination, Client shall pay Tyler for all services and expenses not in dispute and non-Defective Tyler Software Products which were delivered or incurred prior to the date Tyler received Client's notice of termination. Payment for services and expenses in dispute will be determined in accordance with the dispute resolution process.
b) Termination for Non-appropriation. If Client should not appropriate or otherwise make available funds sufficient to purchase the products set forth in this Agreement, or other means of performing the same functions of such products, Client may unilaterally terminate this Agreement only upon thirty (30) days written notice to Tyler. Upon termination, Client shall remit payment for all products and services delivered to Client and all expenses incurred by Tyler prior to Tyler's receipt of the termination notice. Client will not be entitled to a refund or offset of previously paid license and other fees.

13. No Assignment. Client may not assign its rights and responsibilities under this Agreement without Tyler's prior written permission, not to be unreasonably withheld.

14. Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

15. Confidentiality. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities. Each party agrees that it shall not disclose any confidential information of the other party and further agrees to take appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement for a period of two (2) years. This obligation of confidentiality will not apply to information that:

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a) At the time of the disclosure is in the public domain;

b) After disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement by a party;

c) A party can establish by reasonable proof was in that party's possession at the time of disclosure;

d) A party receives from a third party who has a right to disclose it to that party; or

e) Is subject to Freedom of Information Act requests, only to the extent disclosure is based on the good faith written opinion of the receiving party's legal counsel that disclosure is required by law: provided, however, that that receiving party shall give prompt notice of the service of process or other documentation that underlies such requirement and use its best efforts to assist the disclosing party if the disclosing party wishes to obtain a protective order or otherwise protect the confidentiality of such confidential information. The disclosing party reserves the right to obtain protective order or otherwise protect the confidentiality of its confidential information.

16. Shipping. Delivery shall be F.O.B. shipping point.

17. Payment Terms.

a) Tyler shall invoice Client $43,675 upon the Effective Date. Such amount equals 25% of the license fees for the Tyler Software Products.

b) Tyler shall invoice Client $104,820 when Tyler has made the Tyler Software Products available to Client for downloading. Such amount equals 60% of the license fees for the Tyler Software Products.

c) Tyler shall invoice Client $26,205 upon the earlier of (i) the first use of a Tyler Software Product in live production, or (ii) one hundred eighty (180) days from the date Tyler made the Tyler Software Products available to Client for downloading. Such amount equals 15% of the license fees for the Tyler Software Products.

d) Tyler shall invoice Client Professional Services fees in an amount not to exceed $5,000 upon the earlier of (i) the first use of a Tyler Software Product in live production, or (ii) one hundred eighty (180) days from the date Tyler made the Tyler Software Products available to Client for downloading.

e) Tyler shall invoice Client Implementation Services fees for services if and as provided, at an hourly rate of $125.00, in an amount not to exceed $29,000.

f) Payment is due within thirty (30) days of the invoice date.

18. Entire Agreement. This Agreement represents the entire agreement of Client and Tyler with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Client hereby acknowledges that in entering into this Agreement it did not rely on any information not explicitly set forth in this Agreement. Client and Tyler acknowledge that Tyler and the City will be entering into a separate agreement for maintenance services and expenses.

19. Multiple Originals and Signatures. This Agreement may be executed in multiple originals, any of which shall be independently treated as an original document. Any electronic, faxed, scanned, photocopied or similarly reproduced signature on this Agreement or any amendment hereto shall be deemed an original signature and shall be fully enforceable as if an original signature.

20. Notices.

a) All notices or communications required or permitted as a part of this Agreement will be in writing (unless another verifiable medium is expressly authorized) and will be deemed delivered when:

     i) Actually received,

     ii) Upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the party,

     iii) Upon receipt by sender of proof of email delivery, or

     iv) If not actually received, ten (10) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the respective other party at the address set forth in this Agreement or such other address as the party may have designated by notice or Agreement amendment to the other party.

b) Consequences to be borne due to failure to receive a notice due to improper notification by the intended receiving party of a new address will be borne by the intended receiving party. The addresses of the parties to this Agreement are as follows:

Tyler Technologies, Inc.
1 Cole Haan Drive
Yarmouth, ME 04096
Attention: Contracts Manager

Harrison County Board of Supervisors
1801 23rd Avenue
Gulfport, MS 39501
Attention: Pam Ulrich, County Administrator

Harrison County Emergency Communications Commission
15309 B Community Road
Gulfport, MS 39503
Attention: Chairman

21. Independent Contractor. This is not an agreement of partnership or employment of Tyler or any of Tyler's employees by Client. Tyler is an independent contractor for all purposes under this Agreement.

22. Tyler Products and Services. Client may purchase additional Tyler products and services at then-current list price, pursuant to the terms of this Agreement, by executing a mutually agreed addendum.

IN WITNESS WHEREOF, persons having been duly authorized and empowered enter into this Agreement.

Tyler Technologies, Inc.

Harrison County Board of Supervisors

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

Date:_____

Date:_____

Harrison County Emergency Communications Commission

By:_____

Name:_____

Title:_____

Date:_____

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Exhibit 1

Investment Summary

tyler technologies

Robert G Bailey
Harrison County Board of Supervisors
October 31, 2012

Cost Breakdown

Proposal Valid for 120 days

Software	Cost
License Fees	174,700
	174,700

Professional Services	Cost
Implementation Services	29,000
Professional Services	5,000
	34,000

Project Total	208,700

Software Licenses

Robert G Bailey
Harrison County Board of Supervisors
October 6, 2012

Application Software	QTY	License Fee
Public Safety Suite	1	174,700
Computer Aided Dispatch/Comm Center		
CAD (1 dispatcher seat included)		
Dispatcher (additional seats)	7	
External Agency (per agency)	1	
E-911 Server Interface (1 seat included)		
E-911 Client Interface (additional seats)	7	
NCIC Server Interface (1 seat included)		
NCIC Client Interface (additional seats)	7	
Note: Does not include CJIS Addendum		
Tyler CAD Firehouse Interface	1	
Mapping		
CAD Mapping Interface	8	
Additional Mirror Monitors from CAD	6	N/C
Incode Application Subtotal		174,700
Application and System Software Total		174,700

Note: Public Safety On-Site Services are based on a 8 a.m. to 5 p.m. day.
Public Safety On-Site Services are based on the following criteria:

Number of CAD Training Sessions:	6
Number of RMS Training Sessions:	1

Professional Services
Robert G Bailey
Harrison County Board of Supervisors
October 5, 2012

∴ tyler technologies

Application Professional Services Summary	Estimated Hours	Estimated Services
Implementation Services		
Public Safety Suite	232	29,000
INCODE Professional Services		
Project Management		5,000
Professional Services Total	**232**	**34,000**

Implementation Services Breakdown	QTY	Estimated Hours	Estimated Services	
Public Safety Suite				
Computer Aided Dispatch/Comm Center				
CAD (1 dispatcher seat included)	1	136	17,000	
Dispatcher (additional seats)	7			
External Agency (per agency)	1			
E-911 Server Interface (1 seat included)	1	48	6,000	
E-911 Client Interface (additional seats)	7			
NCIC Server Interface (1 seat included)	1	48	6,000	
NCIC Client Interface (additional seats)	7			
Note: Does not include CJIS Addendum				
Mapping				
CAD Mapping Interface	8	N/A	N/A	
Public Safety Suite Subtotal		**232**	**29,000**	

Professional Services				
Professional Services				
Project Management			5,000	
Professional Services Subtotal			**5,000**	

Harrison County Emergency Communications

15309-B Community Road, Gulfport, Mississippi 39503
Phone (228) 831-0760 • Fax (228) 831-0762
E-mail address: harrison911@co.harrison.ms.us

TO: Rupert Lacy, Executive Director
          Commission Members

FROM: Robert Bailey, Deputy Director *RBB*

RE: Tyler Technology Computer Aided Dispatch Software
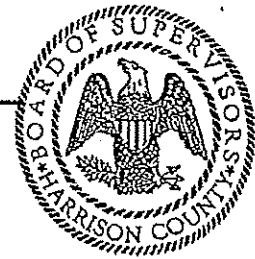
DATE: October 31, 2012

Following receipt of documentation from the City of Gulfport and Tyler Technologies stating that the requested purchase of computer aided dispatch software from Tyler Technologies was a sole source purchase, a review of the documentation was performed by Melissa Pope, Harrison County Purchasing Clerk and myself.

After reviewing the submitted supporting documentation it appears that the requested sole source purchase of computer aided dispatch software from Tyler Technologies meets the guidelines to be considered a sole source purchase.

MEMO

TO: Rupert Lacy, Executive Director

         Harrison County Board of Supervisors

         Pamela J. Ulrich, County Administrator

         Tim Holleman, Attorney, Board of Supervisors

DATE: October 31, 2012

FROM: Melissa L. Pope, Purchase Clerk

RE: Computer Aided Dispatch Software for City of Gulfport

In review of all documents attached for justification and request for a sole source purchase of Computer Aided Dispatch Software by the Harrison County E-911 Commission for the City of Gulfport, it is my opinion that this purchase will meet the State Purchase Law qualification requirements for a sole source purchase. The City of Gulfport has other software products that are from Tyler Technologies that will integrate information and records in a streamline manner therefore keeping the City of Gulfport's workflow process simple and provide the easy of record retrieval. This alone creates a monetary savings to the City of Gulfport and in turn to the Citizens of the City.

Melissa L. Pope
Purchase Clerk

Walter W. Dukes
Hugh D. Keating
Cy Faneca
Phillip W. Jarrell *
W. Edward Hatten, Jr.
Trace D.McRaney
Bobby R. Long
Je'Nell B. Blum **
Haley N. Broom

Matthew M. Williams
Walter J. Eades
Shannon A. Ladner
Robin E. Blair
Drury S. Holland ***

ᵃalso licensed in TX
**also licensed in CA
***licensed in AL only

WILLIAM F. DUKES
(1927 - 2003)

Gulfport Mailing Address:
Post Office Drawer W
Gulfport, Mississippi 39502
Toll Free: (888) 542-2034

Hattiesburg Office:
100 Dudley W. Conner Street
Hattiesburg, Mississippi 39401
Telephone: 601-583-0999
Facsimile: 601-583-0997

November 13, 2012

Stacey Gerard
Tyler Technologies Inc.
One Cole Haan Drive
Yarmouth, ME 04096

RE: Harrison County Emergency Communications Commission
     Proposed Contract for CAD Software and Implementation - (Contract #2012-0230)
   Our File No.: 1829.0001

Dear Ms. Gerard:

As counsel for the Harrison County Emergency Communications Commission, I am notifying you that Mississippi law prohibits Harrison County and the Harrison County Communications Commission from waiving or limiting any legal remedies or damages they have under Mississippi law. Mississippi law also prohibits these entities from agreeing to indemnify and hold harmless another person and/or company for liability. Mississippi law further prohibits the Commission from contractually limiting and/or waiving warranties of merchantability and fitness for a particular use and also prohibits the Commission from contractually assuming any liability for any party's negligence. Therefore, such provisions found in Sections E4 and E5 of the Proposed Contract for the Purchase of CAD Software License and Implementation (Contract #2012-0230) violate Mississippi law and are void and not enforceable.

Subject to this notice prior to your signing and contingent upon Board approval, I will recommend that Harrison County and the Harrison County Emergency Communications Commission approve the Agreement.

Sincerely,

DUKES, DUKES, KEATING & FANECA, P.A.

Haley N. Broom

EXHIBIT
F
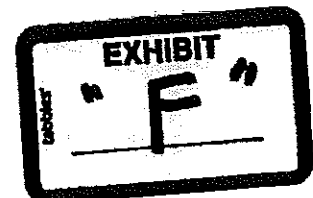
HNB/vlj

Cc: Executive Director, Rupert Lacy
        Commissioner Chair, Steve Delahousey
        Tim Holleman, Esquire