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9 *Attorneys for Plaintiff*

10 **ARIZONA SUPERIOR COURT**
11 **PIMA COUNTY**

12 Beau Hodai, an investigative reporter,)	NO.
)	
13 Plaintiff/Petitioners,)	COMPLAINT for statutory special
)	action and injunctive relief
14 v.)	and
)	
15 The City of Tucson, a municipal)	APPLICATION FOR ORDER TO
16 corporation, and the Tucson Police)	SHOW CAUSE
17 Department, a municipal agency,)	
)	
18 Defendants/Respondents.)	
)	

19 **Introduction**

20 1. This case is necessary to correct the disregard of statutory obligations by
21 the City of Tucson and the Tucson Police Department. Despite the clear requirements of
22 Arizona law, and the importance of transparency in a democracy, the officials involved
23 effectively ignored Plaintiff’s public records request for information about important and
24 costly law enforcement practices. Intervention by this Court is required to address
25 Defendants’ refusal to comply with the law.

26 **Parties and Jurisdiction**

27 2. Mohamad Ali (“Beau”) Hodai is an investigative reporter and researcher
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1 for DBA Press and a freelance researcher/reporter working with the Center for Media
2 and Democracy.

3 3. The City of Tucson is a “public body” as defined in A.R.S. § 39-
4 121.01(A)(2).

5 4. The Tucson Police Department (“TPD”) is a “public body” as defined in
6 A.R.S. § 39-121.01(A)(2).

7 5. Mr. Hodai brings this action and invokes the jurisdiction of this Court
8 pursuant to A.R.S. § 39-121.02 and Rules 1 and 4 of the Arizona Rules of Procedures for
9 Special Actions.

10 6. Venue is proper pursuant to A.R.S. § 12-401 and Rule 4(b), Arizona Rules
11 of Procedure for Special Actions.

12 **General Factual Allegations**

13 7. On October 11, 2013, Mr. Hodai submitted the first of three records
14 request to TPD. Mr. Hodai’s first records request sought records concerning TPD’s
15 purchase and use of Stingray and Stingray II cell phone tracking equipment from Harris
16 Corporation. [Exhibit A]

17 8. Specifically, Mr. Hodai sought:

18 a. “Any/all work products, and/or records related to work products,
19 created by TPD personnel using ‘Stingray’ or ‘Stingray II’ cell
20 phone tracking equipment.” Mr. Hodai also requested all email
21 communications concerning Stingray and Stingray II in TPD’s
22 possession;

23 b. “Any/all records (generated from January 2010 to October 11,
24 2013 – records to include, but not be limited to, email
25 communications) in possession of TPD that pertain in any way to
26 ‘Stingray’ or ‘Stingray II’ cell phone tracking equipment.” Mr.
27 Hodai sought all email communications discussing the use of
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1 Stingray and Stingray II, “as well as general communications
2 concerning the purchase and maintenance of this equipment,”
3 including communications with Harris employees;

4 c. “Any/all records (generated from January 2010 to October 11,
5 2013 – records to include, but not be limited to, email
6 communications) pertaining to Harris Corporation.”

7 9. In response to Mr. Hodai’s October 11 records request, TPD provided Mr.
8 Hodai with four documents [Exhibit B]:

9 a. An email forward from 10/24/13 in which Dawn Wheeler,
10 Contracts Manager with Harris Corp, advises Sargent Hall from
11 TPD what records TPD should redact from Mr. Hodai’s request;

12 b. A Non-Disclosure Agreement (NDA) between Harris Corporation
13 and the City of Tucson effective 6/7/10;

14 c. The City of Tucson’s purchase order from Harris Corporation,
15 and;

16 d. A contract between the City of Tucson and Harris Corporation for
17 the purchase of surveillance equipment and Harris’ services.

18 10. After reviewing TPD’s response, Mr. Hodai learned that at the behest of
19 Harris Corporation, TPD redacted information pursuant to Exemption 4 and Exemption
20 7 of the Federal Freedom of Information Act (FOIA) and based on the application of
21 restrictions on releases of information contained in the Harris Corporation and/or FBI
22 Non-Disclosure Agreements. *See email forward from Sargent Kevin Hall to Attorney*
23 *Lisa Judge, 10/24/13 Exhibit B.* TPD provided no rationale under Arizona law for the
24 redactions.

25 11. Section 3 of the NDA between the City of Tucson and Harris Corporation
26 states:

27 The City of Tucson shall not discuss, publish, release or disclose
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1 any information pertaining to the Products covered under this NDA to any
2 third party individual, corporation, or other entity, including any affiliated
3 or unaffiliated State, County, City, Town or Village, or other governmental
4 entity without the prior written consent of Harris ... The City of Tucson is
5 subject to the Arizona Public Records Law. A.R.S. sec 39-121, et seq.
6 While the City will not voluntarily disclose any Protected Product, in the
7 event that the city receives a Public Records request from a third party
8 relating to any Protected Product, or other information Harris deems
9 confidential, the City will notify Harris of such a request and allow Harris
10 to challenge any such request in court. The City will not take a position
11 with respect to the release of such material, beyond its contractual duties,
12 but will assist Harris in any such challenge.

13 12. As seen from the above, TPD and the City of Tucson have allowed Harris
14 Corporation to dictate the City of Tucson's and TPD's compliance with Arizona public
15 records law in regards to products and services purchased from Harris Corporation.

16 13. The records provided in reply to Mr. Hodai's initial public records request,
17 and the many that were not provided, demonstrate that the response by Defendants the
18 City of Tucson and the Tucson Police Department were inadequate and failed to satisfy
19 the duties of a public body under Arizona Public Records Law Ariz. Rev. Stat. §§ 39-
20 121 to 39.121.03.

21 14. TPD failed to produce failed to produce public records, as required by law,
22 including, but not limited to, the following materials:

- 23 a. work product resulting from the use of Stingray or Stingray II;
- 24 b. records requesting or authorizing the use of Harris products in any
25 police operation, including search warrants or requests for pen
26 registers;
- 27 c. training manuals, operating manuals, or descriptions of Stingray
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1 or Stingray II;

- 2 d. TPD memos, policies, rules, or guidance for when to deploy
3 Stingray or Stingray II;
- 4 e. Internal policies, if any, regulating employee and departmental
5 use of Stingray and Stingray II equipment;
- 6 f. Internal correspondence regarding the purchase, use, or
7 procedures for deployment regarding Stingray or Stingray II;
- 8 g. External correspondence between TPD and Harris Corporation, or
9 TPD and the FBI concerning Stingray or Stingray II; and,
- 10 h. Internal correspondence within TPD concerning Stingray or
11 Stingray II.

12 15. TPD redacted information from the purchase order that was provided and
13 from Harris Corporation's initial quotation to the City of Tucson. Defendant TPD
14 claimed they made these redactions pursuant to Federal FOIA exemptions and
15 restrictions in the NDA between the City of Tucson and Harris.

16 16. In making the above redactions, Defendants improperly failed to meet
17 their obligations under Arizona law.

18 17. On November 15, 2013, Mr. Hodai spoke with TPD Attorney Lisa Judge
19 regarding questions Mr. Hodai submitted to TPD's public information office and the
20 outstanding elements of his October 11 records request.

21 18. In that conversation, Ms. Judge stated TPD redacted information and
22 withheld records at the behest and direction of Harris Corporation.

23 19. Ms. Judge also states that TPD is obligated by the City of Tucson's NDA
24 with Harris Corporation to redact any information Harris deems confidential.

25 20. On November 19, 2013, Sgt. Hawke, TPD Public Information Officer,
26 spoke with Mr. Hodai. Sgt. Hawke stated that locating search warrants and other
27 responsive records would be considerably time consuming and that TPD would not be
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1 willing to undertake the task.

2 21. As of this filing, the City of Tucson has not provided records necessary to
3 satisfy Beau Hodai's October 11, 2013 public records request.

4 22. On November 15th, Mr. Hodai filed his second public records request with
5 TPD. [Exhibit C] Mr. Hodai sought:

- 6 a. All records pertaining to a device known as Hailstorm, produced
7 by Harris Corporation;
8 b. All records pertaining to a recent/ongoing Tucson Police
9 Department "purchase" from Harris Corporation, referenced in
10 records provided after the first request;
11 c. And the non-disclosure agreement between TPD and the FBI
12 referenced in a document provided in response to the initial
13 records request.

14 23. To date, the Tucson Police Department has not responded to this request or
15 provided any legal rationale for not providing the public records requested.

16 24. On December 9, 2013, Mr. Hodai filed his third records request with TPD
17 seeking records concerning TPD's use of surveillance equipment in police
18 investigations, its purchase of surveillance equipment, and TPD's relationship with
19 Harris Corporation and the FBI. [Exhibit D] Specifically Mr. Hodai sought:

- 20 a. Records for any request to use pen registers submitted by TPD
21 personnel to any court from January 1, 2013 to December 9, 2013;
22 b. Copies of any search warrant submitted by TPD to any court from
23 January 1, 2013 to December 9, 2013 that authorizes the use of the
24 Stingray II system (or other Harris Corp cellular technologies, such as
25 Amberjack, Kingfish, Harpoon or Hail Storm);
26 c. All records in possession of TPD that pertain in any way to the
27 Police Counter Narcotics Alliance Unit (records returned per the
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1 October 11 records request show Harris' deliveries to the Police
2 Counter Narcotics Alliance Unit, care of TPD's "J.T. Turner," in
3 May of 2010);

4 d. All records of communications (including email, email
5 attachments, faxes, memos and letters) in the possession of TPD
6 generated from January 1, 2013 to December 9, 2013 that pertain
7 in any way to the FBI, including communications between TPD
8 and FBI personnel.

9 25. To date, the Tucson Police Department has not responded to this request or
10 provided any rationale for not providing the requested public records.

11 **Arizona Public Records Law**

12 26. Arizona's Public Records Law requires public officers and public bodies to
13 maintain all records necessary or appropriate to maintain an accurate account of their
14 official activities and activities supported by public money. A.R.S. § 39-121.01(B).

15 27. Any person has the right to examine or be furnished with copies of any
16 public record. A.R.S. § 39-121.01(D).

17 28. Access to a public record is deemed denied if the custodian fails to
18 promptly respond to a request for production of a public record. A.R.S. § 39-121.01(E).

19 29. Mr. Hodai submitted public records requests to TPD on October 11,
20 November 15, and December 9 of 2013. TPD failed to sufficiently respond to the
21 October 11 request, and has provided no response to the November 15 and December 9
22 requests, all in violation of state law.

23 30. Upon information and belief, the records currently in Mr. Hodai's
24 possession are the full and complete records TPD intends to offer Mr. Hodai to satisfy
25 his three records requests.

26 31. The records Mr. Hodai requested concern sophisticated surveillance
27 equipment with capabilities not fully known to the public.

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1 32. Harris Corporation surveillance equipment, including products purchased
2 by TPD, are reportedly capable of: mimicking cell phone towers; collecting cell phone
3 data from thousands of persons in a single use; intercepting the content of
4 communications; capturing cell phone meta data, text messages, and location data;
5 providing real-time tracking of persons; conducting denial of service attacks on phone
6 users; and, monitoring and mining information from mobile phones over large, targeted
7 areas.

8 33. By utilizing surveillance equipment purchased from Harris Corporation,
9 TPD may gather information about large numbers of the public without their consent or
10 knowledge. In many instances, simply by utilizing the surveillance equipment, the
11 technology collects information from persons having no involvement with or connection
12 to criminal activity.

13 34. The records requested by Mr. Hodai are necessary to ensure the public has
14 an accurate understanding of the official activities of TPD (*See* A.R.S. § 39-121.01(B)),
15 and are not confidential on the basis of any applicable statute or law of this state or the
16 federal government.

17 35. “The core purpose of the public records law is to allow the public access
18 to official records and other government information so that the public may monitor the
19 performance of government officials and their employees.” *Phoenix News., Inc. v.*
20 *Keegan*, 201 Ariz. 344, 35135 P.3d 105, 112 (App. 2001) (citations omitted).

21 36. The public records law is designed to allow the public to conduct
22 intelligent oversight of the official duties of public bodies and officers.

23 37. “[T]he objective implicitly expressed in § 39-121.01 is to broadly define
24 those records which are open to the public for inspection under § 39-121,” and “the
25 combined effect of [Arizona public records statutes] evince a clear policy favoring
26 disclosure.” *Carlson v. Pima County*, 141 Ariz. 487, 490, 687 P.2d 1242, 1245 (1984).

27 38. If a document falls within the scope of the public record statute, then the
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1 presumption favoring disclosure applies and, when necessary, the court can perform a
2 balancing test to determine whether privacy, confidentiality, or the best interests of the
3 state outweigh the policy in favor of disclosure. *Griffis v. Pinal County*, 215 Ariz. 1, 156
4 P.3d 418 (2007).

5 39. “This ‘best interests of the state’ standard is not confined to the narrow
6 interest of either the official who holds the records or the agency he or she serves. It
7 includes the overall interests of the government and the people.” *Phoenix Newspapers,*
8 *Inc. v. Keegan*, 201 Ariz. 344, 35 P.3d 105 (Ariz. 2001).

9 40. Confidentiality interests do not preclude the production of documents if
10 “the information affecting these interests can be redacted.” *Judicial Watch, Inc. v. City of*
11 *Phoenix*, 228 Ariz. 393, 396-397, 267 P.3d 1185, 1188-1189 (2011).

12 41. Given the high costs in public monies expended for the equipment (records
13 indicate TPD purchased at least \$408,000 worth of merchandise from Harris Corporation
14 in one instance (*see Exhibit B*)), the capabilities of the technology to invade the privacy
15 of thousands of persons without their knowledge, and the likelihood that such invasion
16 of privacy is currently taking place, the public has a clear interest in knowing if the City
17 of Tucson and TPD are using the equipment in a legal and responsible manner that
18 protects citizen privacy, provides continued and meaningful oversight, and guarantees
19 the civil rights of Arizonans.

20 42. The City of Tucson and the Tucson Police Department’s refusal to provide
21 Mr. Hodai with copies of public records violates Arizona law, including, without
22 limitation, A.R.S. § 39-121 and § 39-121.02, and thereby constitutes a failure by a public
23 body and public officials to perform a duty required by law.

24 43. TPD has failed to make a good faith effort to search for required records,
25 failing to respond at all to Mr. Hodai’s November 15 and December 9 record requests.

26 44. TPD’s refusal to produce the requested public records exceeds its
27 jurisdiction and legal authority, and has been done in an arbitrary and capricious manner
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1 and in bad faith.

2 45. Mr. Hodai has no equally plain, speedy, or adequate legal remedy from the
3 actions taken by the City of Tucson and TPD. Mr. Hodai will suffer irreparable harm and
4 damage from ongoing violations of his right to access public records unless the relief
5 requested is granted by means of this Special Action.
6

7 **APPLICATION FOR ORDER TO SHOW CAUSE**

8 As set forth above, Defendants are plainly prohibited by law from withholding the
9 requested public records. Accordingly, pursuant to Rule 6(d), Ariz. R. Civ. P., and Rule
10 4(c), Arizona Rules of Procedure for Special Actions, it is appropriate and proper for this
11 Court to issue an Order to Show Cause why the requested relief should not be granted.

12 **WHEREFORE**, Plaintiff Mohamad Ali (“Beau”) Hodai, by his undersigned
13 counsel, respectfully requests that this Court award the following relief:

- 14 1. Issue an order directing the City of Tucson and the Tucson Police Department
15 to immediately comply with A.R.S. §§ 39-121 to 39.121.03. and provide
16 copies of the public records requested on October 11, November 15, and
17 December 9, 2014;
- 18 2. Issue a permanent injunction enjoining the City of Tucson and the Tucson
19 Police Department from withholding the requested records;
- 20 3. Award Mr. Hodai his taxable costs in this action and reasonable attorneys’
21 fees pursuant to A.R.S. § 39-121.02(B) and Rule 4(g) of the Arizona Rules of
22 Procedure for Special Actions; and,
- 23 4. Grant Mr. Hodai such other and further relief as may be just and proper in
24 these circumstances.
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Respectfully submitted this 3rd day of March, 2014.

ACLU FOUNDATION OF ARIZONA

By /s/ Darrell L. Hill
Daniel J. Pochoda
Darrell L. Hill
Attorneys for Plaintiff

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VERIFICATION

STATE OF ARIZONA)
) ss,
County of Maricopa)

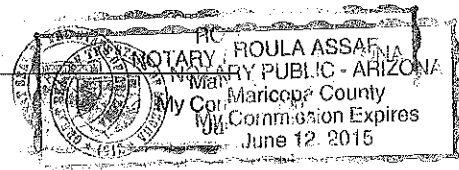
Darrell L. Hill, being first duly sworn upon his oath, deposes and states:

- 1. That he is the attorney for Plaintiff in the above entitled action;
 - 2. That he has read the foregoing Complaint and knows the contents thereof,
- and that the matters and things contained therein are true and correct to the best of his knowledge, information and belief.

Darrell L. Hill
Darrell L. Hill

SUBSCRIBED AND SWORN to before me this 3rd day of March, 2014, by Darrell L. Hill

[Signature]
Notary Public



My Commission Expires:
June 12, 2015

STATE OF ARIZONA)
COUNTY OF MARICOPA) ss.
This instrument was acknowledged before me this 3rd day
of March, 2014, by Darrell L Hill
In witness whereof I herewith set my hand and official seal
[Signature], NOTARY PUBLIC.

EXHIBIT A

tucsonpdpio@gmail.com

October 11, 2013

Tucson Police Department Public Information Officer,

I am requesting (pursuant to ARS Sec. 39-121 through 39-121.03) copies of the following records in the possession of the Tucson Police Department (TPD):

-- 1.) Any/all work products, and/or records related to work products, created by TPD personnel using "Stingray" or "Stingray II" cell phone tracking equipment. Such records may have been generated from January, 2010 to October 11, 2013. Responsive records to include, but not be limited to, email communications.

-- 2.) Any/all records (generated from January, 2010 to October 11, 2013-- records to include, but not be limited to, email communications) in possession of TPD that pertain in any way to "Stingray" or "Stingray II" cell phone tracking equipment. Such records may include-- but are not limited to-- email communications discussing the use of this equipment, as well as general communications concerning the purchase and maintenance of this equipment (such communications may also include communications with customer services, or other, employees of Harris Corporation).

-- 3.) Any/all records (generated from January, 2010 to October 11, 2013-- records to include, but not be limited to, email communications) pertaining to Harris Corporation. Harris Corporation produces both "Stingray" and "Stingray II."

Background: TPD purchased a "Stingray II" cell phone tracking system from Harris Corporation in June of 2010, with \$396,500 in federal Operation Stonegarden grant funding. As is listed above, I am seeking records relating to TPD's use of this system.

I am making this request in the capacity of a researcher/reporter with *DBA Press* and the Center for Media and Democracy. Materials requested are for educational, not-for-profit purposes. As such, I request that any/all applicable records retrieval/production/redaction fees be waived.

I am requesting that responsive materials be emailed to me at: bhodai31@yahoo.com

Or, if records cannot be delivered electronically via email, I ask that you mail responsive records to me (preferably in digital formation on a data disk) at:

P.O. Box 126
Elfrida, Arizona
85610

If, for any reason, you elect to withhold any record (or any portion of any record) responsive to this request, provide me with a reason for each withholding/redaction, along with relevant legal citations.

I remind you that, per Arizona open records law, failure to comply with this request in a timely fashion may result in civil litigation with an award of attorney's fees to the plaintiff.

Please contact me upon receipt of this request to acknowledge that it has been received and that it is being processed.

Sincerely,
Beau Hodai
(520) 457-8077

EXHIBIT B

From: Kevin Hall
To: Lisa Judge
Date: 10/24/2013 12:48 PM
Subject: Fwd: FOIA response
Attachments: Purchase Order 34278_Redacted.pdf; Tucson Contract 100494_Redacted.pdf; Tucson NDA.pdf

>>> "Wheeler, Dawnn" <dwheel01@harris.com> 10/22/2013 8:48 AM >>>

Sgt. Hall,

Thank you for taking the time to talk to me this morning. Harris appreciates the opportunity to provide input to the request for data received and respectfully requests Tucson PD consider Harris' recommend redactions prior to publishing.

PO 34278:

1. Harris has recommended redacting verbiage we believe should not be released per Exemption 7 of the FOIA due to Title 18 restrictions on the products, and/or what Harris believes are the restrictions on release of the information contained in the Harris and/or Federal Bureau of Investigation Non Disclosure Agreement.

Page 1 - Line 18

Page 4 - Lines 15 and 16

2. Harris respectfully requests redacting Harris contact information to protect the individual.

Page 1 - Line 18

3. Harris respectfully requests redacting pricing information as authorized by Exemption 4 of the FOIA; primarily, unit prices not available to the public on Harris' GSA Schedule for which the release of would harm our competitive position.

Page 1 - Lines 2 and 3

Page 2 - Line 4

Page 3 - Lines 11, 12 and 13

Contract 100494:

4. Harris has recommended redacting verbiage we believe should not be released per Exemption 7 of the FOIA due to Title 18 restrictions on the products, and/or what Harris believes are the restrictions on release of the information contained in the Harris and/or Federal Bureau of Investigation Non Disclosure Agreement.

Page 9

Page 10

5. Harris respectfully requests redacting Harris contact information to protect the individual.

Pages 6 and 8

6. Harris respectfully requests redacting pricing information as authorized by Exemption 4 of the FOIA; primarily, unit prices not available to the public on Harris' GSA Schedule for which the release of

would harm our competitive position.

Page 9

Page 10

Also attached is a copy of the NDA signed between Tucson and Harris in 2010.

As we discussed, you are currently in the process of having a new NDA signed with the FBI for your next purchase. We appreciate your consideration in this matter. Please let me know if you have any questions.

Regards,
Dawnn Wheeler
Contracts Manager
Harris Corporation
Phone: (321) 309-7432
eFax: (321) 726-3330
dawnn.wheeler@harris.com <<mailto:dawnn.wheeler@harris.com>>

"This information is only intended for the use of the individual or entity named in this email. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or use of the contents of this information is strictly prohibited. If you have received this email in error, please notify me and delete it immediately."

**Non-Disclosure Agreement (NDA)
Harris Corporation, GCSD
Wireless Products Group (WPG)/Wireless Solutions**

[Effective Date: 6/7/10]

In order to protect certain Harris Corporation developed "Title 18" Protected Products, (hereinafter called "Products,") both HARRIS CORPORATION, a Delaware Corporation, through its GCSD Division ("HARRIS") and the City of Tucson mutually agree as follows:

1. The Products protected under this NDA include, but are not limited to the following:

WPG Title 18 USC Restricted Products	
RayFish® Core Hardware Platform	
KingFish®	X
StingRay®	X
StingRay II®	X
RayFish® Core Software	
GSM Transceiver	X
GSM StingRay II® Transceiver	X
CDMA Transceiver	X
iDEN Transceiver	X
RayFish® Accessory Software	
Map Router	X
RayFish® Converters	
Band IV Converter -- AWS (2100/1700)	X
RayFish® Accessories	
RayFish® Power Kit	X
AmberJack® DF Antenna	X
Power Amplifiers	
Broadband Amplifiers	X
Harpoon™ Amplifiers	X
Handheld	
Gossamer®	X
Gossamer® DF Kit	X
Accessories	
Lanterneye	X
Tarpon®	X
Wireless LAN Products	
Moray®	X

2. Harris Corporation's Government Communications Systems Division, Wireless Products Group (hereinafter, "Harris") provides a number of tools, equipment and capabilities, both hardware and software (hereinafter "Products"), that provide users a capability to locate targets of interest. These Products are restricted and other wise controlled under United States Code, Title 18, and by other governing policies, regulations and laws.

Missions utilizing in whole or in part the Harris Products are covered in their entirety by this NDA.

The City of Tucson is subject to this NDA and except for Court ordered or other judicially mandated disclosures, will not disseminate, publish or release any information about the operations, missions, equipment, CONOPS, mission or investigation results, methods or any other information related to or arising out of the use, deployment or application of the Products that would be deemed a release of technical data as is described and agreed to under this NDA. In the event of a court ordered or judicially mandated disclosure, the City of Tucson shall use its best efforts to make such disclosure in a manner that provides maximum protection of the information to be disclosed. Agency shall promptly notify Harris upon receipt of such order or mandate and provide a copy of any such written order or mandate.

Further, City of Tucson personnel may be exposed to additional Harris WPG equipment to which it may not have direct access, such as might be used by a federal partner to assist the City of Tucson and its personnel in performance of their duties. The City of Tucson understands that such exposure is also covered by this NDA and that it shall neither disclose its knowledge of such missions, equipment, CONOPS, mission or investigation results, methods or any other information that would be deemed a release of technical data as is described and agreed to under this NDA, nor will the City of Tucson or its personnel demand direct access to such Products through direct or indirect pursuits or inquiries to gain access to such restricted equipment.

Further, the City of Tucson will ensure the operation of Harris Products will be restricted to only those personnel permanently assigned to department sections tasked with completing electronic surveillance missions. Authorized personnel should be sworn members who possess arrest authority, but may include full-time civilian employees permanently assigned to the same department sections tasked with supporting electronic surveillance missions.

3. The City of Tucson shall not discuss, publish, release or disclose any information pertaining to the Products covered under this NDA to any third party individual, corporation, or other entity, including any affiliated or unaffiliated State, County, City, Town or Village, or other governmental agency or entity without the prior written consent of Harris and shall further limit the circulation and disclosure of information regarding the Products within its own organization to its employees or agents having a "need to know" about the Products and shall ensure that they are informed of the sensitive nature thereof and agree to and are required to observe the provisions of confidentiality set forth herein and under Title 18 of the U.S. Code.

The City of Tucson is subject to the Arizona Public Records Law, A.R.S. sec. 39-121, et seq. While the City will not voluntarily disclose any Protected Product, in the event that the City receives a Public Records request from a third party relating to any Protected Product, or other information Harris deems confidential, the City will notify Harris of such a request and allow Harris to challenge any such request in court. The City will not take a position with respect to the release of such material, beyond its contractual duties, but will assist Harris in any such challenge.

4. This Agreement shall be binding upon the parties, their successors, and assignees. Neither party shall assign this Agreement nor any Product received from Harris pursuant to this Agreement without Harris' prior written consent.
5. This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of Arizona. Jurisdiction and venue shall lie in the State of Arizona, Pima County, for all causes of actions arising under this Agreement.
6. Removal of any Product listed herein from the restrictions under Title 18 of the U.S. Code in no way affects, voids or invalidates this Agreement, it being the intent of the Parties to treat this Agreement as enforceable notwithstanding such removal. Protection of all other Products herein remain in full force and effect.

Agency Representative (Department or Division Head):

End User:

City of Tucson
Agency Organization
Laura Gustings
Name
Contract Administrator
Title
6-9-10
Date

End User Organization

Name

Title

Date

Harris Corporation, Government Communications Systems Division:


Name

Sr. Contract Admin.

Title

Date

6/10/10



Purchase Order

City of Tucson
 255 W Alameda - P.O. Box 27210
 Tucson, AZ 85726

V E N D O R	Vendor ID: 0013934	Phone: (321) 309-7319
		Fax: (321) 674-2572
S H I P T O	Harris Corporation	
	PO Box 37	
	Melbourne, FL 32902	
	Police Counter Narcotics Alliance Unit	
	6868 S Plumer	
	Tucson, AZ 85706	
	Contact J T Turner at (520)351-4440	

Specific PO Number	
34278	
ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER.	
MAIL ORIGINAL INVOICE TO ADDRESS BELOW	
I N V O I C E	City of Tucson Finance/Accounts Payable PO Box 27450 Tucson, AZ 85726-7450 (520) 791-4031

Requisition Number	Contract Number	FOB	Terms	Delivery Date
	100494,	Destination, Freight Prepaid	Net 30	0 Days ARO

Catalog: -

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
18	***REFERENCE CONTRACT #100494, SIGNED BY [REDACTED] ***REFERENCE QUOTE #QTE6779-02353, PREPARED BY [REDACTED] StingRay II and King Fish Protable Celluar [REDACTED] System [REDACTED] System) Includes 4 lines, training for 4 officers, and all warranties, and all line items below. (Federal AEL #13LE-00-SURV).	1 EA	0.00	0.00	0.00	0.00
1	STINGRAY II, STINGRAY II LN / FY / Account Code 1 10 092-201-21FN-245-OSG7A Dollar Amount \$148,000.00	1 EA	148,000.00	148,000.00	0.00	148,000.00
2	STINGRAY II [REDACTED] SOFTWARE PACKAGE, STINGRAY II [REDACTED] -SW LN / FY / Account Code 10 092-201-21FN-245-OSG7A Dollar Amount [REDACTED]	1 EA	[REDACTED]	[REDACTED]	0.00	[REDACTED]
3	STINGRAY II [REDACTED] SOFTWARE PACKAGE, STINGRAY II [REDACTED] -SW LN / FY / Account Code 10 092-201-21FN-245-OSG7A Dollar Amount [REDACTED]	1 EA	[REDACTED]	[REDACTED]	0.00	[REDACTED]

By accepting this order, vendor agrees to all terms and conditions posted on
http://www.tucsonprocurement.com/bidders_tandc.aspx Terms and conditions are
 incorporated by reference as though fully set forth herein. Terms and conditions are
 also available by calling (520)791-4217 for a mailed copy.

Nathan Daour	(520) 837 - 4136
Contract Officer	Phone



Purchase Order

City of Tucson

255 W Alameda - P.O. Box 27210
Tucson, AZ 85726

V E N D O R	Vendor ID: 0013934 Phone: (321) 309-7319 Fax: (321) 674-2672
	Harris Corporation PO Box 37 Melbourne, FL 32902
S H I P T O	Police Counter Narcotics Alliance Unit 6868 S Plumer Tucson, AZ 85706
	Contact J T Turner at (520)351-4440

Specific PO Number	
34278	
ALL PACKING SLIPS, INVOICES, AND CORRESPONDENCE MUST REFERENCE THIS NUMBER. MAIL ORIGINAL INVOICE TO ADDRESS BELOW	
I N V O I C E	City of Tucson Finance/Accounts Payable PO Box 27450 Tucson, AZ 85726-7450 (520) 791-4031

Requisition Number	Contract Number	FOB	Terms	Delivery Date
	100494,	Destination, Freight Prepaid	Net 30	0 Days ARO

Catalog: -

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
4	STINGRAY II SOFTWARE PACKAGE, STINGRAY I -SW LN / FY / Account Code Dollar Amount: 10 092-201-21FN-245-OSG7A	1 EA			0.00	
5	LAPTOP PC, 2009523-101 LN / FY / Account Code Dollar Amount: 10 092-201-21FN-245-OSG7A \$1,350.00	1 EA	1,350.00	1,350.00	0.00	1,350.00
6	HARPOON 2100 MHZ, PA-KIT-30W 2100 LN / FY / Account Code Dollar Amount: 10 092-201-21FN-245-OSG7A \$18,550.00	1 EA	18,550.00	18,550.00	0.00	18,550.00
7	HARPOON DUAL-BAND 850/1900 MHZ, PA-KIT-30W DUAL BAND LN / FY / Account Code Dollar Amount: 10 092-201-21FN-245-OSG7A \$20,200.00	1 EA	20,200.00	20,200.00	0.00	20,200.00
8	HARPOON IDEN 800 MHZ, PA-KIT-30W IDEN 800 LN / FY / Account Code Dollar Amount: 10 092-201-21FN-245-OSG7A \$16,400.00	1 EA	16,400.00	16,400.00	0.00	16,400.00

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Contract Officer	Phone



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	PO Box 37 Melbourne, FL 32902	
Police Counter Narcotics Alliance Unit 6868 S Plumer Tucson, AZ 85706		
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Requisition Number	Contract Number	FOB	Terms	Delivery Date
	100494,	Destination, Freight Prepaid	Net 30	0 Days ARO

Catalog: -						
Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
9	AMBERJACK WIDE BAND DF ANTENNA, AJ-W	1 EA	38,400.00	38,400.00	0.00	38,400.00
	LN / FY / Account Code		Dollar Amount			
	10 092-201-21FN-245-OSG7A		\$38,400.00			
10	KINGFISH, KINGFISH	1 EA	27,800.00	27,800.00	0.00	27,800.00
	LN / FY / Account Code		Dollar Amount			
	10 092-201-21FN-245-OSG7A		\$27,800.00			
11	KINGFISH ██████████ SOFTWARE PACKAGE, KF ██████████ -SW	1 EA	██████████	██████████	0.00	██████████
	LN / FY / Account Code		Dollar Amount			
	10 092-201-21FN-245-OSG7A		██████████			
12	KINGFISH ██████████ SOFTWARE PACKAGE, KF ██████████ -SW	1 EA	██████████	██████████	0.00	██████████
	LN / FY / Account Code		Dollar Amount			
	10 092-201-21FN-245-OSG7A		██████████			
13	KINGFISH ██████████ SOFTWARE PACKAGE, KF ██████████ SW	1 EA	██████████	██████████	0.00	██████████
	LN / FY / Account Code		Dollar Amount			
	10 092-201-21FN-245-OSG7A		██████████			

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		Fax: (321) 674-2572
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T O	Police Counter Narcotics Alliance Unit	
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Requisition Number	Contract Number	FOB	Terms	Delivery Date
	100494,	Destination, Freight Prepaid	Net 30	0 Days ARO

Catalog: -

Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
14	RUGGED MINI-PC CONTROLLER (GD GO BOOK), 2014069-101 LN / FY / Account Code 10 092-201-21FN-245-OSG7A	1 EA	5,500.00	5,500.00	0.00	5,500.00
	Dollar Amount \$5,500.00					
15	TRAINING - MELBOURNE (TUITION ONLY) STINGRAY II TRAINING IS FOR UP TO 4 PEOPLE PER SESSION, TRAIN-MLB LN / FY / Account Code 10 092-201-21FN-245-OSG7A	1 EA	4,000.00	4,000.00	0.00	4,000.00
	Dollar Amount \$4,000.00					
16	TRAINING - MELBOURNE (TUITION ONLY) STINGRAY II TRAINING IS FOR UP TO 4 PEOPLE. TRAIN-MLB LN / FY / Account Code 10 092-201-21FN-245-OSG7A	1 EA	4,000.00	4,000.00	0.00	4,000.00
	Dollar Amount \$4,000.00					
17	TRAINING - MELBOURNE (TUITION ONLY) KINGFISH TRAINING IS FOR UP TO 4 PEOPLE PER SESSION, TRAIN-MLB LN / FY / Account Code 10 092-201-21FN-245-OSG7A	1 EA	4,000.00	4,000.00	0.00	4,000.00
	Dollar Amount \$4,000.00					

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 Tucson, AZ 85726

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		Fax: (321) 674-2572
SHIP TO	Harris Corporation	
	PO Box 37 Melbourne, FL 32902	
CONTACT	Police Counter Narcotics Alliance Unit	
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Requisition Number	Contract Number	FOB	Terms	Delivery Date
	100494,	Destination, Freight Prepaid	Net 30	0 Days ARO

Catalog: -						
Item	Description	Quantity	Unit Price	Amount	Sales Tax	Total
					Subtotal:	\$408,600.00
					Tax:	\$0.00
					TOTAL:	\$408,600.00

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Nathan Daou	(520) 837 - 4136
Contract Officer	Phone



CITY OF TUCSON

CONTRACT #100494

THIS CONTRACT is made and entered into this 5th day of May, 2010, by and between the CITY OF TUCSON, hereinafter referred to as the City, and HARRIS CORPORATION, hereinafter referred to as the Contractor.

SCOPE OF WORK

- A. **DELIVERABLES AND PRICING:** Contractor shall deliver to the City the equipment and training described in Contractor's Quote #QTE6779-02353, dated 2/2/2010, which is incorporated as Attachment A to this Contract. Pricing shall be as stated on Attachment A.
- B. **DEFECTIVE PRODUCT:** All defective products shall be replaced and exchanged by the Contractor. The cost of transportation, unpacking, inspection, re-packing, re-shipping or other like expenses shall be paid by the Contractor. All replacement products must be received by the City within fourteen (14) days of initial notification.
- C. **WARRANTY:** Contractor shall warrant that all equipment and parts furnished are newly manufactured and free from defects in material and workmanship. Warranty shall also guarantee accepted trade standards of quality, fitness for the intended uses, and conformance to promises or specified specifications. No other express or implied warranty shall eliminate the vendor's liability as stated herein.
- D. **FOB DESTINATION FREIGHT PREPAID:** Contractor shall retain title and control of all goods until they are delivered and the Contract of coverage has been completed. All risk of transportation and all related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The City will assist the Contractor in arranging for inspection.
- E. **DELIVERY:** Delivery shall be within 120 days from receipt of a Purchase Order.
- G. **PAYMENT:** Terms are Net 30.

STANDARD TERMS AND CONDITIONS

1. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract without prior written consent of the City's Director of Procurement.
2. **AFFIRMATIVE ACTION:** Contractor shall abide by the provisions of the Tucson Procurement Code Chapter 28, Article XII.
3. **AMERICANS WITH DISABILITIES ACT:** The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101, et seq.) and applicable Federal regulations under the Act.
4. **APPLICABLE LAW:** This Contract shall be governed, and the City and Contractor shall have all remedies afforded to each, by the Tucson Procurement Code and the law of the State of Arizona. State law claims shall be brought only in Pima County Superior Court.
5. **ASSIGNMENT-DELEGATION:** No right or interest in this Contract shall be assigned by the Contractor without prior written permission of the City, and no delegation of any duty of the Contractor shall be made without prior written permission of the City's Director of Procurement. The City shall not unreasonably withhold approval and shall notify the Contractor of the City's position by written notice.
6. **CERTIFICATION OF COMPLIANCE WITH A.R.S. SEC. 35-393 ET SEQ.:** By signing this contract, the Contractor certifies that it does not have scrutinized business operations in Iran as required by A.R.S. sec. 35-393 et seq. If the City determines that the Contractor has submitted a false certification, the City may impose remedies as provided in the Tucson Procurement Code up to and including termination of this contract.
7. **CHILD/SWEAT-FREE LABOR POLICY:** The Contractor shall comply with all applicable provisions of the United States Federal and State Child Labor and Worker's Right laws and agrees if called upon to affirm in writing, that they, and any subcontractor involved in the provision of goods to the City, are in compliance.
8. **CLEAN UP:** The Contractor shall at all times keep the contract area, including storage areas used by the Contractor, free from accumulation of waste material or rubbish and, prior to completion of the work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not property of the City. Upon completion of the repair, the Contractor shall leave the work and premises in clean, neat and workmanlike condition.
9. **COMMENCEMENT OF WORK:** The Contractor is cautioned not to commence any billable work or provide any material or service under this Contract until Contractor receives purchase order or is otherwise directed to do so, in writing, by the City.
10. **CONFIDENTIALITY OF RECORDS:** The Contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that no information contained in its records or obtained from the City or from others in carrying out its functions under the Contract shall be used by or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the City. Information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the City.
11. **CONTRACT AMENDMENTS:** The Procurement Department has the sole authority to:
 - A. Amend the contract or enter into supplemental verbal or written agreements;
 - B. Grant time extensions or contract renewals;
 - C. Otherwise modify the scope or terms and provisions of the contract.

This Contract shall only be modified with the approval of the Department of Procurement. Except in the case of a documented emergency, approval must be granted prior to performance. Any contract modification not explicitly approved by the Procurement Department through a written contract amendment or change order is performed at the sole risk of the Contractor and may not be eligible for payment by the City.
12. **CONTRACT:** The Contract shall be based upon the Invitation for Bid issued by the City and the Offer submitted by the Contractor in response to the invitation for Bid. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the Invitation for Bid. The City reserves the right to clarify any contractual terms with the concurrence of the Contractor; however, any substantial non-conformity in the offer, as determined by the City's Director of Procurement, shall be deemed non-responsive and the offer rejected. The Contract shall contain the entire agreement between the City of Tucson and the Contractor relating to this requirement and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreements in any form.
13. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment or lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials, or default of any nature, may constitute breach of the Contract. Noncompliance may be deemed a cause for possible Contract termination.

14. **DUPLEXED/RECYCLED PAPER:** In accordance with efficient resource procurement and utilization policies adopted by the City of Tucson, the Contractor shall ensure that, whenever practicable, all printed materials produced by the Contractor in the performance of this Contract are duplexed (two-sided copies), printed on recycled paper and labeled as such.
15. **EXCLUSIVE POSSESSION:** All services, information, computer program elements, reports and other deliverables created under this Contract are the sole property of the City of Tucson and shall not be used or released by the Contractor or any other person except with prior written permission by the City.
16. **FEDERAL IMMIGRATION LAWS AND REGULATIONS:** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214(A) and that it requires the same compliance of all subcontractors under this Contract. Contractor acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this Contract subject to penalties up to and including termination of this Contract. The City retains the legal right to audit the records of the Contractor and inspect the papers of any employee who works for the Contractor to ensure compliance with this warranty and the Contractor shall assist in any such audit. The Contractor shall include the requirements of this paragraph in each contract with subcontractors under this Contract.

If the Contractor or subcontractor warrants that it has complied with the employment verification provisions prescribed by sections 274(a) and 274(b) of the Federal Immigration and Nationality Act and the E-verify requirements prescribed by A.R.S. § 23-214(A), the Contractor or subcontractor shall be deemed to be in compliance with this provision. The City may request proof of such compliance at any time during the term of this Contract by the Contractor and any subcontractor.

17. **FORCE MAJEURE:** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force Majeure shall not include late performance by a subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

If either party is delayed at any time in the progress of the work by Force Majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

18. **GRATUITIES:** The City may, by written notice to the Contractor, terminate this Contract if it is found that gratuities, in the form of entertainment, gifts, meals or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City amending, or the making of any determinations with respect to the performing of such Contract. In the event this Contract is terminated by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.
19. **HUMAN RELATIONS:** Contractor shall abide by the provisions of the Tucson City Code Chapter 28, Article XII.

20. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless City of Tucson, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, including claims of patent or copyright infringement, damages, losses, expenses, including but not limited to, attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work, services and/or products provided in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and Subcontractor's employees.

21. **INDEPENDENT CONTRACTOR:** It is understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose.

The Contractor shall not be entitled to compensation in the form of salaries, paid vacation or sick days by the City. The City of Tucson will not provide any insurance coverage to the Contractor, including Worker's Compensation coverage. The Contractor is advised that taxes, social security payments, and other withholdings shall not be withheld from a City payment issued under this Contract and that Contractor should make arrangements to directly pay such expenses.

22. **INSPECTION AND ACCEPTANCE:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this Contract shall be held at the Contractor's risk and may be returned to the

Contractor. If returned, all costs are the responsibility of the Contractor. Noncompliance may be deemed a cause for possible Contract termination.

23. **INTERPRETATION-PAROLE EVIDENCE:** This Contract is intended by the parties to be a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Contract. Acceptance or consent in the course of performance under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or consenting party has knowledge of the nature of the performance and the opportunity to object.
24. **LICENSES:** Contractor shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this Contract.
25. **LIENS:** All materials, services, and other deliverables supplied to the City under this Contract shall be free of all liens other than the security interest. Security interest shall extinguish upon full payment made by the City. Upon the City's request, the Contractor shall provide a formal release of all liens.
26. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials must fully comply with all provisions of this Contract. If a tender is made which does not fully comply, this shall conform to the termination clause set forth within this document.
27. **NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Tucson. The City reserves the right to obtain like goods or services from another source when necessary.
28. **OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the materials or services used to fulfill the Contract.
29. **PAYMENT:** The City's preferred method of payment is via credit card. The City will issue a Purchase Order and, in some cases, either provide a credit card for payment at the time of ordering or pay subsequent invoices by credit card upon receipt of goods or services in good order. However, not all City employees will possess a credit card and, therefore, the City reserves the right to make payment by check as it deems necessary.

Unless payment is made by credit card at time of order or point of sale, a separate invoice shall be issued for each shipment of material or service performed, and no payment shall be issued prior to receipt of material or service and correct invoice.

The City shall make every effort to process payment for the purchase of materials or services within twenty-one (21) calendar days after receipt of materials or services and a correct invoice.
30. **PROTECTION OF GOVERNMENT PROPERTY:** The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on City property. If the Contractor fails to do so and damages such property, the Contractor shall replace or repair the damage at no expense to the City, as determined and approved by the City's Director of Procurement. If the Contractor fails or refuses to make such repair or replacement, the City will determine a cost and the Contractor shall be liable for the cost thereof, which may be deducted from the Contract price.
31. **PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall be amended to make such insertion or correction.
32. **RECORDS:** Internal control over all financial transactions related to this Contract shall be in accordance with sound fiscal policies. The City may, at reasonable times and places, audit the books and records of the Contractor and/or any subcontractors. Said audit shall be limited to this Contract.
33. **RIGHT TO ASSURANCE:** Whenever one party to this Contract has reason to question, in good faith, the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as the other party's intent not to perform and as a cause for possible Contract termination.
34. **RIGHT TO INSPECT:** The City may, at reasonable times, and at the City's expense, inspect the place of business of a Contractor or subcontractor which is related to the performance of any Contract as awarded or to be awarded.
35. **RIGHTS AND REMEDIES:** No provision in this document or in the Contractor's bid shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim, default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract, to exercise or

delay the exercise of any right or remedy provided in the Contract or by law, or to accept materials or services required by this Contract or by law shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

36. **SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the valid provision or application.
37. **SHIPMENT UNDER RESERVATION PROHIBITED:** No tender of a bill of lading shall operate as a tender of the materials. Non-compliance shall conform to the termination clause set forth within this document.
38. **SUBCONTRACTS:** No subcontract shall be entered into by the Contractor with any other party to furnish any of the material/service specified herein without the advance written approval of the City's Director of Procurement. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract, as if the subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not subcontractors are used.
39. **SUBSEQUENT EMPLOYMENT:** The City may terminate this Contract without penalty or further obligation pursuant to A.R.S. Section 38-511 if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract, on behalf of the City, is or becomes, at any time while the Contract or any extension of the Contract is in effect, an employee of, or a contractor to, any other party to this Contract with respect to the subject matter of the Contract. Termination shall be effective when written notice from the City's Director of Procurement is received by the parties to this Contract, unless the notice specifies a later time.
40. **TERMINATION OF CONTRACT:** This Contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty (30) days written notice. The City, at its convenience, by written notice, may terminate this Contract, in whole or in part. If this Contract is terminated, the City shall be liable only for payment under the payment provisions of this Contract for services rendered and accepted material received by the City before the effective date of termination.

The City reserves the right to terminate the whole or any part of this Contract due to the failure of the Contractor to carry out any term or condition of the Contract. The City will issue a written ten (10) day notice of default to the Contractor for acting or failing to act as specified in any of the following:

In the opinion of the City, the Contractor provides personnel that do not meet the requirements of the Contract;

In the opinion of the City, the Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this Contract;

In the opinion of the City, the Contractor attempts to impose personnel, materials, products or workmanship of an unacceptable quality;

The Contractor fails to furnish the required service and/or product within the time stipulated in the Contract;

In the opinion of the City, the Contractor fails to make progress in the performance of the requirements of the Contract;

The Contractor gives the City a positive indication that the Contractor will not or cannot perform to the requirements of the Contract.

Each payment obligation of the City created by this Contract is conditioned upon the availability of City, State and Federal funds that are appropriated or allocated for the payment of such an obligation. If funds are not allocated by the City and available for the continued purchase of the services and/or materials provided under this Contract, this Contract may be terminated by the City at the end of the period for which funds are available. The City will endeavor to notify the Contractor in the event that continued service will or may be affected by non-appropriation. No penalty shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph.

41. **TITLE AND RISK OF LOSS:** The title and risk of loss of material or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.
42. **WARRANTIES:** Contractor warrants that all material or service delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of shipment of the material or service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in this document.

This Contract represents the entire agreement between the City of Tucson and the Contractor relating to this requirement and shall prevail over any and all previous verbal and written agreements.

CITY OF TUCSON:

Laura Gustafson
as Director of Procurement
and Not Personally

CONTRACTOR:

[REDACTED]

FOR: Harris Corporation --

[REDACTED]

ATTACHMENT A:

Quote #QTE6779-02353 from Harris Corporation, dated 2/2/2010

HARRIS

HARRIS CORPORATION

Wireless Products Group
407 John Redus Blvd
Melbourne, FL 32934
321-308-7459

March 18, 2010

Tucson Police Department
270 S. Stone Avenue
Tucson, AZ 85701

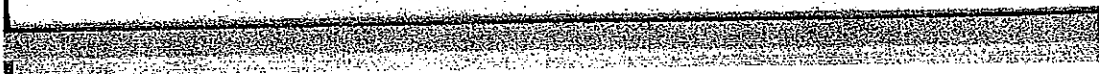
This notice is to provide information regarding quote number QTE6779-02353 to purchase Harris Corporation products and services.

The price quoted on quote number QTE6779-02353 is all inclusive. There will be no sales tax and no use tax associated with this quote. The price quoted is the price that will be invoiced once a purchase order is received and products are shipped.

Please feel free to contact me at any time should you have any questions or concerns.



next level solutions





Quote:	QTE6779-02353
Date:	2/2/2010
Page:	1

Quotation

Bill To:

TUCSON POLICE DEPARTMENT
 TUCSON P.D.
 J.T. TURNER
 jt.turner@tucsonaz.gov
 TUCSON AZ 85701
 270 S. STONE AVE
 USA

Ship To:

TUCSON P.D.
 J.T. TURNER
 jt.turner@tucsonaz.gov
 270 S. STONE AVE
 TUCSON AZ 85701
 USA

Purchase Order No.	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req. Ship Date	Master No.
	TUCSON PD	WPG3		Net 30	0/0/0000	2,899
Quantity	Item Number	Description	UOM	Discount	Unit Price	Ext. Price
1	STINGRAY II	StingRay II	EA		\$148,000.00	\$148,000.00
1	STINGRAY II [REDACTED] SW	StingRay II [REDACTED] Software Package	EA		[REDACTED]	[REDACTED]
1	STINGRAY II [REDACTED] SW	StingRay II [REDACTED] Software Package	EA		[REDACTED]	[REDACTED]
1	STINGRAY II [REDACTED] SW	StingRay II [REDACTED] Software Package	EA		[REDACTED]	[REDACTED]
1	2009523-101	Laptop PC	EA		\$1,350.00	\$1,350.00
1	PA-KIT-30W 2100	Harpoon 2100 MHz	EA		\$18,550.00	\$18,550.00
1	PA-KIT-30W DUAL-BAND	Harpoon Dual-Band 850/1900 MHz	EA		\$20,200.00	\$20,200.00
1	PA-KIT-30W IDEN 600	Harpoon IDEN 800 MHz	EA		\$18,400.00	\$18,400.00
1	AJ-W	AmberJack Wide Band DF Antenna	EA		\$38,400.00	\$38,400.00
1	KINGFISH	KingFish	EA		\$27,800.00	\$27,800.00
1	KF [REDACTED] SW	KingFish [REDACTED] Software Package	EA		[REDACTED]	[REDACTED]
1	KF [REDACTED] SW	KingFish [REDACTED] Software Package	EA		[REDACTED]	[REDACTED]
1	KF [REDACTED] SW	KingFish [REDACTED] Software Package	EA		[REDACTED]	[REDACTED]
1	2014059-101	Rugged Mini-PC Controller (GD Go Book)	EA		\$5,500.00	\$5,500.00
1	TRAIN-MLB StingRay II [REDACTED]	Training - Melbourne (tuition only) StingRay II [REDACTED] training is for up to 4 people per session.	EA		\$4,000.00	\$4,000.00
1	TRAIN-MLB StingRay II [REDACTED]	Training - Melbourne (tuition only) StingRay II [REDACTED] training is for up to 4	EA		\$4,000.00	\$4,000.00



Quote	QTE6779-02353
Date	2/2/2010
Page	2

Quotation

Bill To:

TUCSON POLICE DEPARTMENT
 TUCSON P.D.
 J.T. TURNER
 jt.turner@tucsonaz.gov
 TUCSON AZ 85701
 270 S. STONE AVE
 USA

Ship To:

TUCSON P.D.
 J.T. TURNER
 jt.turner@tucsonaz.gov
 270 S. STONE AVE
 TUCSON AZ 85701
 USA

Purchase Order No.	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Rev Shlo Date	Master No.
	TUCSON PD	WPG3		Net 30	0/0/0000	2,899
Quantity	Item Number	Description	UOM	Discount	Unit Price	Ext Price
1	TRAB-MLB	Training - Melbourne (u/lon only) KingFish training is for up to 4 people per session.	EA		\$4,000.00	\$4,000.00
						\$0.00
						\$0.00
						\$0.00
						\$0.00

HARRIS CORP - WIRELESS PRODUCTS GROUP
 P.O. BOX 9800, W/ R5-11A
 MELBOURNE, FL 32902-9800
 PH: 800-358-5297, FAX: 321-309-7437, wpg@harris.com

Approved By: _____

Subtotal	\$408,500.00
Tax	\$0.00
Freight	\$0.00
Trade Discount	\$0.00
Totals	\$408,500.00

EXHIBIT C

Darrell. Hill

Subject:

FW: FW: URGENT PUBLIC RECORDS REQUEST: Hailstorm, Harris Corporation, FBI NDA

From: **Beau Hodai** <bhodai31@gmail.com>

Date: Fri, Nov 15, 2013 at 3:50 PM

Subject: URGENT PUBLIC RECORDS REQUEST: Hailstorm, Harris Corporation, FBI NDA

To: Maria Hawke <maria.hawke@tucsonaz.gov>

Cc: tucsonpdpio@gmail.com

November 15, 2013

Tucson Police Department Public Information Officer,

I am requesting (pursuant to ARS Sec. 39-121 through 39-121.03) copies of the following records in the possession of the Tucson Police Department (TPD):

- 1.) Any/all records pertaining to a device known as "Hailstorm," produced by Harris Corporation.**
- 2.) Any/all records pertaining to a recent/ongoing Harris Corporation "purchase" referenced on page 2 of the attached pdf file (records responsive to October 11, 2013 TPD public records request pertaining to Stingray II and Harris Corporation).**
- 3.) "New" non-disclosure agreement between the TPD and FBI. This "new" non-disclosure agreement is referenced on page 2 of the attached pdf file (records responsive to October 11, 2013 TPD public records request pertaining to Stingray II and Harris Corporation).**

Background: TPD purchased a "Stingray II" cell phone tracking system from Harris Corporation in June of 2010, with \$396,500 in federal Operation Stonegarden grant funding. I have received, pursuant to an October 12, 2013 public records request submitted to TPD, records pertaining to both the Stingray II system and Harris Corporation. These records are referenced in this request.

I am making this request in the capacity of a researcher/reporter with *DBA Press* and the Center for Media and Democracy. Materials requested are for educational, not-for-profit purposes. As such, I request that any/all applicable records retrieval/production/redaction fees be waived.

I am requesting that responsive materials be emailed to me at: bhodai31@yahoo.com

Or, if records cannot be delivered electronically via email, I ask that you mail responsive records to me (preferably in digital formation on a data disk) at:

P.O. Box 126
Elfrida, Arizona
85610

If, for any reason, you elect to withhold any record (or any portion of any record) responsive to this request, provide me with a reason for each withholding/redaction, along with relevant legal citations.

I remind you that, per Arizona open records law, failure to comply with this request in a timely fashion may result in civil litigation with an award of attorney's fees to the plaintiff. This records request is a records request submitted under ARS 39-121 et seq. This is not a federal Freedom of Information Act Request (FOIA) and should not be processed as such, as FOIA does not apply to the Tucson Police Department. Failure to comply with this request under Arizona open records law will result in litigation.

Please contact me upon receipt of this request to acknowledge that it has been received and that it is being processed.

Sincerely,
Beau Hodai
[\(520\) 457-8077](tel:(520)457-8077)

EXHIBIT D

Darrell. Hill

Subject: FW: URGENT: Public Records Requests and Questions re: pen registers and Police Counter Narcotics Alliance Unit

From: **Beau Hodai** <bhodai31@gmail.com>

Date: Mon, Dec 9, 2013 at 12:51 PM

Subject: URGENT: Public Records Requests and Questions re: pen registers and Police Counter Narcotics Alliance Unit

To: Maria Hawke <maria.hawke@tucsonaz.gov>

Maria,

I have few questions/public records requests for you:

-- 1.) (QUESTION) Does TPD seek pen registers for the use of the Stingray II system (or other Harris Corp cellular technologies, such as Amberjack, Kingfish, Harpoon, or Hail Storm), as opposed to search warrants?

A.) (PUBLIC RECORDS REQUEST) If so, please (pursuant to ARS 39 sec. 121, et seq) provide me with copies of any such requests submitted by TPD personnel to the Pima County Superior Court (or any other court) from January 1, 2013 to December 9, 2013.

B.) (PUBLIC RECORDS REQUEST) If TPD does in fact request search warrants (as opposed to pen registers) for the use of the Stingray II system (or other Harris Corp cellular technologies, such as Amberjack, Kingfish, Harpoon, or Hail Storm), I request (pursuant to ARS 39 sec. 121, et seq) copies of any such warrant request submitted by TPD personnel to the Pima County Superior Court (or any other court) from January 1, 2013 to December 9, 2013.

-- 2.) (QUESTION) Can you please tell me what the "Police Counter Narcotics Alliance Unit" is? According to invoices for the delivery of Stingray II components, in May of 2010 the Harris Corp. technologies were delivered to the Police Counter Narcotics Alliance Unit" located at 6868 S. Plumer, Tucson, AZ 85706.

A.) (PUBLIC RECORDS REQUEST) I am requesting (pursuant to ARS 39, sec. 121, et seq) all records in possession of the Tucson Police Department that pertain in any way to the "Police Counter Narcotics Alliance Unit."

-- 3.) (PUBLIC RECORDS REQUEST) I am requesting (pursuant to ARS 39, sec. 121, et seq) any and all records of communications (i.e. email, email attachments, faxes, memos, letters) (generated from January 1, 2013 to December 9, 2013) in the possession of any TPD personnel that pertain in any way to the Federal Bureau of Investigation (FBI)-- such records may include (but are not limited to) communications to/from TPD personnel and FBI personnel.

For the public record request portions of this email:

I am making this request in the capacity of a researcher/reporter with *DBA Press* and the Center for Media and Democracy. Materials requested are for educational, not-for-profit purposes. As such, I request that any/all applicable records retrieval/production/redaction fees be waived.

I am requesting that responsive materials be emailed to me at: bhodai31@yahoo.com

Or, if records cannot be delivered electronically via email, I ask that you mail responsive records to me (preferably in digital formation on a data disk) at:

P.O. Box 126
Elfrida, Arizona
85610

If, for any reason, you elect to withhold any record (or any portion of any record) responsive to this request, provide me with a reason for each withholding/redaction, along with relevant legal citations.

I remind you that, per Arizona open records law, failure to comply with this request in a timely fashion may result in civil litigation with an award of attorney's fees to the plaintiff. This records request is a records request submitted under ARS 39-121 et seq. This is not a federal Freedom of Information Act Request (FOIA) and should not be processed as such, as FOIA does not apply to the Tucson Police Department. Failure to comply with this request under Arizona open records law will result in litigation.

Please contact me upon receipt of this request to acknowledge that it has been received and that it is being processed.

Sincerely,
Beau Hodai
[\(520\) 457-7384](tel:(520)457-7384)