



PRODUCT SUPPORT & ENHANCEMENT PROGRAM

CONFIDENTIAL

ACS GOVERNMENT SYSTEMS, INC.
1733 Harrodsburg Road
Lexington, KY 40504-3617
FAX Number (859) 277-2300
("ACS")

and

Hidalgo County District Clerk
PO Box 87
Edinburg, Tx. 78540
("Licensee")

THIS AGREEMENT is made between ACS and Licensee on the Commencement Date of 11/01/2011.

ACS and Licensee have entered into a Software License and Services Agreement with an Effective Date of 11/01/2011 (the "License Agreement") for the Licensed Software. Licensee desires that ACS provide Maintenance and Enhancements for and new releases of the Baseline Licensed Software identified in Exhibit 1 on the terms and conditions contained in this Agreement. Accordingly, the parties agree as follows:

1. Incorporation By Reference. Sections 1 (Definitions), 8 (Confidential Information) and 11 through 15, inclusive (Notices, Force Majeure, Assignment, No Waiver and Choice of Law; Severability, respectively) of the License Agreement are incorporated into this Agreement by this reference as fully as if written out below. If any provision incorporated by reference from the License Agreement conflicts with any provision of this Agreement, the provision of this Agreement will control.

2. Additional Definitions.

"Commencement Date" means the date identified above in this Agreement as the Commencement Date.

"Contract Year" means, with respect to

each Baseline Component System, each one (1) year period beginning and ending on the dates provided for in Exhibit 1 for such Baseline Component System.

"Enhancements" means general release (as opposed to custom) changes to a Baseline Component System which increase the functionality of the Baseline Component System.

"Expiration Date" means, with respect to each Baseline Component System, the date upon which the initial term of this Agreement ends for such Baseline Component System as provided for in Exhibit 1.

"Improvements" means, collectively, Maintenance, Enhancements and New Releases provided under this Agreement.

“Maintenance” means using reasonable efforts to provide Licensee with avoidance procedures for or corrections of Documented Defects.

“New Releases” means new editions of a Baseline Component System.

“Partial Year” means, for each Baseline Component System, the period between the Commencement Date and the first day of the initial Contract Year for that Baseline Component System.

3. Services.

(a) Types of Services. During the term of this Agreement, ACS will provide Licensee with Maintenance for, Enhancements of, and New Releases of each Baseline Component System identified in Exhibit 1.

(b) Limitations. All Improvements will be part of the applicable Baseline Component System and will be subject to all of the terms and conditions of the License Agreement and this Agreement. ACS’ obligation to provide Licensee with Improvements for Baseline Component Systems owned by parties other than ACS is limited to providing Licensee with the Improvements that the applicable third party owner provides to ACS for that Baseline Component System. In this regard, to the extent that an agreement authorizing ACS to resell or sublicense a third party’s Baseline Component System is terminated or expires prior to the Expiration Date, or prior to the expiration of any renewal term, for that Baseline Component System, then ACS’ obligation to provide Improvements to Licensee for that Baseline Component System, and Licensee’s obligation to pay ACS for such Improvements, shall automatically terminate simultaneously with the termination or expiration of the relevant agreement. Licensee must provide ACS with such facilities, equipment and support as are reasonably necessary for ACS to perform its obligations under this Agreement, including remote access to the Equipment.

4. Payment and Taxes.

(a) Product Support & Enhancement Fees. For the Improvements for each Baseline Component System, Licensee will pay ACS: (i)

the amount provided for in Exhibit 1 as the Partial Year payment (if applicable) on the payment date provided for in Exhibit 1; and (ii) the amount provided for in Exhibit 1 as the “Payment Amount” for the first Contract Year; and (iii) for each Contract Year subsequent to the initial Contract Year, an amount invoiced by ACS, which amount will not increase by more than the “Annual Escalation Not to Exceed” percentage provided for in Exhibit 1 the fee that Licensee was obligated to pay to ACS for Improvements for the applicable Baseline Component System in the immediately preceding Contract Year for that Baseline Component System. Fees for Improvements for a Baseline Component System are due on the first day of the first month of the Contract Year for that Baseline Component System.

(b) Additional Costs. Licensee will also reimburse ACS for actual travel and living expenses that ACS incurs in providing Licensee with Improvements under this Agreement, with reimbursement to be on an as-incurred basis. ACS will use reasonable efforts to limit travel and living expenses by using coach air fare, booked in advance when available, staying at hotels identified in advance by Licensee as offering Licensee’s contractors a discounted rate, and sharing rental cars. Licensee will also reimburse ACS for all charges incurred in connection with accessing Equipment. Reimbursement is subject to any statutory reimbursement limitations imposed on Licensee contractors, and Licensee will provide ACS with a copy of such limitations before ACS incurs expenses.

(c) Taxes. Licensee is responsible for paying all taxes (except for taxes based on ACS’ net income or capital stock) relating to this Agreement, the Improvements, any services provided or payments made under this Agreement. Applicable tax amounts (if any) are NOT included in the fees set forth in this Agreement. If Licensee is exempt from the payment of any such taxes, Licensee must provide ACS with a valid tax exemption certificate; otherwise, absent proof of Licensee’s direct payment of such tax amounts to the applicable taxing authority, ACS will invoice Licensee for and Licensee will pay to ACS all such tax amounts.

(d) Late Charges. Licensee will pay each ACS invoice by no later than thirty (30) days after receipt. Late payments are subject to a late charge

equal to the lesser of: (i) the prime lending rate established from time to time by Wells Fargo Bank, Dallas, Texas, plus three percent (3%); or (ii) the highest rate permitted by applicable law.

5. Term. As it applies to each Baseline Component System, the term of this Agreement is for the period beginning on the Commencement Date and continuing until the Expiration Date for that Baseline Component System. For each Baseline Component System, this Agreement will automatically be extended for consecutive Contract Years beyond the Expiration Date on a year-to-year basis unless: (i) either party notifies the other in writing of its intent not to extend this Agreement for any particular Baseline Component System at least twelve (12) months prior to the Expiration Date, or, for any Contract Year subsequent to the Expiration Date, at least twelve (12) months prior to the expiration of the then-current Contract Year or (ii) the Agreement has otherwise expired or terminated as it relates to a particular Baseline Component System under the terms of this Agreement.

6. Disclaimer of Warranties. Licensee agrees and understands that **ACS MAKES NO WARRANTIES WHATSOEVER, EXPRESSED OR IMPLIED, WITH REGARD TO ANY IMPROVEMENTS AND/OR ANY OTHER MATTER RELATING TO THIS AGREEMENT, AND THAT ACS EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FURTHER, ACS EXPRESSLY DOES NOT WARRANT THAT A COMPONENT SYSTEM OR ANY IMPROVEMENTS WILL BE USABLE BY LICENSEE IF THE COMPONENT SYSTEM HAS BEEN MODIFIED BY ANYONE OTHER THAN ACS, OR WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR WILL BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE OTHER THAN THE EQUIPMENT.**

7. Termination. A party has the right to terminate this Agreement if the other party breaches a material provision of this Agreement. Either party has the right to terminate this Agreement at any time while an event or condition giving rise to the right of termination exists. To terminate this Agreement, the party seeking termination must give the other party

notice that describes the event or condition of termination in reasonable detail. From the date of its receipt of that notice, the other party will have thirty (30) days to cure the breach to the reasonable satisfaction of the party desiring termination. If the event or condition giving rise to the right of termination is not cured within that period, this Agreement will automatically be deemed terminated at the end of that period. However, notice to ACS of a suspected Documented Defect will not constitute a notice of termination of this Agreement. Notwithstanding Section 5 or any other provision of this Agreement, County may terminate this Agreement without cause upon thirty (30) days written notice by County to other party; provided, however, that County shall not be entitled to a refund of any amounts paid prior to the notice of termination. Termination of this Agreement will be without prejudice to the terminating party's other rights and remedies pursuant to this Agreement.

8. LIMITATIONS OF LIABILITY.

(a) LIMITED LIABILITY OF ACS. ACS' LIABILITY IN CONNECTION WITH THE IMPROVEMENTS OR ANY OTHER MATTER RELATING TO THIS AGREEMENT WILL NOT EXCEED THE FEES THAT LICENSEE ACTUALLY PAID TO ACS FOR THE IMPROVEMENTS FOR THE YEAR THAT SUCH LIABILITY ARISES.

(b) EXCLUSION OF DAMAGES. REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL ACS BE LIABLE TO LICENSEE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT ACS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

(c) BASIS OF THE BARGAIN. LICENSEE ACKNOWLEDGES THAT ACS HAS SET ITS FEES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES

AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

9. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter. Any purchase order or similar document which may be issued by Licensee in connection with this Agreement does not modify

this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Agreement.

10. Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State Of Texas and shall be, solely for establishing venue in the event that any cause of action is brought relating to the performance of this Agreement, performable in Hidalgo County.

THE PARTIES have executed this Agreement through the signatures of their respective authorized representatives.

ACS

By: Phillip D. Halton
Phillip D. Halton
(Printed Name of Signatory)
Title: VP/OPS

LICENSEE

By: Ramon Garcia
Ramon Garcia
(Printed Name of Signatory)
Title: County Judge



EXHIBIT 1

Licensee:

ANNUAL CONTRACT YEAR PAYMENT DATE: 11/01/2011

Baseline Component System	Contract Year Begins/Ends	Expiration Date	First Annual Payment Amount
ACS Basic Juror Support	Effective Date	1 yrs. From Effective Date	\$10,900.00
ACS Basic eJuror Support	Effective Date	1 yrs. From Effective Date	\$5,600.00
ACS Infoscan System	Effective Date	1 yrs. From Effective Date	\$4,770.00
ACS Data Merge with NCOA and DPV Services	Effective Date	1 yrs. From Effective Date	\$2,250.00
TOTAL:			\$23,520.00

ACS

By: Phillip D. Nutton
VP/OPS
 (Printed Name and Title of Signatory)

LICENSEE

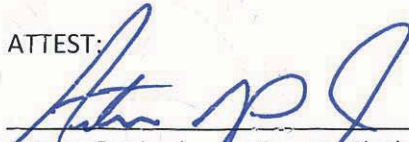
By: Ramon Garcia
Ramon Garcia - County Judge
 (Printed Name and Title of Signatory)

****Upon the expiration of the year term of this Product Support and Enhancement Agreement, effectively: October 31, 2012 the improvement fees will be escalated by no more that 5% of the amount payable for improvements for the immediately preceding contract year.**

Affiliated Computer Services, Inc., aka, ACS Government Systems, Inc.

"Sole Source Declaration-Product Support and Enhancement Program Agreement"


ATTEST:



Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM:

Atlas & Hall, L.L.P.



Stephen L. Crain

Approved by Commissioners Court: **November 1, 2011**

Chapter 271.

(b) The requirements established by Subsection (a) apply to contracts for which payment will be made from current funds or bond funds or through time warrants. Contracts for which payments will be made through certificates of obligation are governed by The Certificate of Obligation Act of 1971 (Subchapter C, Chapter 271). Contracts for which payment will be made through anticipation notes are subject to the competitive bidding provisions of The Certificate of Obligation Act of 1971 (Subchapter C, Chapter 271) in the same manner as certificates of obligation.

(c) In applying the requirements established by Subsection (a), all separate, sequential, or component purchases of items ordered or purchased, with the intent of avoiding the requirements of this subchapter, from the same supplier by the same county officer, department, or institution are treated as if they are part of a single purchase and of a single contract. In applying this provision to the purchase of office supplies, separate purchases of supplies by an individual department are not considered to be part of a single purchase and single contract by the county if a specific intent to avoid the requirements of this subchapter is not present.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 57(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1250, § 9, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, § 13.02(b), eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 757, § 13, 38, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 442, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 505, § 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 436, § 4, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 1063, § 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1409, § 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, § 12.004, eff. Sept. 1, 2003.

§ 262.0235. PROCEDURES ADOPTED BY COUNTY PURCHASING AGENTS FOR ELECTRONIC BIDS OR PROPOSALS. The county purchasing agent, before receiving electronic bids or proposals, shall adopt rules in conformance with Section 262.011(o) to ensure the identification, security, and confidentiality of electronic bids or proposals.

Added by Acts 2001, 77th Leg., ch. 1063, § 3, eff. Sept. 1, 2001.

§ 262.024. DISCRETIONARY EXEMPTIONS. (a) A contract for the purchase of any of the following items is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption:

- (1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county;
- (2) an item necessary to preserve or protect the public health or safety of the residents of the county;
- (3) an item necessary because of unforeseen damage to public property;
- (4) a personal or professional service;
- (5) any individual work performed and paid for by the day, as the work progresses, provided that no individual is compensated under this subsection for more than 20 working days in any three month period;
- (6) any land or right-of-way;
- (7) an item that can be obtained from only one source,

including:

(A) items for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies;

(B) films, manuscripts, or books;

(C) electric power, gas, water, and other utility

services; and



Hidalgo County Purchasing Department
2812 S. Business Highway 281
New Administration Building
Edinburg, Texas 78539
(956) 318-2626/ Fax: (956) 318-2629

MEMORANDUM

“SOLE SOURCE DECLARATION”

TO: Hidalgo County Commissioner’s Court

FROM: Martha L. Salazar, CPPB
Hidalgo County Purchasing Agent 

DATE: November 1, 2011

RE: “Sole Source Declaration” For ASC Government Systems, Inc.-Product Support and Enhancement Program

In 2002, Hidalgo County District Clerk’s Office implemented *Jury 2000 Plus*. As technology improved, more productive and efficient programs were emerging in the market place which addressed an urgent and necessary need to better serve the community through an upgrade to the *Jury 2000 Plus*.

Hidalgo County on request by the District Clerk’s Office advertised and solicited proposals in November of 2008 to acquire a New Jury Software System. On January 6, 2009, the project was awarded by Hidalgo County Commissioners Court to ACS GOVERNMENT SYSTEMS, INC.

Term of the Request For Proposals was for one (1) year with option to extend an additional (1) year including a sixty (60) day grace period extension clause which the County utilized so as to continue the “Product Support and Enhancement Program” as provided by ACS on the New Jury System.

The contract for the New Jury Software System expired May 19, 2011. Hidalgo County attempted to find continued “product support, maintenance and enhancement program” through Hidalgo County’s IT Division but were advised (by IT Director) that the best solution was to continue services provided by ACS due to patent and copy rights to the jury system product by company.

ASC has continued services to Hidalgo County on a month to month basis so as to have no lapse in services.

Hidalgo County District Clerk’s Office requires the continuation of the Product Support and Enhancement Program services which are proprietary components of ACS GOVERNMENT SYSTEMS, INC.

Therefore, due to the proprietary nature of the Product Support and Enhancement Program product, ASC Government Systems, Inc. is the sole source for these services.

HIDALGO COUNTY PURCHASING DEPARTMENT
SOLE SOURCE AFFIDAVIT

THIS IS AN OFFICIAL PURCHASING DOCUMENT-RETAIN WITH PURCHASE ORDER

Before me, the undersigned official, on this day, personally appeared Phil Hatton
A person known to me to be the person whose signature appears below, whom after being duly sworn upon his/her oath deposed and said:

1. My name is Phil Hatton. I am over the age of 18, have never been convicted of crime and am competent to make this affidavit.
2. I am an authorized representative of the following company or firm: Affiliated Computer Service, Inc. A Xerox Company.
3. The above named company or firm is the sole source for the following item(s), product(s) or services(s):
 1. Custom Jury summons printing of all summons by Scantron, three colors (two sides) 8.5 x 14
 2. Data Merge process (updates of all juror names/address
 3. Technical Support for both Jury and eJuror
 4. Modifications/update to the jury summons for special jury selections such as *special venire*.
4. Competition in providing the above named item(s) product(s), service(s) is precluded by the existence of a patent copyright, secret process or monopoly as stated under Section 262.024(a)(7)(A), of the Local Government Code. Also, attached hereto is a sole source letter which sets forth the reasons why this Vendor is a sole source provider (dated and signed).
5. There is/are no other like item(s) or product(s) available for purchase that would serve the same purpose or function.
6. **Note:** This Vendor understands that by providing false information on this Sole Source Affidavit, it may be considered a non-responsible Vendor on this and future purchases and may result in discontinuations of any/all business with Hidalgo County.

Signature Phillip Hatton

SWORN AND SUBSCRIBED TO under oath before me on 17 day of May, 2011.

Lisa D. Perun
NOTARY PUBLIC

Lisa D. Perun
PRINTED NAME

3/6/2014
MY COMMISSION EXPIRES

COMPANY NAME: Affiliated Computer Service, Inc. A Xerox Company
ADDRESS, CITY, STATE & ZIP CODE: 1733 Harrodsburg Rd, Lexington, Ky. 40504
PHONE NUMBER: 859.2772.8800
CONTACT NAME AND TITLE: David Jacobs - Project Manager
WEB ADDRESS: www.acs-inc.com EMAIL: david.jacobs@acs-inc.com
FEDERAL TAX ID NUMBER: 232154345 TEXAS SALES TAX NUMBER: _____

Affiliated Computer Services, Inc.
A Xerox Company

Evangelina Garcia

From: Jacobs, David [David.Jacobs@acs-inc.com]
Sent: Monday, November 28, 2011 10:08 AM
To: evangelina.garcia@co.hidalgo.tx.us; stephanie.palacios@co.hidalgo.tx.us
Subject: New PS&E agreement
Attachments: ACS Product Support Enhancement Agreement-Hidalgo 11-28-11.pdf

Attached is the new agreement that your attorney and ours agreed upon. Please sign, scan and return a copy to me as soon as possible.

David C. Jacobs, PMP®
Project Manager, Juror Solutions
Public Safety and Justice
Affiliated Computer Services, Inc.
A Xerox Company
1733 Harrodsburg Road
Lexington, KY 40504

📞 Office (859) 277-8800 x 326

📞 Cell (859) 509-8356

✉ david.jacobs@acs-inc.com

Evangelina Garcia

From: Martha Salazar [martha.salazar@co.hidalgo.tx.us]
Sent: Wednesday, November 23, 2011 11:52 AM
To: 'Evangelina Garcia'
Subject: FW: ACS-Hidalgo County support agreement
Attachments: ACS Product Support Enhancement Agreement-Hidalgo 11-23-11.docx

We're ready to finish this up. Good job. Let District Clerk know.
Marty

From: Steve Crain [mailto:scrain@atlashall.com]
Sent: Wednesday, November 23, 2011 11:43 AM
To: 'Martha Salazar'
Subject: FW: ACS-Hidalgo County support agreement

Please see the revised agreement.

From: Steve Crain [mailto:scrain@atlashall.com]
Sent: Wednesday, November 23, 2011 11:42 AM
To: scrain@atlashall.com
Subject: FW: ACS-Hidalgo County support agreement

From: Davis-Diehl, Joseph [mailto:Joseph.Davis-Diehl@acs-inc.com]
Sent: Wednesday, November 23, 2011 9:34 AM
To: scrain@atlashall.com
Cc: Jacobs, David
Subject: ACS-Hidalgo County support agreement

Hi Steve,

Attached please find the support agreement revised to reflect our discussion just now. Please let me know if the attached version is acceptable.

Thank you and Happy Thanksgiving,
Joe

Joseph Davis-Diehl
Contracts Manager
ACS, A Xerox Company
8260 Willow Oaks Corporate Drive
Fairfax, VA 22031
Tel: 703-891-8782
Fax: 703-891-8857
Joseph.Davis-Diehl@acs-inc.com



AI-29328

41. O. O.

CC REGULAR

Meeting

11/01/2011

Date:

Submitted For: Martha Salazar

Submitted By: Vangie Garcia, PURCHASING DEPT.

Department: PURCHASING DEPT.

Information

CAPTION

- ✓ a. Exemption from competitive bidding requirements under Texas Local Government Code, 262.024(a)(7)(A)-"Items for which competition is precluded because of existence of patents, copyrights, secret processes or monopolies";
- ✓ b. Approval of a "Sole Source Declaration" for Affiliated Computer Services, Inc., aka, ACS Government Systems, Inc. with authority to purchase and enter into a Product Support and Enhancement Program Agreement" in the amount of \$23,520.00/year effective November 1, 2011 thru October 31, 2012;

BACKGROUND

Fiscal Impact

FISCAL YEAR: 2011

ACCT. #: 1100-412-00-090-001-0-336

FUNDS AVAILABLE Y/N?:

MATCHING FUNDS Y/N?:

BUDGETARY IMPACT:

Attachments

SOLE SOURCE DOCUMENTATION

Form Review

<u>Inbox</u>	<u>Reviewed By</u>	<u>Date</u>
Purchasing Department	Marty Salazar	10/26/2011 04:28 PM
Budget & Management	Merlen P. Munoz	10/26/2011 04:47 PM
Purchasing Department	Marty Salazar	10/26/2011 04:28 PM
Budget & Management	Merlen P. Munoz	10/26/2011 04:47 PM
Ivan Cantu		
Auditor's Office		
Form Started By: Vangie Garcia		Started On: 10/26/2011 09:16 AM