

5. Pursuant to action approved by CC last Tuesday, November 27, 2012, nominating all 11 architectural firms on approved pool of architects, requesting action on designation/appointment of members of Grading Committee to score, grade, evaluate all Statements of Qualifications in connection with the Design & Construction of a New Hidalgo County Courthouse including Remodeling/Additions/Renovations of Existing Courthouse.

On motion by COMMISSIONER, PCT. 1 JOEL QUINTANILLA, seconded by COMMISSIONER, PCT. 4 JOSEPH PALACIOS, the Court made a UNANIMOUS vote to approve the appointment of Yolanda Chapa, Eddie Gonzalez, Raul Silguero, Mona Parras and Marco Lopez as members of the Grading Committee.

**Vote:** 4 - 0 - Unanimously

6. A. Presentation of reason of necessity to cancel original Purchase Order #681804 for \$465K issued by Hidalgo County to awarded contractor, HighMark Construction Company, LLC, for the "Additions and Renovations to the WIC Clinic located at 3105 E. Richardson, Edinburg, TX" for HC WIC Program's 2012 fiscal funding and since project was not commenced during that fiscal year the funding does not roll-over to 2013 fiscal year's budget; therefore,

On motion by COMMISSIONER, PCT. 1 JOEL QUINTANILLA, seconded by COMMISSIONER, PCT. 3 JOE M. FLORES, the Court made a UNANIMOUS vote of approval.

**Vote:** 3 - 0

B. Discussion, consideration and action authorizing the Purchasing Department to approve and process a requisition into a Purchase Order to HighMark Construction Company, LLC, in the amount of \$232.5K which reflects one-half of the awarded amount of the approved and fully executed construction contract between Hidalgo County and HighMark for the amount of \$465K with additional specific wording on new PO noting that the other one-half or \$232.5K will be issued through a second PO upon receipt in March of 2013 of WIC Program fiscal year's funding in connection to: "Additions and Renovations to the WIC Clinic/Offices located at 3105 E. Richardson, Edinburg, TX" (C-12-021A-09-25) with acceptance of this two (2) equal parts method of payment by HighMark.

On motion by COMMISSIONER, PCT. 3 JOE M. FLORES, seconded by COMMISSIONER, PCT. 1 JOEL QUINTANILLA, the Court made a UNANIMOUS vote of approval.

**Vote:** 3 - 0 - Unanimously

**B. District Clerk**

1. Requesting clarification and approval to amend the Sole Source Declaration (previously approved by CC on 11/01/11-AI#29328) with ACS Government Systems, Inc. to include the purchase of an "IVR System" including the hardware, software licenses and any other pertinent related services in the amount of \$31,545.70 as well as any future purchases of equipment, licenses, software, maintenances support and related services for the District Clerk's current jury system in place through the life term of the equipment/software/hardware/maintenance/support services in place.

On motion by COMMISSIONER, PCT. 3 JOE M. FLORES, seconded by COMMISSIONER, PCT. 1 JOEL QUINTANILLA, the Court made a UNANIMOUS vote of approval.

**Vote: 3 - 0 - Unanimously**

**C. Facilities Management:**

1. Requesting discussion & action to repair the Courthouse-County Clerk Office Roof which has water leaks and sloping problems through the following options:
  - a. Short Term: Repair roof through an approved dealer as recommended by Mulehide in order to not violate any warranties; however roof has low lying areas and needs more than just patch work.
  - b. Long Term: Appropriate funding for and request proposal from an approved Hydro Stop JOC to apply dens deck in order to gravitate water to the appropriate drains, in addition apply can strip to all parapet walls and apply Barrier Guard to all drain locations to adhere to concrete underlayment, with a 10 to 15 year warranty.

On motion by COMMISSIONER, PCT. 1 JOEL QUINTANILLA, seconded by COMMISSIONER, PCT. 3 JOE M. FLORES, the Court made a UNANIMOUS vote to approve items a & b, providing information on the short term fix/repairs @ no charge while looking into a long term plan.

**Vote: 3 - 0 - Unanimously**

**D. Tax Office**

1. A. Requesting exemption from competitive bidding requirements under Texas Local Government Code 262.024 (a)(7)(A)..items for which competition is precluded because of the existence of patents, copyrights, secret processes'

On motion by COMMISSIONER, PCT. 1 JOEL QUINTANILLA, seconded by COMMISSIONER, PCT. 3 JOE M. FLORES, the Court made a UNANIMOUS vote of approval.

Vote: 3 - 0

B. Approval of the Sole Source Declaration for **Cummins Allison Corp.**, to include the purchase of all future purchases of equipment, licenses, software, maintenance-support and related services for the **Tax Office** current Currency

**APPROVED****AI-33978****Purchasing Department****42. O. 0.****CC REGULAR****Meeting Date:** 12/04/2012**Submitted For:** Martha Salazar**Submitted By:** Vangie Garcia, PURCHASING DEPT.**Department:** PURCHASING DEPT.InformationCAPTION

Requesting clarification and approval to amend the Sole Source Declaration (previously approved by CC on 11/01/11-AI#29328) with ACS Government Systems, Inc. to include the purchase of an "IVR System" including the hardware, software licenses and any other pertinent related services in the amount of \$31,545.70 as well as any future purchases of equipment, licenses, software, maintenances support and related services for the District Clerk's current jury system in place through the life term of the equipment/software/hardware/maintenance/support services in place.

BACKGROUND

Said purchase of the IVR System through requisition #221170 in the amount of \$31,545.70.

Legal has not approved the agreement as to form pursuant to a concern that he will disclose at Commissioners Court thus resulting in the court taking action (see legal's response).

See District Clerk's Office request to proceed ahead with agenda item (see attachment).

Fiscal ImpactFISCAL YEAR: 2012ACCT. #: 1100-412-00-090-001-0-336FUNDS AVAILABLE Y/N?:MATCHING FUNDS Y/N?:BUDGETARY IMPACT:FISCAL YEAR: 2012ACCT. #: 1100-412-00-090-001-0-745FUNDS AVAILABLE Y/N?:MATCHING FUNDS Y/N?:BUDGETARY IMPACT:FISCAL YEAR: 2012ACCT. #: 1100-412-00-090-001-0-747FUNDS AVAILABLE Y/N?:MATCHING FUNDS Y/N?:BUDGETARY IMPACT:AttachmentsPrevious Agenda Item #31164Requisition #221170Revised AgreementLegal's ResponseDepartment's RequestAdditional Correspondence

**Form Review**

<b>Inbox</b>	<b>Reviewed By</b>	<b>Date</b>
Purchasing Department	Marty Salazar	11/29/2012 03:19 PM
Budget & Management	Merlen P. Munoz	11/30/2012 08:22 AM
Purchasing Department	Marty Salazar	11/29/2012 03:19 PM
Budget & Management	Merlen P. Munoz	11/30/2012 08:22 AM
Erika Zamora Auditor's Office		
Form Started By: Vangie Garcia		Started On: 08/30/2012 01:09 PM



## SOFTWARE SERVICES AGREEMENT

ACS GOVERNMENT SYSTEMS, INC.  
1733 Harrodsburg Road  
Lexington, KY 40504-3617  
FAX Number (859) 277-7600

and

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

**THIS AGREEMENT** is made between ACS and Client as of the Commencement Date.

ACS and the Client have entered into a certain License Agreement (as that term is hereinafter defined) under which ACS granted the Client a right of use for the Licensed Software (as that term is hereinafter defined), all on the terms and conditions of such License Agreement. ACS and the Client desire to enter into this Agreement pursuant to which ACS will provide Client with services in connection with the Licensed Software, all in accordance with the terms and conditions of this Agreement as the same may be amended from time to time. Accordingly, the parties, intending to be legally bound, hereby 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, substituting, in each instance, the term "Client" for the term "Licensee." If any other 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.** Each of the following additional terms will have the meaning ascribed to such term hereinbelow when used in this Agreement. Further, certain other terms may be defined in a

Scope of Services (including without limitation in Exhibit A), and each such term has the mean ascribed to it therein when used therein.

"**Commencement Date**" means the date identified on the signature page of this Agreement as the Commencement Date.

"**Customization**" means any ACS-developed changes to and/or creations of Source Code and/or Object Code in compliance with a Customization Specification therefor, but without any other change whatsoever.

"**Customization Defect**" means, in each instance, a material deviation between a Customization and its Customization Specification, for which Customization

Defect ACS has confirmed that Client has given ACS enough information for ACS to replicate the deviation on a computer configuration which is both comparable to the computer configuration for which ACS created the Customization and which computer configuration is under ACS' control.

**"Customization Delivery Date"** means, for each Customization, the date Client first receives that Customization at the Delivery Address.

**"Customization Specification"** means that detailed specification that Client and ACS will agree upon in each instance for a Customization, and from which Customization Specification ACS will generate the Source Code and Object Code for such Customization.

**"Exhibit A"** means the Scope of Services that is attached to this Agreement and marked as Exhibit A.

**"Fee"** means the remuneration that Client is to pay to ACS for Services in any instance.

**"License Agreement"** means that certain Software License Agreement entered into by and between Client and ACS on or about the Commencement Date, pursuant to which License Agreement Client obtained the right to use Licensed Software.

**"Premises"** means Client's data processing facility(ies) located at such address or addresses as Client may designate from time to time.

**"Project Plan"** means, in each instance, a detailed plan describing the specific Services to be performed by ACS and the associated activities to be handled by Client in connection therewith. Upon its creation and approval by both parties, the Project Plan will be deemed incorporated into this Agreement by reference, without further action by either party.

**"Scope of Services"** means, in each instance, the written description of Services to be rendered by ACS, and each which Scope of Services must be expressly incorporated by reference into this Agreement in each instance.

**"Services"** means, in each instance, the implementation, training, customization and/or consulting services that ACS is to provide to Client pursuant to a Scope of Services and for the remuneration otherwise provided for in such Scope of Services or a correlating amendment to this Agreement.

**"Software"** means the Source Code and Object Code for application software products, operating systems, database systems, computer language facilities, development tools; and the related specification(s) therefor.

**"Product Support & Enhancement Agreement"** means that certain written agreement entitled the "Product Support & Enhancement Agreement" and entered into by the parties on or about the Commencement Date, under which Product Support & Enhancement Agreement ACS is to provide Licensee with Improvements (as that term is defined in the Product Support & Enhancement Agreement) for the Baseline Licensed Software, all on the terms and conditions of and for the fees provided for in the Product Support & Enhancement Agreement.

3. **Services.** In consideration of Client's payment of the Fee specified in Exhibit A, ACS agrees to furnish the Client with the Services specified in Exhibit A. Absent the parties' execution of an amendment to this Agreement that provides to the contrary, this Agreement specifically excludes any responsibility on the part of ACS for providing any services other than the Services specified in Exhibit A. ACS can provide Client with additional Services under the terms of this Agreement. In any such instance, the parties will amend this

Agreement to define such additional Services, to specify the Fee for such additional Services, and to set forth the payment terms for the Fee for such additional Services.

In each instance in which ACS is to provide Services, the parties will develop a Project Plan that details the Services to be provided, identifies each party's responsibilities for such Services and sets for a schedule for the provision of such Services.

#### **4. Client Obligations.**

**4.1 Access.** Client agrees to permit ACS' authorized personnel, and third parties as may be authorized by ACS, access to the Premises and other Client facilities, information, data, data communication services, and communication lines, at such times and for such purposes as reasonably necessary or appropriate to permit ACS to perform its obligations under this Agreement.

**4.2 Availability of Client Personnel.** Upon ACS' reasonable request, Client will make its personnel, including appropriate professional personnel, administrative personnel and other employees, reasonably available for consultation to the extent reasonably necessary in order to facilitate ACS' performance of the Services its obligations.

#### **5. Personnel.**

**5.1 Assignment of ACS Personnel and Replacement of ACS Premises-Based Personnel.** Client will have the right to request that ACS remove and replace any ACS personnel providing Services at the Premises if, in the reasonable opinion of Client, such ACS personnel do not possess the skills and experience necessary to render the Services for which ACS has provided such personnel. Promptly after receipt of Client's request therefor (which right of request Client will not unreasonably

exercise), ACS will replace such personnel, at no additional cost to Client therefor.

**5.2 ACS Project Manager.** ACS will designate an ACS Project Manager who will be responsible for coordinating ACS' efforts and for communicating with the Client Project Director regarding the Services.

**5.3 Client Project Director.** Client will designate a Client Project Director who will be responsible for communicating with the ACS Project Manager with regard to the proper execution of this Agreement and the obligations and duties under this Agreement.

**6. Term.** Subject to the events of termination otherwise provided for in this Agreement, this Agreement will remain in full force and effect for a period of 1 years after the Commencement Date. The term during which ACS will provide Client with Services under any particular Scope of Services will be specified in the applicable Scope of Services.

#### **7. Fees and Payment.**

**7.1. Fee Payment.** In each instance, Client will pay ACS the Fee for Services in the manner specified in the applicable Scope of Services

**7.2 Reimbursement of Expenses Additional.** Except as may be otherwise specified in any particular Scope of Services, Client will additionally reimburse ACS for actual travel and living expenses that ACS incurs in providing Client with the Services, 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 Client as offering Client's contractors a discounted rate, sharing rental cars, using the telephone when reasonable to obviate the need for travel, and remotely accessing the Equipment.

### 7.3 Payment of ACS Invoices.

Client 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 Mellon Bank, N.A., Philadelphia, Pennsylvania plus three percent (3%); and (ii) the highest rate permitted by applicable law.

## 8. Source Code and Software License For Customizations; Work Product Ownership

### 8.1 License To Use Customizations.

Except to the extent that any Customization constitutes a "derivative work" of underlying copyrighted Software within the meaning of the definition set forth in Section 101 of the U.S Copyright Act (in which event Client's right to use such derivative Customization will, in each instance, be governed by the license agreement governing Client's right to use the underlying copyrighted Software from which such Customization is derived), then subject to the terms and conditions of this Agreement, ACS grants Client a perpetual, non-exclusive, non-transferable license to use, execute and copy as needed to use the Customization in Object Code form and Source Code form (where applicable), at the Premises and on the computer configuration for which ACS created such Customization, all in accordance with all other terms and conditions of this Agreement. ACS also grants Client the rights set forth in the Sonant Corporation Software License Agreement attached hereto as Exhibit B with respect to the Sonant Software identified in Exhibit A. Client agrees to be bound by the terms of such Sonant Corporation Software License Agreement and further agrees to return an executed copy of such Sonant Corporation Software License Agreement to ACS within ten (10) business days of the Commencement Date. Client acknowledges that ACS has no obligation with respect to the Sonant Software identified in Exhibit A other than to provide to Client the

warranties, indemnities and other rights provided to ACS by Sonant Corporation which are transferable to Client in accordance with the terms of the Sonant Corporation Software License Agreement. Any rights not expressly granted in this Agreement are expressly reserved.

(a) Source Code. Client will not disclose all or any part of the Source Code for any Customization to any person except to Client Employees.

(b) Object Code. Client has the right to use each Customization in Object Code form, in a test, production and/or disaster recovery mode.

(c) Right To Reproduce Customization Specifications. Client can make copies of the Customization Specification for each Customization as needed for its use in accordance with the terms of this Agreement.

(d) Restrictions on Use of Customizations. Client is prohibited from causing or permitting the reverse engineering, disassembly or decompilation of any Customization. Client will not allow any Customization to be used by, or disclose all or any part of any Customization to, any person except Client Employees on a "need to know" basis. Without limiting the foregoing, Client is permitted to allow use of the input and/or output sensory displays of or from a Customization by third parties on a strict "need to know" basis, and such use will not be deemed a non-permitted disclosure of the Customization. Client will not allow any Customization, in whole or in part, to be exported outside of the United States of America, in any manner or by any means, without in each instance obtaining ACS' prior written consent (such consent which ACS will not unreasonably withhold or delay) and, if required, a validated export license from the Office of Export Administration within the U.S. Department of Commerce and such other appropriate United States governmental authorities.

(e) Right To Modify Customizations. Client has the right to modify, improve, enhance and compile the Customizations, utilizing the Source Code delivered by ACS pursuant to this Agreement.

(f) Intellectual Property Rights Notices. Client is prohibited from removing or altering any of the Intellectual Property Rights notice(s) embedded in or that ACS otherwise provides with any Customization. Client must reproduce the unaltered Intellectual Property Rights notice(s) in any full or partial copies that Client makes of any Customization.

(g) Survival. Subject to the payment terms provided for in this Agreement, the provisions of this Subsection 8.1, including the license granted hereunder and all related rights and obligations, will survive the term or termination of this Agreement for any reason; provided, however, that Client understands and agrees that in the event of termination of the license to the Licensed Software granted to Client pursuant to the License Agreement, Client's rights to utilize the Licensed Software would terminate, and accordingly, Client's right to use any Customizations that are derivative works of the Licensed Software, in whole or in part, will terminate.

8.2 Ownership of Work Product. Without limitation or prejudice to: (a) Client's rights under this Agreement; and (b) ACS' rights, including without limitation ACS' exclusive ownership right in and to derivative works of the Licensed Software, and except to the extent that any of the same constitute derivative works incorporating property of any other third party, ACS, for itself and others as it deems appropriate, will have all ownership rights in all Customizations, whether completed or partially completed, and all documents and other work product developed under or pursuant to the provision of the Services, whether completed or partially completed,

including without limitation the right to receive Source Code and the right to use, duplicate, and disclose Customizations and Customization data, in whole or in part, in any manner and for any purpose, and Client will not have the right to sell, license, or use the Customizations.

## **9. Intellectual Property Indemnity By ACS.**

ACS will defend, indemnify and hold Client harmless from and against any loss, cost and expense that Client incurs because of a claim that use of any Customization infringes any United States copyright of others. ACS' obligations under this indemnification are expressly conditioned on the following: (i) Client must promptly notify ACS of any such claim; (ii) Client must in writing grant ACS sole control of the defense of any such claim and of all negotiations for its settlement or compromise (if Client chooses to represent its own interests in any such action, Client may do so at its own expense, but such representation must not prejudice ACS' right to control the defense of the claim and negotiate its settlement or compromise); (iii) Client must cooperate with ACS to facilitate the settlement or defense of the claim; (iv) the claim must not arise from modifications to a Customization or from the use or combination of the Customization with items provided by Client or others. If a Customization is, or in ACS' opinion is likely to become, the subject of a United States copyright infringement claim, then ACS, at its sole option and expense, will either: (A) obtain for Client the right to continue using the Customization under the terms of this Agreement; or (B) replace the Customization with products that are substantially equivalent in function, or modify the Customization so that it becomes non-infringing and substantially equivalent in function; or (C) refund to Client the portion of the Fee paid to ACS for the Customization(s) giving rise to the infringement claim, less a charge for use by Client based on straight line depreciation

assuming a useful life of five (5) years.  
**THE FOREGOING IS ACS' EXCLUSIVE OBLIGATION WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.**

**10. Limited Warranties: Disclaimer of Warranties: Certain Maintenance.**

10.1 **Limited Warranty of Workmanlike Skills And Remedy For Breach.** ACS will render all Services in a professional and workmanlike manner, using personnel generally deemed acceptable in the information technology industry to perform the Services that such ACS personnel have been assigned to perform. ACS will promptly replace any ACS personnel that are rendering Services on-site at the Premises if Client reasonably determines that such personnel do not so possess the requisite skills and provides ACS with notice to that effect, provided that such replacement does not violate any law or governmental regulation applicable to such personnel replacement.

10.2 **Limited Software Warranty by ACS and Remedy For Breach.** For each Customization, ACS warrants to Client that, for a period of ninety (90) days after the Customization Delivery Date, the Customization, as used by Client for its own, non-commercial computing operations on the computer configuration for which ACS created such Customization, will operate without Customization Defects. For each Customization Defect, ACS, as soon as reasonably practicable and at its own expense, will provide Client with an avoidance procedure for or a correction of the Customization Defect. If, despite its reasonable efforts, ACS is unable to provide Client with an avoidance procedure for or a correction of a Customization Defect, then, subject to the limitations set forth in Section 11 of this Agreement, Client may pursue its remedy at law to recover direct damages resulting from the breach of this limited warranty. These remedies for breach of this limited warranty are exclusive

and are in lieu of all other remedies for breach of this limited warranty, and ACS' sole obligations for breach of this limited warranty are contained in this Section 10.2.

10.3. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 10, ACS DISCLAIMS ALL WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, ANY EXPRESS WARRANTIES NOT INCORPORATED INTO THIS AGREEMENT AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IMPOSED BY LAW OR WHICH COULD OTHERWISE ARISE IN CONNECTION WITH ACS' PERFORMANCE UNDER THIS AGREEMENT.

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INTENTIONALLY LEFT BLANK)*

**11. LIMITATION OF LIABILITY/ REMEDIES.**

ACS AND CLIENT ACKNOWLEDGE AND AGREE THAT IN NO EVENT WILL ACS' LIABILITY TO CLIENT, IF ANY, FOR ANY CLAIMS WHATSOEVER OR FOR ANY REASON WHATSOEVER RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT EXCEED THE SERVICES FEES THAT CLIENT ACTUALLY PAID TO ACS FOR THE SERVICES GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL ACS BE LIABLE TO CLIENT 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. THESE LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER CAUSES OF ACTION BASED ON SIMILAR LEGAL THEORIES. THE PARTIES HAVE AGREED THAT THE LIMITATIONS SPECIFIED IN SECTIONS 10 AND 11 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO

HAVE FAILED OF ITS ESSENTIAL PURPOSE.

12. This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

13. No Hire Clause. During the period of this Agreement and any resulting Subcontract, neither party hereto shall solicit for hire any employee of the other associated with performance under this Agreement or any resulting Subcontract; nor shall they hire such employee without prior written consent of the party which employs that individual. Individuals previously employed by either party may be solicited for hire and hired, without such written approval, one (1) year after termination of their employment with the party which employs the individual.

14. 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 Client 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.

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

Commencement Date: \_\_\_\_\_

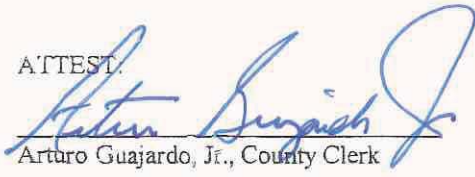
By: D.P. Cummins ACS  
DAVID P. CUMMINS, SVP  
(Printed Name and Title of Signatory)

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

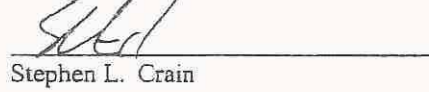
Approved by Commissioners' Court  
on 12/04/12 rd

ACS Government Systems, Inc.  
"Interactive Voice Response System (IVR)"

ATTEST

  
Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM:  
Atlas, Hall & Rodriguez, LLP

  
Stephen L. Crain

Approved by Commissioners Court: December 4, 2012

## EXHIBIT A

### STATEMENT OF WORK/PAYMENT SCHEDULE

#### System Components

System components consist of the hardware platform, system software and application software.

The supplied application software includes:

- Standard ClientCall runtime environment and utility programs
- The customized ClientCall IVR application software with custom playback messages that are professionally recorded.

A 4 port telephone voice processing hardware module with software licenses for 4 active IVR ports for this initial implementation will be provided.

#### Training

After system installation is completed, Remote web-conference training for staff members who will have the responsibility for administration and operation of the system will be provided. Training covers system configuration, administration and variable management, report generation and application program maintenance. This training is tailored to the specific application and system configuration for the site.

#### Typical Schedule

Delivery 4 weeks after receipt of the order and the approved wording of the English information messages and the Spanish of the message informing Spanish-speaking callers of the Court's English competency requirement

#### Assumptions

- 1) Court will provide the server platform with Microsoft Windows software to Sonant specifications shown in this proposal
- 2) Testing will be done using the production IVR system before it is put into use by the public
- 3) Court is responsible for providing Sonant with VPN access to the IVR server.
- 4) Court is responsible for providing an reliable electrical power for the system
- 5) For the purposes of acceptance and start of the first year annual maintenance, the software shall be considered accepted after Sonant has corrected any problems documented by the Court during the two weeks following installation or when the system is put into productive use by the public, whichever comes first

## Pricing

### Base IVR System

Description	Price
<b>Hardware</b>	
4 Port Analog Telephone Interface	\$1,461.31
<b>ClientCall Software Licenses</b>	
ClientCall AGE Software License, Application Generation Environment for IVR, per server	
Voice Processing DTMF Port Software License, for 4 ports	
<b>Software License Total</b>	<b>\$6,454.13</b>
<b>Professional Services</b>	
Project Management including project planning and scheduling, system specification and configuration	\$11,123.85
Tailored CourtTalk eCenter IVR Application including design and development of custom IVR script, and processing logic	
System Configuration and Delivery including documentation, professional voice recordings, and integration and test	\$5,577.35
Remote System Installation, Testing, Admin Training and Cutover Support	\$3,750.70
1st Year Annual System Maintenance Support, providing business hours coverage (Commencing once the system goes into production)	\$3,178.36
<b>Professional Services Subtotal</b>	<b>\$23,630.26</b>
<b>System Total</b>	<b>\$31,545.70</b>

## Options

### Additional Hardware and Port Expansion

Description	Price
ClientCall 4072 Rack Mount Server Platform including 3u chassis, RAID disk hot-swap hard disk drive array, and redundant power supplies	\$5,601.70
Additional 4 port analog telephone interface module	\$1,461.31
Additional 12 port analog telephone interface module	\$4,140.39
Additional 23/24 port digital PRI/T-1 telephone interface module	\$8,402.55
Voice Processing DTMF Port Software License, per port	\$243.55

### Optional Services

Description	Price
Upgrade to On-site System Installation, Testing, Admin Training and Cutover Support, including travel and living expenses	\$5,090.24

## EXHIBIT B

### Sonant Corporation Software License Agreement

*This is a license agreement ("License") and not an agreement for sale. Sonant Corporation. (Hereinafter referred to as "Sonant") owns, or has licensed from the owner, copyrights in the Software and provides the Software under the licensing terms as provided below. The term Software means the logical instructions to which this License refers and all such human or machine readable or translatable versions whether they be stored on physical or electronic media. The term Software is also meant to include such ancillary materials, any user instructions, design specifications or any other reference documentation supplied with the licensed Software. You assume responsibility for the selection of the Software to achieve your intended results, and use and results obtained from the Software.*

#### 1. LICENSE

Sonant hereby grants to you a nontransferable (except as provided herein), nonexclusive, perpetual license (the "License") to use the Licensed Software and all its components and any modifications thereto or replacement thereof provided to you.

You may:

- a) use the Software on a non-exclusive basis with a single Sonant system, for each License purchased;
- b) copy the Software into any machine readable or printed form for backup in support of your use of the Software as permitted herein;
- c) transfer the Software to another party if all of the following conditions are met: the other party accepts the terms and conditions of this License; a copy of this License signed by the other party is returned to Sonant; you transfer or destroy all copies, modifications or merged portions of the Software. Any such transfer terminates your License.

You may not:

- a) distribute copies of the Software or any portion thereof in any form, including but not limited to flow charts, logic diagrams, computer codes, and listings to others without the prior written permission of Sonant;
- b) modify, reverse assemble, reverse compile, or translate the Software without the prior written consent of Sonant.

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YOU ACKNOWLEDGE THAT YOU HAVE READ THIS LICENSE, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE LICENSE AGREEMENT BETWEEN US WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN US RELATING TO THE SUBJECT MATTER OF THIS LICENSE AGREEMENT.

SONANT

By: *Charles W. Smith*

CHARLES W. SMITH, PRESIDENT  
(Printed Name and Title of Signatory)

CLIENT

By: *Ramon Garcia*

Ramon Garcia, County Judge  
(Printed Name and Title of Signatory)

Approved by Commissioners' Court  
on 12/4/12 Ro

**Evangelina Garcia**

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**From:** Steve Crain [scrain@atlashall.com]  
**Sent:** Thursday, November 15, 2012 2:26 PM  
**To:** 'Evangelina Garcia'  
**Subject:** RE: Review Of ACS Software Agreement for the "Interactive Voice Response System (IVR)"

This provision limits the indemnity paid by ACS to the fees paid by the County to ACS. If the County desires to proceed I will have to disclose to Commissioners Court this provision. It then becomes a business decision for the Commissioners Court to decide.

---

**From:** Evangelina Garcia [mailto:evangelina.garcia@co.hidalgo.tx.us]  
**Sent:** Thursday, November 15, 2012 2:08 PM  
**To:** 'Steve Crain'  
**Cc:** 'Martha Salazar'; 'Stephanie Palacios'  
**Subject:** FW: Review Of ACS Software Agreement for the "Interactive Voice Response System (IVR)"

Mr. Crain:

I will ask the vendor on paragraph 6 however, on paragraph 9, I'm not sure what needs to be modified, please let me know on this one. Paragraph 11, your last comment on that one was the liability issue and if the District Clerk realized the liability and if she was alright with that provision and apparently Ms. Hinojosa wants to proceed forward in procuring this IVR System. ACS also replied that this section would give ACS some protections that allow them to give Hidalgo a very good price on the IVR and that they could not agree to remove it but if the County's legal had an alternative wording, they would consider it. Would you consider proposing some wording for their consideration?

Will you let me know what revision on 9 that way I can get back to ACS with this including paragraph 6.

Thank you

---

**From:** Steve Crain [mailto:scrain@atlashall.com]  
**Sent:** Thursday, November 15, 2012 10:12 AM  
**To:** 'Evangelina Garcia'  
**Subject:** RE: Review Of ACS Software Agreement for the "Interactive Voice Response System (IVR)"

Paragraph 6 still contains a blank. With respect to paragraphs 9 and 11 ACS has made no revisions to these paragraphs.

---

**From:** Evangelina Garcia [mailto:evangelina.garcia@co.hidalgo.tx.us]  
**Sent:** Thursday, November 15, 2012 8:49 AM  
**To:** 'Steve Crain'  
**Cc:** 'Martha Salazar'; 'Stephanie Palacios'  
**Subject:** FW: Review Of ACS Software Agreement for the "Interactive Voice Response System (IVR)"

Good Morning Mr. Crain:

Need for you to review the following correspondences including the attachment so as to briefly bring you up to date on this revised agreement. It's requiring your review as to form of the revisions. Appreciate your assistance on this.

Thank you

**Evangelina Garcia**

---

**From:** Laura Hinojosa [laura.hinojosa@co.hidalgo.tx.us]  
**Sent:** Monday, November 26, 2012 1:52 PM  
**To:** 'Evangelina Garcia'; 'Martha Salazar'  
**Cc:** 'Stephanie Palacios'; 'Jacobs, David'; 'Nilda Vanhook'  
**Subject:** RE: ACS IVR System

Vangie,

Thank you for participating in the call this morning. As stated previously, the IVR System is an add-on component we believe will further enhance the jury software we currently utilize.

~~I respectfully request for it to be placed on the agenda for Commissioner's Court so as to move forward with its procurement.~~

Respectfully,  
L. Hinojosa

---

**From:** Evangelina Garcia [mailto:evangelina.garcia@co.hidalgo.tx.us]  
**Sent:** Monday, November 26, 2012 12:03 PM  
**To:** 'Martha Salazar'  
**Cc:** 'Laura Hinojosa'; 'Stephanie Palacios'; 'Jacobs, David'; 'Martha Salazar'  
**Subject:**

Marty:

Can you please forward to legal the above attached document in place with ACS. This was an agreement that the County's legal and legal from ACS worked together and came to agreement and thus is now in place. This document more specifically page 3 section 8 contains the same language that our legal now is expressing a concern with the software services agreement in connection to the District Clerks Office wanting to purchase the IVR System with ACS. Our legal expressed a concern on paragraph 11 of the agreement (see attached document) and this is where we are at.

We had a conference call on or around 11:15 or so with District Clerks Office and ACS (David Jacobs) and their attorney. Unfortunately, our legal was not able to join us on this conference call. Their point to the matter is that our legal approved the prior agreement with that clause in place and now is of concern on this new agreement for the purchase of the IVR System.

Can you please review the attached information and discuss with Mr. Crain for directions. I'm thinking Mr. Crain will probably state that we can move on with the project however he will disclose to Commissioners Court of his concern as he states on the email. I just need to move forward with this project.

Please let me know if there are any questions.

Thank you

VANGIE Y. GARCIA, CONTRACT'S MANAGER  
HIDALGO COUNTY PURCHASING DEPARTMENT  
2812 S. BUSINESS HWY. 281  
NEW ADMINISTRATION BUILDING



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
12/22/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> MARSH USA, INC 1166 AVENUE OF THE AMERICAS NEW YORK, NY 10036 Attn: ACS CertRequest@Marsh.com	<b>CONTACT</b> NAME _____ PHONE _____ FAX _____ (A/C No. Ext.) _____ (A/C No.) _____ E-MAIL _____ ADDRESS _____
<b>INSURED</b> ACORN GOVT CAS-17-13 ACORN Government Contractors Group Allied Computer Services, Inc. 2528 N. Haskell Ave. Dallas TX 75204	<b>INSURER(S) AFFORDING COVERAGE</b>
	INSURER A: AIG American Insurance Company NAIC # 1206
	INSURER B: St. Paul Fire & Marine Ins Co NAIC # 1476
	INSURER C: Liberty Ind Co of North America NAIC # 4275
	INSURER D: _____
	INSURER E: _____
	INSURER F: _____

COVERAGES CERTIFICATE NUMBER: NY 02 92714 REVISION NUMBER: 0

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR LTR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES FOR <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PER-ACCIDENT <input type="checkbox"/> LOC		HDC 02642602	01/01/2012	01/01/2013	EACH OCCURRENCE \$ 2,500,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 2,500,000 MED EXP (Any one person) \$ N/A PERSONAL & ADV INJURY \$ 2,500,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMP OR AGG \$ INCLUDE \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		ISA H0862762	01/01/2012	01/01/2013	COMBINED SINGLE LIMIT (Per accident) \$ 2,500,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per person) \$ \$
B	UMBRELLA LIAB EXCESS LIAB LFD RETENTIONS		ZUP12P6371-2 NF	01/01/2012	01/01/2013	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPERTY OR PART HEREOF IS NOT AN OFFICIAL MEMBER EXCLUDED (Mandatory in NH) If yes, describe above DESCRIPTION OF OPERATIONS below	Y/N N N/A	WLR C1678019A (A and WA) SCH CAC780218 (W)	01/01/2012 01/01/2012 01/01/2012	01/01/2013 01/01/2013 01/01/2013	<input checked="" type="checkbox"/> NYC STATE TORT LIMITS E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - CA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
ACORN Government Contractors Group, 2528 N. Haskell Ave, Dallas TX 75204

<b>CERTIFICATE HOLDER</b> HARRIS COUNTY POPULATION (2010) 1,200,000 1000 North Business Highway 381 Houston TX 77051	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc Henry Swaync
--	--

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# Requisition

Req # 00221170

PO #

Date: 08/14/12

Bill To: x  
x

Vendor: 369381  
ACS GOVERNMENT SYSTEMS INC.  
1733 HARRDSBURG ROAD  
LEXINGTON KY 40504

Ship To: DISTRICT CLERK  
100 N. CLOSNER, 1ST FL  
EDINBURG TX 78539

Contact: Stephanie  
956-318-2200

Contract No:

Special Instructions:

QUANTITY	UOM	DESCRIPTION	UNIT PRICE	AMOUNT
		DO NOT DUPLICATE ORDER		
1.00	EACH	Base IVR System	1,461.31	1,461.31
		Hardware 4 Port Analog Telephone Interface Total \$1,461.31		
1.00	EACH	ClientCall Software Licenses ClientCall AGE Software License, Application Generation Environment for IVR, per server Voice Processing DTMF Port Software License, for 4 ports Software License Total \$6,454.13	6,454.13	6,454.13
1.00	EACH	Professional Services Project Management including project planning and scheduling, system specification and configuration Total \$11,123.85	23,630.26	23,630.26
		Tailored CourtTalk eCenter IVR Application including design and development of custom IVR script, and processing logic System Configuration and Delivery including documentation, professional voice recordings, and integration and test Total \$5,577.35		
		Remote System Installation, Testing, Admin Training and Cutover Support Total \$3,750.70		
		1st Year Annual System Maintenance Support, providing business hours coverage (Commencing once the system goes into production) Total \$3,178.36		
		Professional Services Subtotal Total \$23,630.26		
		Account No _____	<u>Encumbrance</u>	
		2-1100-412-00-090-001-0-336	23,630.26	
		2-1100-412-00-090-001-0-745	1,461.31	
		2-1100-412-00-090-001-0-747	6,454.13	

Authorized By: \_\_\_\_\_

# Requisition

Req # 00221170

PO #

Date: 08/14/12

Bill To: x  
x

Vendor: 369381

ACS GOVERNMENT SYSTEMS INC.  
1733 HARRDSBURG ROAD  
LEXINGTON KY 40504

Ship To: DISTRICT CLERK  
100 N. CLOSNER, 1ST FL  
EDINBURG TX 78539

Contact:

QUANTITY	UOM	DESCRIPTION	UNIT PRICE	AMOUNT
		REPORT ROAD HAZARDS 1-866-HCR-SAFE OR 1-866-427-7233	Freight	300
			Total	31,545.70

Authorized By: \_\_\_\_\_



Purchase Order

PO#: 685307

COUNTY OF HIDALGO

DATE: 12/20/12

Page No 1 Of 2

VENDOR: 369381 REQ:00221170

Email:

BUYER: SPALACIOS

Phone:

SHIP TO: DISTRICT CLERK

ACS GOVERNMENT SYSTEMS INC.

100 N. CLOSNER, 1ST FL

1733 HARRDSBURG ROAD

EDINBURG TX 78539

LEXINGTON KY 40504

Vendor Acct:

CONTACT:

SITE: DISTRICT CLERK

Special Instructions:

Contract No:

VENDOR NOTES

- DO NOT ADD TO, OR ALTER THIS PURCHASE ORDER. THIS ORDER IS NOT RENEWABLE.
- TAX EXEMPTION: THIS PURCHASE ORDER MAY BE ACCEPTED IN LIEU OF EXEMPTION CERTIFICATE.
- THIS ORDER IS ALSO PLACED F.O.B. DESTINATION. VENDOR MUST REPAY ALL SHIPPING COSTS.
- INVOICE EACH PURCHASE ORDER SINGLY. ORIGINAL INVOICES ARE REQUIRED. CUSTOMER COPY MAY BE ACCEPTED. OUT NUMBER MUST APPEAR ON ALL INVOICES, BILLS OF LADING, AND PACKAGES.
- PAYMENT WILL BE MADE ONLY FOR A BONA FIDE AND FULLY COMPLETED ORDERS, UNLESS OTHERWISE ATTACHED.

QUANTITY	UOM	DESCRIPTION	UNIT PRICE	AMOUNT
		DO NOT DUPLICATE ORDER		
		APPROVED THRU C.C. ON 12/04/2012 AS A SOLE SOURCE VENDOR		
1	EACH	SS Base IVR System	1,461.31	1,461.31
		Hardware		
		4 Port Analog Telephone Interface Total \$1,461.31		
1	EACH	SS ClientCall Software Licenses	6,454.13	6,454.13
		ClientCall AGE Software License, Application Generation Environment for IVR, per Server Voice Processing DTMF Port Software License, for 4 ports Software License		
		Total \$6,454.13		
1	EACH	SS Professional Services	23,630.26	23,630.26
		Project Management including project planning and scheduling, system specification and configuration		
		Total \$11,123.85		
		Tailored CourtTalk eCenter IVR Application including design and development of custom IVR script, and processing logic		
		System Configuration and Delivery including documentation, professional voice recordings, and integration and test		
		Total \$5,577.35		
		Remote System Installation, Testing, Admin Training and Cutover Support		
		Total \$3,750.70		

Authorized by:

*Martha L. Salazar* *msl*



Purchase Order

PO#: 685307

COUNTY OF HIDALGO

DATE: 12/20/12

Page No 2 Of 2

VENDOR: 369381 REQ:00221170

Email:

BUYER: SPALACIOS

Phone:

SHIP TO: DISTRICT CLERK

ACS GOVERNMENT SYSTEMS INC.

100 N. CLOSNER, 1ST FL

1733 HARRDSBURG ROAD

EDINBURG TX 78539

LEXINGTON KY 40504

Vendor Acct:

CONTACT:

SITE: DISTRICT CLERK

Special Instructions:

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5. PAYMENT WILL BE MADE ONLY FOR A BONA FIDE AND FULLY COMPLETED ORDERS, UNLESS OTHERWISE ATTACHED.

QUANTITY	UOM	DESCRIPTION	UNIT PRICE	AMOUNT
		1st Year Annual System Maintenance Support, providing business hours coverage (Commencing once the system goes into production)		
		Total \$3,178.36		
		Professional Services Subtotal		
		Total \$23,630.26		
		REPORT ROAD HAZARDS: 1-866-HCR-SAFE OR 1-866-427-7233		
		Total		31,545.70
		***** For Hidalgo County use only		
		2-1100-412-00-090-001-0-336		23,630.26
		2-1100-412-00-090-001-0-745		1,461.31
		2-1100-412-00-090-001-0-747		6,454.13
		Approved		

Authorized by:

*Marta L. Salazar*