

**COMMISSIONERS COURT**  
**REGULAR SESSION**  
*December 22, 2003*

The Hunt County Commissioners Court met this day at 10:00A.M. with all Commissioners present with Judge Joe Bobbitt presiding. Minutes of the previous meeting were approved as submitted.

NEW BUSINESS:

**8955** On the motion by Phillip Martin, second by Kenneth Thornton, the Court approved continuing support of Crossroads Drug and Alcohol Program. Ken Crutchfield, Jerry Mainord, Dan Perkins, Judge Shipp and Judge Beacom were all present in Court to discuss this issue along with Charles Sivley. After much discussion agreement was made by the Court to approve the immediate need of \$5,500 per month (to be paid out of contingency funds) for 3 months – January, February, and March, which should be sufficient time to turn program around. Hunt County liability can act as an umbrella insurance for 1 year. Additionally, the Court will require monthly program reports. Judge Beacom advised the Court, Crossroads deals with people dealing with failure of staying off addictions – it gives these people a place to go and keeps them out of jail. A lot of work is done with youths due to referrals from the JP's and County Court at Law Crisis counseling.

— ‘Discuss and possibly take action on recognition of Dorsey Driggers and Terry Ellsworth, for completing State and Local Blast Investigation Course. Dorsey Driggers advised the Court this was an excellent school that taught the investigative process of bomb blast and what is used for explosive containers.

**8956** On the motion by Jim Latham, second by Martin, the Court approved implementation of the Texas Vine Program funded (\$5,200.00) completely by the Attorney General Office, which allows victims information and notification everyday. This program will save lives, decrease workload, with no burden to the County. Hunt County will act as a pass through entity between our software vender Net Data and the Attorney General's Office. Judge Bobbitt stated this is a win win agreement for our County. It will help our Jail, Courts, and Clerk's Offices have recorded information 15 minutes after the book-in occurs, victims may call in all day (toll-free number) for information. *See Attachments.*

**8957** On the motion by Ralph Green, second by Martin, the Court approved the preliminary plat for Veranda in Pct. 2. Fred Brown advised the Court this firm is working with the City of Greenville for water supply for the area, Caddo Mills for Fire and Police protection support followed by the next stage in progress of: 2 elementary schools on 22 acres, 19 acres of parks, several lakes and retail along I-30. Bobby Harper was present stating Caddo Mills can't fund this help. Commissioner Green advised the Court the Huffines Group will directly put policy and funding in for Fire Protection.

**8958** On the motion by Martin, second by Latham, the Court approved request of FEC Electric to construct electrical power distribution facilities along and across CR3613 in Pct. 3 with the usual stipulations.

**8959** On the motion by Martin, second by Green, the Court approved Mallard Drive for purposes of bringing it into County Road Maintenance – to begin 1 year period this date.

**8960** On the motion by Martin, second by Latham, the Court approved the final plat for McMullen Addition in Pct. 3.

**8961** On the motion by Martin, second by Latham, the Court approved change to the Hunt County Subdivision Regulations, page 15/Sec 8 – Standards and Specification – changing requirement from 2 acres to 1.5 acres. Commissioner Green stated ruling to apply to new subdivision filed beginning this date forward / not retroactive of plats already filed, will have to come back to Court and ask for a replat on previously filed plats.

**8962** On the motion by Green, second by Martin, the Court approved Resolution concerning unfunded mandates sent by TAC each year. This allows Hunt County to join with other Counties to be against unfunded mandates. *See Attachments.*

**8963** On the motion by Judge Bobbitt, second by Thornton, the Court accepted bids for evaluation received for copier and computer paper. Bids on file in Personnel Office.

**8964** On the motion by Martin, second by Green, the Court approved Interlocal Agreement between Texas A&M University of Commerce and Pct. 4 to allow maintenance to be done on ditch. *See Attachments.*

**8965** On the motion by Martin, second by Latham, the Court approved Election Administration fees as follows: Hunt County will assess a \$75.00 administrative fees

under Sec 31.100 of the Texas Election Code for the County Parties (primary and run-off) and the County Hospital District Elections. All other entities such as City elections, local option liquor election, etc. will be charged 10% of the total cost of elections. Furthermore, agreement was made by the Court the County will not prepay any election supplies for any political parties.

8094 The Court acknowledged the 2003 – 2005 Star Award received by Hunt County Clerk's Office from the Bureau of Vital Statistics in Austin.

8096 'Discuss and possibly take action on contract with Johnson Controls pertaining to the remodeling of the 3<sup>rd</sup> and 4<sup>th</sup> floors of the Courthouse.' Joe Davis was present to discuss this issue with the Court. Our Attorney Andy Bench recommended that we go out for request for qualifications and negotiate a price on the energy saving aspect of this project and go out for bids on the construction parts per LGC 279.119. Charlie Kerns, our architect stated he is not licensed to the energy management portion of the contract, however he would be able to draw up RFQ and RFP specifications for this job. Judge Bobbitt made the motion to go with the RFQ / RFP combination proposal and let the Personnel Director and our Attorney work together on the proper form of both items and to get them issued. If this process requires any additional fee from the architectural firm, must come back to Commissioners Court for approval.

#### HEAR AND DISCUSS REPORTS:

8098 A Pilot Richard Grant sent an American flag to the Court which flew over airfield in Baghdad in 2003.

8966 On the motion by Thornton, second by Green, the Court approved payment of framing this flag which will be hung in the hallway of the Courthouse. Elbert Gantt was present asking the Court to resend order concerning any property south of I-30 for spraying of pesticides after April 15 without notifying Dallas to get a blanket permit for 6 months, due to it effecting his crops. The Court advised Mr. Gantt to contact the Extension Office.

8967 On the motion by Martin, second by Latham, the Court approved accounts payable. Judge Bobbitt abstained from the vote.

— There were no line item budget transfers.

8023

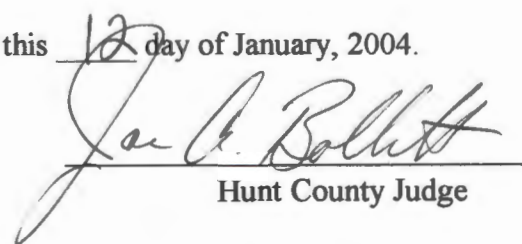
PERSONNEL AND PAYROLL:

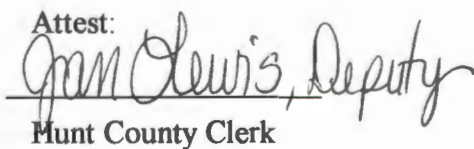
District Court:	Raise Janice Rector \$384.00 per year and Wendall Carver \$216.00 per year, effective 12-18-2003.
DPS / HWY Patrol:	Remove Sue Hass due to her resignation, effective 12-26-03.  Add Della Jennings as Secretary 1/G2 at \$18,000.00 per year, effective 12-22-03.
Extension Dept:	Remove Stephen Gowin due to his resignation, effective 12-12-03.
Sheriff:	Terminate Linda Beauchamp as Detention Officer, effective 10-13-03.  Add Phillip Morris as Detention Officer G4 at 22,273.00 per year, effective 12-19-03.  Remove Lois Mayfield as part time Dispatcher – she no longer works for this department, effective 12-1-03.  Add Jeffery Wayne Haines as part time Dispatch as \$9.38 per hour, effective 12-15-03.

**8968** On the motion by Martin, second by Latham, the Court approved Personnel and Payroll changes.

— The Court went into executive Session at 12:15P.M. with no action taken.

— Court Adjourned. Minutes approved this 12 day of January, 2004.

  
Hunt County Judge

Attest:  
  
Hunt County Clerk

# 8956

FILED FOR RECORD  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M  
DEC 22 2003  
By County Clerk LINDA BROOKS  
Hunt County, Tex.  
8/12/03

# Texas VINE SERVICES AGREEMENT

Hunt County

8c





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## SERVICES AGREEMENT

THIS SERVICES AGREEMENT, including all Exhibits and Schedules attached hereto and incorporated herein by reference (the Agreement) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2003, by and between Hunt County hereinafter referred to as 'Customer' and Appriss, Inc., a Delaware Corporation authorized to do business in Texas with offices located at 10401 Linn Station Road, Suite 200, Louisville, KY 40223 hereinafter referred to as 'Appriss'. Customer and Appriss may be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

### 1. INDUCEMENTS; CONSTRUCTION OF AGREEMENT

#### 1.1 *Inducements*

Customer is a governmental entity, officer or political subdivision of the State of Texas and desires to provide crime victim notification services to the citizens and residents of [county, Texas]. Appriss is in the business of providing crime victims notification services to states, political subdivisions of states and the federal government.

The Customer expects Appriss to provide substantive notification to victims of crime regarding events relevant to victims of violent crime including but not limited to events in the prosecution, incarceration and release of persons charged or convicted of violent crime in Texas. Customer expects Appriss to notify the interested citizens of these relevant events through prompt automated or personal telephone calls, and /or correspondence regarding events relevant to victims of violent crime including but not limited to events in the prosecution, incarceration and release of persons charged or convicted of violent crime in Texas. Customer expects that victims will be able to register for the notification Services through a single 24-hour toll-free telephone number and to register for the Services through the internet. Customer also expects that victims will be able to request and receive relevant information by calling the 24-hour toll-free telephone number. Customer expects Appriss to make this Service available to the public 24-hours a day, 365 days per year.

Customer is relying on Appriss's factual representations that it has substantial expertise in providing such Services, and based on such representations, desires Appriss to provide the Services for the protection and benefit of the citizens of the State of Texas.

#### 1.2 *Construction of Agreement*

The provisions of this Section 1 are intended to be a general introduction to this Agreement, and to the extent the terms and conditions of this Agreement do not address a particular circumstance or are otherwise unclear or ambiguous, such terms and conditions are to be interpreted and construed consistent with the objectives, expectations and purposes stated in this Section 1. All Exhibits and Schedules attached hereto are hereby incorporated by reference herein in their entirety for all purposes.

NOW, THEREFORE, in consideration of the inducements, covenants, agreements and conditions herein contained, the Parties agree as follows:

## 2. DEFINITIONS

**Acceptance Criteria** shall mean the conditions set forth in Section 4.3 relating to Services and related Deliverables, if any, to be provided by Appriss to Customer, and which collectively are the basis for Customer's evaluation of Appriss's performance of such Services and delivery of related Deliverables in accordance with its obligations under the Agreement.

**Customer Assets** is defined in Section 6.1(2) of this Agreement.

**Customer Equipment** shall mean Equipment owned, leased or otherwise under the control of Customer.

**Customer Software** shall mean Software owned by Customer or licensed to Customer by a party other than Appriss.

**Change Order** is defined in Section 4.8(B) of this Agreement.

**Change Order Procedure** is defined in Section 4.8(A) of this Agreement.

**Change Order Response** is defined in Section 4.8(B) of this Agreement.

**Changes** is defined in Section 4.8(A) of this Agreement.

**Critical Systems** shall mean the systems identified as critical by Customer in Exhibit S-01 and Exhibit C-06 to this Agreement.

**Deliverable** shall mean the Service or related product(s) that Appriss agrees to provide under the terms and conditions of this Agreement.

**Documentation** shall mean the user manuals and any other materials in any form or medium customarily provided by Appriss to the users of the related Software, and which will provide to users sufficient information to properly operate, diagnose and maintain such Software safely and efficiently.

**Developed Software** is defined in Section 14.4 of this Agreement.

**Equipment** shall mean the computers, hardware and related equipment used in connection with the delivery or receipt of Services hereunder, including central processing units and other processors, controllers, modems, communications and telecommunications equipment (including, but not limited to, voice, data and video), cables, storage devices, printers, terminals, other peripherals and input and output devices, and other tangible mechanical and electronic equipment intended for the processing, input, output, storage, manipulation, communication, transmission, and retrieval of information and data.

**New Technology** is defined in Section 4.18 of this Agreement.

**Product(s)** shall mean any Equipment, Software, Service, communications hardware or Software, or Supply Item offered by Appriss. For this purpose, "Supply Item" includes any cards, paper, ribbons, magnetic tape, other magnetic storage media, optical media, and similar items that are used or required to operate the Products acquired by Customer under this Agreement.

**Service Levels** shall mean the required availability, response, response times, or other performance standards of Section 4 of this Agreement.

**Services** includes but is not limited to the description stated in Section 1 and any programming service, preventive maintenance, remedial hardware maintenance, software maintenance, conversion service, support service or other service provided by Appriss to Customer under this Agreement.



**Software** shall mean the source code and object code versions of any application programs, operating system software, computer software languages, utilities and other computer programs, and Documentation and other supporting materials thereto, in whatever form or media, used in connection with the delivery or receipt of Services hereunder, including the tangible media upon which such application programs, operating system software, computer software languages, utilities and other computer programs, and Documentation and supporting materials relating thereto are recorded or printed, together with all corrections, improvements, updates and releases thereof.

**Appriss Change Order Request** is defined in *Section 4.8(C)* of this Agreement.

**Appriss Equipment** shall mean Equipment owned, leased or otherwise under the control of Appriss.

**Appriss Software** shall mean Software owned by Appriss or which is Appriss Third-Party Software.

**Appriss Third-Party Software** shall mean Software owned by a party other than Customer or Appriss and which is licensed to Appriss.

**Termination Assistance Period** is defined in *Section 19.1(3)* of this Agreement.

**Time and Materials (T&M) Rate** is defined in *Section 5.12* of this Agreement.

**Term** shall mean the Initial Term and Renewal Term, collectively.

### 3. TERM

#### 3.1 Initial Term; Renewal; Cancellation

The initial term of this Agreement shall commence on \_\_\_\_\_ and terminate August 31, 2004. If the Customer has tendered payment on or before August 31, 2004 pursuant to Payment Milestone No. 2 (Production Notice), then Appriss shall continue provide the Services for twelve (12) consecutive months from the date that the Services are actually available to the public (hereinafter referred to as the 'Initial Term'). The Initial Term or any Renewal term is subject to earlier termination and termination in accordance with the provisions of this Agreement.

Customer, in its sole discretion, shall have the option to renew this Agreement for an additional successive one year terms through August 31, 2007 (hereinafter referred to as the 'Renewal Term') upon the same terms and conditions as set forth herein by providing written notice to Appriss at any time prior to the expiration of the Initial Term. Customer may exercise its option to renew each year by providing a letter advising Appriss of Customer's intent to renew. Such letter notice shall be delivered with the formalities required by Section 20.7 Notices.

In the event Customer does not elect to extend the term of this Agreement, the provisions of Section 20.18 hereof (Rights Upon Orderly Termination) shall apply.

### 4. SCOPE

#### 4.1 Scope of Services

Appriss has substantial expertise in performing Services and/or providing Products relating to crime victim notification, and agrees to perform such Services and/or provide such Products in a good and workman like manner that meets Customer's objectives as



stated herein and otherwise adds value to and/or improves the performance of Customer's expectations, objectives and purposes as stated in Section 1. The Services are further described in the following Exhibits:

- S-01 Service Specification
- S-11 Service Level Standards
- S-12 Service Performance Reports
- V-01 Vendor Certification

Appriss shall provide as part of the Services, the following Customer Deliverables, as explained in Exhibit V-01 Vendor Certification:

- C-01 County Questionnaire
- C-02 County Implementation Plan
- C-03 County Infrastructure
- C-04 Application Interface
- C-05 Customer Verification Plan
- C-06 County Support Document
- C-07 County Promotions Package
- C-08 Production Notice
- C-09 County Web Access

#### **4.2 Service Levels**

Services provided by Appriss to Customer shall be performed in accordance with all applicable Service Levels as set forth in Exhibit S-11 Service Level Standards to this Agreement for the first twelve months of the period during which the Services are performed by Appriss. As part of its provision of Services to Customer, Appriss shall provide a methodology for continuous improvement that commits to a regular improvement in the Service Levels throughout the period of Appriss's performance. Without limitation on the foregoing sentence, Appriss shall at a minimum, improve the Service Levels for Services performed for Customer under this Agreement on an annual basis to reflect the higher of:

- a. the same level as the Service Level for the previous year, or
- b. a level equal to the actual service levels attained by Appriss during the previous year.

#### **4.3 Acceptance Criteria; Acceptance of Deliverables**

Exhibits C-02 County Implementation Plan; C-03 County Infrastructure; C-04 Application Interface; C-05 Customer Verification Plan; C-06 County Support Document; C-07 County Promotions Package; C-08 Production Notice to this Agreement contain certain Acceptance Criteria for Appriss's performance of Products and/or Services and completion of any related Deliverables as agreed to between the Parties. Customer's obligation to compensate Appriss with respect to the performance of Services, delivery of Products or completion of Deliverables under this Agreement shall arise only after Customer has reviewed such Product, Service or Deliverable, performed such acceptance testing as Customer and Appriss have agreed to, and otherwise established that Appriss

has fully performed its obligations under this Agreement with respect to such Product, Service or Deliverable, and that Appriss is not otherwise in default under the Agreement.

#### **4.4 Acceptance of Phases and Stages**

Depending upon the nature of the Equipment, Products or Services and related Deliverables being acquired by Customer from Appriss, the Parties may agree and set forth in Exhibit C-02 County Implementation Plan hereto a schedule whereby Appriss shall perform its obligations according to two or more phases or stages. In such event, each such phase or stage of performance shall constitute a separate obligation of Appriss, the performance of which shall be subject to all remedies available to Customer hereunder in the event the applicable acceptance or approval procedures specified in Section 4.3 are not fully satisfied.

#### **4.5 Third-Party Products and Services**

Customer shall have the right to contract with a third party to provide any Products and/or Services related to those being provided by Appriss. In the event Customer contracts with a third party for such Products and/or Services, Appriss shall cooperate with Customer and such third party to the extent reasonably required by Customer, including provision of:

- (i) written requirements, standards and procedures for Customer's systems, interface(s), and operations that are maintained by or interact with the Service provided by Appriss so that the enhancements or developments of such third-party may be operated by Appriss;
- (ii) assistance and support Services to such third party at no additional charge; and
- (iii) access to the Products being utilized by Appriss as may be reasonably required by such third party and approved by Customer in connection with Customer's utilization of such third-party Products and/or Services.

Customer shall require such third parties to comply with Appriss's reasonable requirements regarding operations, data center standards, confidentiality and security. Appriss will provide to such third parties or to Customer upon request copies of any such reasonable requirements regarding operations, interface(s), data center standards, confidentiality and security. Appriss will be solely responsible for the Appriss Gateway infrastructure, hardware and software as defined in Deliverable C03-County Infrastructure.

#### **4.6 [Section Deleted]**

#### **4.7 Additional Services**

During the Term of this Agreement, Customer may desire to obtain Services from Appriss that are not within the scope of Appriss's obligations hereunder (herein after referred to as the 'Additional Services'). As soon as reasonably practicable and in any event within thirty (30) business days after Appriss's receipt of Customer's request for Additional Services, Appriss shall submit to Customer Appriss's proposal for provision of the Additional Services, including Appriss's proposed charges for the Additional Services. Customer may obtain Additional Services from suppliers other than Appriss in Customer's sole discretion.



#### **4.8 Agreement Change Orders**

A. During the Term of this Agreement, Customer or Appriss may propose changes in Appriss's obligations hereunder (other than technical or operational changes described herein or other aspects of this Agreement (the Changes)), and all such Changes shall be implemented pursuant to the procedures set forth in this Section (the Change Order Procedures).

B. If Customer desires to propose a Change, it shall deliver a written notice to the Appriss Project Manager describing the Change proposal and establishing a reasonable period for Appriss to respond (Change Order). Appriss shall respond to such proposal within the time stated in the proposal by preparing at Appriss's expense and delivering to the Customer Project Manager a written document (a Change Order Response), indicating:

- (i) the effect of the proposal, if any, on the amounts payable by Customer under this Agreement, which effect shall be determined in the manner set forth in Section 9.9 (Increase in Charges Pursuant to Change Orders) and the manner in which such effect was calculated;
- (ii) the effect of the proposal, if any, on Appriss's performance of its obligations under this Agreement, including the effect on required service levels;
- (iii) the anticipated time schedule for implementing the proposal; and
- (iv) any other information requested in the proposal or reasonably necessary for Customer to make an informed decision regarding the proposal, including the effect of the proposal on Customer's costs and expenses relating to Customer's Obligations.

If Customer accepts the change proposed in the Change Order Response, Appriss shall indemnify and hold harmless Customer from and against any losses, costs or expenses resulting from any inaccurate or incomplete information contained in the Change Order Response, including any unanticipated increases in Customer's costs and expenses under this Agreement or otherwise. A Change Order Response shall constitute an irrevocable offer by Appriss to implement the proposal described therein on the terms set forth therein.

C. If Appriss desires to propose a Change, it shall deliver a written request (Appriss Change Order Request) to Customer, which shall include the information described in Section 4.8(B) for a Change Order and Change Order Response.

D. No Change to the Services or any other aspect of this Agreement shall become effective without the written approval of the Customer's designee with actual authority to bind Customer in contract. If Customer elects to accept Appriss's offer set forth in the Change Order Response or the Appriss Change Order Request, as the case may be, any such Change shall thereafter be deemed part of Appriss's obligations hereunder and this Agreement shall be deemed amended accordingly. Under no circumstances shall Appriss be entitled to payment for any work or Services rendered under a Change Order that has not been approved by Customer in accordance with the Change Order Procedures.

E. Notwithstanding any other provision of this Agreement, Appriss acknowledges that Appriss is expected to accomplish normal and routine tasks associated with its obligations hereunder within the charges provided for in this Agreement. No Appriss Change Order



Requests for additional chargeable resources will be approved by Customer for tasks which Customer deems to be normal and routine tasks, including Changes resulting from changes in federal, state or other laws, regulations, ordinances or policies.

#### **4.9 Substantial Changes and Additional Business Units**

##### **4.9.1 Substantial Change in Volume**

In the event Customer's use of the Products and/or Services provided by Appriss substantially decreases or increases in volume during the Initial Term or any Renewal Term, and such change in the volume modifies the characterization of Customer's use of the Services from either mega, Large, medium or small, then on the next renewal cycle, Customer and Appriss shall negotiate and implement an appropriate reduction or increase to the compensation due to Appriss hereunder according to the statewide rate as described in Exhibit V-01. In the event Customer and Appriss cannot agree on the amount of a reduction or increase in such compensation, such dispute shall be submitted to dispute resolution pursuant to Section 10.

##### **4.9.2 Additional Business Units**

Customer shall have the right to add or relocate sites, entities, facilities or units under this Agreement. Customer shall share information with Appriss to allow Appriss to determine which resources will be required to meet Customer's needs. Appriss shall: (i) formulate a plan to accommodate Customer's needs, without a disruption in service to Customer, in a cost effective manner, and (ii) submit such plan, including any adjustments to the compensation due to Appriss hereunder (such adjustments being limited to the rates or other pricing in effect under this Agreement for similar Products or Services and according to the amounts stated in Exhibit K-01 Schedule of Payments), for Customer's review. Upon Customer's acceptance of the plan, Appriss may adjust its compensation hereunder accordingly. Customer shall not be obligated to obtain the additional Services or Products from Appriss with respect to any additional site, entity or unit (whether acquired or formed by Customer).

#### **4.10 Analysis and Resolution of Problems in Service Levels**

Upon (i) Appriss's failure to provide any of the Services in accordance with the Service Levels and for which the cause of such failure is not immediately identified and cured by Appriss; or (ii) Appriss's failure to provide any of the Services in accordance with the Service Levels on more than three (3) separate occasions for any specific Service, whether or not the cause of such failure is immediately identified and cured by Appriss, Appriss shall: (a) perform an analysis to identify the cause of such failure, (b) correct the failure, (c) provide Customer with a report detailing the cause of the failure, and procedure for correcting the failure, and (d) provide Customer with reasonable evidence that such failure will not recur.

#### **4.11 Performance Reports**

Appriss shall develop for Customer's approval a set of performance, utilization and status reports (including error logs) which Appriss shall maintain on a periodic basis as requested by Customer. Such reports shall be provided via an on-line graphical information system or such other means as specified by Customer. Appriss shall submit to Customer drafts of the formats to be used in such reports within thirty (30) days after this Agreement becomes effective, and shall implement such reports within sixty (60) days



thereafter. Appriss shall also provide, on a monthly basis and otherwise as reasonably requested by Customer, system availability statistics, including descriptions of the major incidents or system unavailability or errors during the period covered by the report, and proposed procedures for correcting or preventing same. At a minimum, such reports shall be consistent with the reports described in Exhibit S-12 Service Performance Reports.

#### **4.12 Competitive Assessment**

Customer or its designee shall have the right, at any time during the Term, to benchmark any of the Services being performed by Appriss to ensure that such Services are competitive with respect to price, quality, service and technology. Customer may consult with Appriss in advance regarding the definition and specifications of each such Service to be benchmarked, provided that Customer shall finally determine such definitions and specifications.

Appriss shall, at Customer's request, prepare and provide, or cooperate with Customer in the preparation of, comparative information and data verifying the competitive nature of the Services being performed or which may be available from Appriss, in such frequency, methodology and detail as required by Customer. Customer agrees to select an experienced benchmarking company that is not generally considered to be a direct competitor of Appriss.

If the written benchmarking report indicates, in Customer's reasonable judgment, that all or part of the Services provided by Appriss are not competitive with respect to price, quality, service or technology, then Customer shall provide Appriss with a copy of the benchmark results. Appriss shall review the benchmark results and discuss any disagreement with Customer within thirty (30) days after Appriss's receipt of the results. At the end of the thirty (30) day review period, Appriss shall have ten (10) days to adjust its Services and/or related fees to meet the benchmark results or such other standards as the Parties may have agreed to during the review period. If Appriss fails to adjust its Services and/or related fees to meet such results or other agreed upon standards, Customer may terminate the Services covered by the benchmarking.

#### **4.13 Technical Change Control**

With respect to any changes in the technical environment and systems used by Appriss to provide the Services, Appriss shall comply with the change control requirements set forth in this Section 4.13. Prior to using any new Software or new Equipment to provide the Services, Appriss shall have verified that the item has been properly installed, is operating in accordance with its specifications, and is performing its intended functions in a reliable manner. Appriss shall make no material change in the technical environment and systems used by Appriss to provide the Services, nor shall Appriss make any change which could adversely affect the function or performance of, or decrease the resource efficiency of, the Services, including implementing changes in technology, without first obtaining Customer's approval, which approval Customer may withhold in its sole discretion.

Appriss may make temporary changes required by an emergency if it has been unable to contact the appropriate Customer Project Manager to obtain such approval after making best efforts. Appriss shall document and promptly report such emergency changes to Customer. Appriss shall move programs from development and test environments to production environments in a controlled and documented manner, so that no changes are introduced into the programs during such activity.

#### **4.14 Technical Architecture and Product Standards**

In performing the Services, Appriss shall comply with Customer's technical architecture and product standards, unless otherwise expressly agreed by Customer.

#### **4.15 Productivity and Project Management Tools**

Appriss shall consult with Customer regarding the use of project management tools, including productivity aids and project management systems. Appriss shall use mutually acceptable project management tools in connection with all Services provided to Customer. The project tasks and project management system will account for associated tasks and all personnel for the performance of the Services by Appriss, including any Customer Obligations and involvement by third parties. Project management tools and productivity aids furnished by Appriss will be made available for use by Customer and personnel of third parties involved in the performance of the Services.

#### **4.16 Disaster Recovery**

##### **4.16.1 Appriss Assets**

Appriss shall be responsible for disaster recovery and disruption of services within the Scope of Services for all Appriss Assets and Services delivered directly by Appriss. Appriss Assets include but are not limited to the infrastructure (e.g. equipment, hardware, Appriss Software, Appriss Third-party Software, call center and staff) that is located at Appriss' headquarters and Appriss Assets (e.g. equipment, hardware, telephony, gateway personal computer, Appriss Software and Appriss Third-party Software) located at Customer's site. Appriss disaster recovery plans are found in Exhibit S-01 Service Specification.

##### **4.16.2 Customer Assets**

Customer is responsible for disaster recovery of all Customer Assets (e.g. booking system(s), facilities, Customer Software or interfaces on Customer's system(s) developed and maintained by Customer).

##### **4.16.3 Disaster Recovery Planning Assistance**

At Customer's request, Appriss will participate in an assessment of Customer's disaster recovery requirements and provide for Customer's approval a reasonable set of alternatives for the development of a viable Customer disaster recovery program, and the estimated fees associated with each alternative, and (b) upon Customer's request, certify or participate in the certification of the disaster recovery plan then in effect for each Customer site or facility to which such plan relates.

1. Immediately provide Customer with a notice of a disruption of service and direct them to the procedures in C06 for handling such disruption
2. Use its best efforts to restore the Critical Systems immediately, but in any event within the period of time set forth in the S11 - Service Level Standards. In the event of a disaster, Appriss shall not charge Customer any additional usage fees unless expressly set forth in the disaster recovery plan approved by Customer. Further Appriss shall provide a pro rate refund to Customer for Appriss' failure to comply with this Section.



#### **4.16.4 Interim Solution during Disruption of Services**

During any period where services are disrupted from a disaster or from some other cause, the Emergency Override Line (EOL) procedures shall be implemented as described in Exhibit S-01 Service Specification.

#### **4.16.5 Force Majeure Event.**

Whenever a Force Majeure Event (as defined in Section 20.6) or a disaster causes Appriss to allocate limited resources between or among Appriss' customers, Customer shall receive no less priority in respect to such allocation than any of Appriss' other customers.

#### **4.17 Satisfaction and Performance Reviews**

Customer or its designee shall have the right to develop, adopt and implement on at least an annual basis Customer and/or user satisfaction surveys, Appriss performance reviews, and any other surveys or reviews as deemed appropriate by Customer. The content, scope, method and timing of such surveys and reviews shall be developed by Customer. Appriss shall (i) support such surveys and reviews to the extent requested by Customer, and (ii) work with Customer to increase Customer and/or user satisfaction and Customer and/or user performance on an ongoing basis. At Customer's request, Appriss shall meet with and discuss with Customer the results of such surveys and reviews, and shall prepare a plan for improvement of Customer satisfaction and performance. Such surveys and reviews, and Appriss's assistance to Customer in improving Customer and/or user satisfaction and performance, shall be factors to be considered by Customer in evaluating Appriss's qualifications relative to the performance of additional Services under the Agreement.

#### **4.18 New Technology Replacement**

Customer and Appriss recognize that Appriss will develop and market new victim notification Products (New Technology) that are designed to enhance or replace the Products and/or Services provided for in this Agreement. To accommodate each Party's requirements, and subject to the approval of the Statewide Stakeholders workgroup Appriss agrees to include the New Technology as part of its Product offerings within the terms provided for in this Agreement. Customer's acquisition of New Technology will be included in any pricing discounts for Product or purchase volumes stated within this Agreement.

#### **4.19 Continuous Improvement and Best Practices**

Appriss shall:

1. On a continuous basis, as part of its total quality management process, identify ways to improve the quality, Services, pricing and technology available to Customer hereunder, and
2. Identify and apply proven techniques and tools from other installations within its operations that would benefit Customer either operationally or financially.

Appriss shall use commercially reasonable efforts to advise Customer of any new developments relating to its obligations to Customer hereunder, and shall, upon Customer's request, assist in the evaluation and testing of such developments in connection with the performance of such obligations. Without limiting the foregoing, Appriss shall inform Customer of any new Information Technology Services, Products and

processes Appriss is developing or Information Technology trends and directions of which Appriss is aware which may be relevant to Customer's business.

#### **4.20 *Dedicated/Shared Environment***

Appriss shall perform its obligations hereunder using Products and/or Services dedicated solely to supporting Customer and other Texas customers, unless otherwise set forth in this Agreement. Appriss may propose during the Term hereof that Customer share such Products and/or Services that are dedicated solely to supporting Customer with other out-of-state customers of Appriss. Appriss shall make no material change in the technical environment and systems used by Appriss to provide the Services, nor shall Appriss make any change which could adversely affect the function or performance of, or decrease the resource efficiency of, the Services, including implementing changes in technology, without first obtaining Customer's approval, which approval Customer may withhold in its sole discretion.

#### **4.21 *Information Gathering Practices***

Appriss agrees that its acquisition of information on behalf of Customer shall be in compliance with all applicable laws and regulations and shall be in compliance with the ethical principles set forth in Customer's employee handbook, policies or related guidelines for the conduct of its employees.

### **5. RELATIONSHIP BETWEEN CUSTOMER AND APPRISS**

#### **5.1 *Appriss Visits to Customer***

In addition to and without limitation on Appriss' other obligations hereunder, Appriss will, at Appriss' expense and upon request by Customer, visit Customer's designated location as Customer may reasonably request. Appriss personnel will include, but not be limited to, Product development specialists and/or other such technical specialists as requested by Customer.

#### **5.2 *Customer's Visits to Appriss***

In addition to and without limitation on Customer's other obligations hereunder, Customer may elect, at Customer's expense, to visit Appriss's facilities no less than twice annually. Appriss will make available, at Appriss's expense, technical specialists as determined by Customer and Appriss to discuss Appriss's technical strategic direction. Such visits may include Appriss's development laboratory so that Customer may participate in discussions relevant to the development of new technologies which might be utilized in Customer's Information Technology environment and otherwise to assist in the evaluation of Customer's future needs for Information Technology Products and Services.

#### **5.3 *Key Appriss Personnel***

Certain individuals will have access to Customer's plans and confidential information as a requirement for fulfilling their duties, and Customer will become dependent on these individuals for advice and expertise (Key Appriss Personnel). Upon at least thirty (30) days prior written notice to Appriss, Customer shall be entitled to require Appriss to replace any of the Key Appriss Personnel upon the conclusion of such thirty (30) day period. Such right may be exercised by Customer in its sole discretion, including without limitation upon a determination that any individual simply is not compatible with Customer personnel. Appriss will make its best efforts to minimize changes in Key Appriss



Personnel. Key Appriss Personnel may be temporarily replaced by Appriss for absences due to vacations, illness, accident or other events outside of Appriss's control.

#### **5.4 Appriss Personnel**

Customer reserves the right to review Appriss's personnel qualifications for applicability to the requested Services. Customer reserves the rights to perform or to have Appriss provide criminal background verifications for Appriss's personnel. In addition, Customer reserves the right to have Appriss personnel replaced on the account if, in Customer's sole opinion, the person does not meet the qualifications for the task, project or other duties assigned.

#### **5.5 Removal for Cause**

Customer may require Appriss to remove an individual immediately from the assignment to perform any task, project or other duties hereunder, for reasons included but not limited to violation of the terms and conditions of this Agreement, including the violation of Customer's policies, rules and regulations; violation of local, state, federal or municipal statutes; or where said individual is engaged in activities that could be detrimental to Customer or Customer's personnel. Customer's sole liability to Appriss when Appriss personnel are removed under the provisions of this paragraph will be for the payment of any outstanding valid invoices submitted to Customer by Appriss covering the period to the time of Customer notifying Appriss to remove said personnel.

#### **5.6 No Effect on Warranties**

Customer's selection and use (or nonuse) of its rights and remedies regarding Appriss Key Personnel and other Appriss personnel shall not affect in any way Appriss's responsibilities, liabilities, or warranties under this Agreement.

#### **5.7 Individual Confidentiality**

Appriss agrees, at the Customer's request, that prior to assigning any personnel to perform any part of Appriss's obligations hereunder, whether or not such individuals are designated as Key Appriss Personnel, such personnel shall be required to execute an Individual Confidentiality Agreement which, upon execution, shall be attached to this Agreement and incorporated herein. Appriss shall cause the agreements to be executed in duplicate, with one (1) copy to be retained by Appriss and the other to be retained by Customer.

#### **5.8 Site Rules and Regulations**

Appriss and its employees and agents, while on Customer's premises, shall comply with Customer's site rules and regulations.

#### **5.9 Independent Obligation of Appriss to Continue Performance**

Because of the critical importance of the obligations undertaken by Appriss hereunder to the operations of Customer and the substantial expertise (not otherwise possessed by Customer) which Appriss has represented it will utilize in connection with the fulfillment of its obligations and the reliance of Customer on such expertise for the fulfillment of its objectives, Appriss assumes an independent obligation to continue performance of its obligations hereunder in all respects regardless of any dispute that may arise between Customer and Appriss in connection with any claims by Appriss that Customer has materially breached its obligations hereunder.



Such independent obligation shall continue for ninety (90) days from the date upon which Customer receives written notice of such alleged breach from Appriss. Appriss undertakes this independent obligation without prejudice to any rights or remedies it may otherwise have in connection with any dispute between Appriss and Customer.

#### **5.10 Subcontractors/Appriss's Agents**

Appriss shall not subcontract any portion of its obligations hereunder without Customer's prior written consent. Customer's consent with respect to any subcontracting shall not relieve Appriss of its responsibility for the performance of any of its obligations hereunder or constitute Customer's consent to further subcontracting.

Appriss shall retain responsibility for the acts or omissions of all of its employees, agents and representatives in connection with the performance of its obligations hereunder. Appriss shall be responsible for all payments to, and claims by, such employees, agents and representatives relating to performance or nonperformance under this Agreement. Customer, in its sole discretion, shall approve all Appriss employees, agents and representatives requiring access to any Customer site or facility.

#### **5.11 Customer Access to Appriss Personnel**

Without limitation on any other obligation of Appriss or right of Customer hereunder, Appriss agrees that it shall, upon Customer's request, provide to Customer equal access to Appriss's specialized technical personnel and resources consistent with access provided to Appriss's other customers.

#### **5.12 Appriss Personnel and Rates**

Additional Services performed by Appriss Personnel shall be billed at rates not-to-exceed the rates described in Exhibit K-12.

#### **5.13 Holidays and Weekends**

In the event that Customer elects to use Additional Services, Customer and Appriss agree that Customer shall not be billed for days worked on holidays and weekends unless prior approval is received from the Customer Project Manager. Customer and Appriss further agree that Customer will not be billed for any Appriss personnel at a daily rate higher than that agreed as the maximum daily rate less applicable discounts.

#### **5.14 Partial Days**

In the event that Customer elects to use Additional Services, Customer and Appriss agree that partial days (with a "day" being defined as equal to eight (8) hours work) may be billed when Appriss personnel are not able to work a full day on a regular scheduled day for any reason, or when a full day is not required on a non-scheduled day such as a holiday or weekend (as approved by Customer). Such partial days will be calculated so that Customer will be billed for one fourth (1/4) of a day when Appriss personnel work up to three (3) hours, or one half (1/2) of a day when Appriss personnel work more than three (3) hours but less than five (5) hours.

#### **5.15 Appriss's Best Efforts to Minimize Time and Materials Charges**

Appriss shall use its best efforts to complete each assigned task in as economical a manner as possible and to minimize any time and materials charges incurred in connection therewith to the maximum extent possible, consistent with Appriss's other obligations under this Agreement.



## 6. CUSTOMER OBLIGATIONS

### 6.1 *Customer Obligations*

1. To the extent allowed by law or allowed by Customer's other contracts, Customer shall provide Appriss with access to all Customer Software, the use of which is necessary or appropriate in connection with the performance of Services, and will cooperate with Appriss to help Appriss secure the necessary approvals and/or consents from third parties for the use of Software owned by such third parties and the use of which is necessary or appropriate in connection with Appriss's performance of Services.
2. All assets owned, leased or otherwise held by Customer during the Term (Customer Assets) shall at all times remain the property of Customer. Appriss shall have access to and use of the Customer Assets and such ability to manage the Customer Assets as may be necessary or appropriate to enable Appriss to perform its obligations properly hereunder.
3. To the extent allowed by law or allowed by Customer's other contracts, Customer shall provide Appriss with access to all Customer Confidential Information and other data and information as reasonably requested by Appriss and the use of which is necessary or appropriate in connection with the performance of the Services, and will otherwise cooperate with Appriss in connection with Appriss's performance of the Services.
4. Customer shall assign an individual who will act as the primary point of contact for Appriss with respect to each Party's obligations under this Agreement (Customer Project Manager as further defined in Section 6.3.1).
5. Customer shall provide those Appriss personnel to whom Customer consents with access to Customer sites or facilities during normal working hours as is appropriate to its responsibilities hereunder upon compliance with all Customer security and safety policies of general applicability in effect at such Customer sites or facilities. If Appriss personnel require access to a Customer site or facility outside of normal working hours, Appriss shall request the necessary security clearance from Customer, and Customer shall not unreasonably withhold such clearance.
6. Customer shall be responsible for providing, to those Appriss personnel, if any, to whom Customer consents to be located on Customer's premises in connection with the Appriss's performance hereunder, office space and office furnishings, janitorial services and utilities (including air conditioning) in connection with such office space. All such space, furnishings and utilities shall be consistent with those that Customer provides to its own similarly situated personnel. Appriss may not provide Services to other customers from space provided by Customer without Customer's consent. Customer shall have the option during the Term hereof to relocate Appriss personnel located on Customer's premises to another, comparable location or facility.
7. Customer shall have no obligations hereunder except as listed in this Section or otherwise specifically set forth herein (Customer Obligations). Customer shall have no other responsibilities or obligations hereunder other than the Customer Obligations which it must perform as a condition to the full and timely performance by Appriss of its obligations under this Agreement. No language or provision of any document or correspondence delivered by Appriss to Customer prior to or



during the Term hereof (including Appriss's Proposal) shall be deemed or construed as expanding, adding to or altering the Customer Obligations.

## **6.2 Continuation of Services**

Customer and Appriss each acknowledge that the provision of the Services as agreed to by the Parties is critical to the business and operations of both Customer and Appriss. Accordingly, in the event of a fee dispute between Customer and Appriss pursuant to which Customer in good faith believes it is entitled to withhold payment or for which either Party in good faith believes payment is due, Appriss shall continue to perform its obligations and Customer shall continue to pay Appriss as set forth in Section 9.7.

## **6.3 Mechanism to Identify and Avoid Certain Problems**

### **6.3.1 Project Managers**

Customer and Appriss shall each designate in writing one individual to serve as its Project Manager during the Term of this Agreement. This individual (Customer Project Manager or Appriss Project Manager as appropriate) shall be deemed to have authority to issue, execute, grant or provide any approvals, requests, notices or other communications required hereunder or requested by the other Party. This authority does not include the authority to amend or modify this Agreement.

### **6.3.2 Review Meetings and Progress Reports**

During the Term hereof, and as requested by Customer's Project Manager, the Customer Project Manager and Appriss Project Manager, as well as additional personnel involved in the performance of this Agreement, shall meet at a location designated by Customer, or at Customer's option, conduct a telephone conference call, to discuss the progress made by Appriss and Customer in the performance of their respective obligations during the period since the most recent meeting for such purpose.

In order to facilitate proper management of the performance of this Agreement, Appriss shall, at each such meeting, provide Customer with a written Notice, sent to the customer return receipt requested and included in the next Statewide Implementation Status Report, in which Appriss identifies any problem or circumstance encountered by Appriss, or which Appriss gained knowledge of during the period since the last such status report (including, without limitation, the failure of Customer to perform, any delay of Customer in performing, or the inadequacy in the performance of Customer of any Customer Obligation) which (i) may prevent or tend to prevent Appriss from completing any of its obligations hereunder, or (ii) may cause or tend to cause Appriss to generate charges in excess of those previously agreed to by the Parties. Before performing any Service that will result in excess charges, Appriss shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and steps taken or proposed to be taken by Appriss to remedy same.

### **6.3.3 Effect of Appriss's Failure to Identify Certain Problems**

In the event Appriss fails to specify in writing any problem or circumstance referred to in subsection 6.3.2 with respect to the period during the Term hereof covered by Appriss's status report, it shall be conclusively presumed for purposes of this Agreement that no such problem or circumstance arose during such period, and Appriss shall not be entitled to rely upon such problem or circumstance as a purported justification for either: (i) claiming it is entitled to receive any amount (including without limitation damages or



additional charges arising out of a breach by Customer of Customer Obligation) with respect to any of Appriss's obligations hereunder in excess of those previously agreed to; or (ii) failing to complete any of Appriss's obligations hereunder. Submission by Appriss of the status reports pursuant to subsection 6.3.2 shall not alter, amend or modify Appriss's or Customer's rights or obligations pursuant to any provision of this Agreement.

#### **6.3.4 Effect of Customer's Failure to Perform Customer Obligations**

For any problem or circumstance included in any Appriss status report and which Appriss claims was the result of Customer's failure or delay in discharging Customer Obligation, Customer shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If Customer agrees as to the cause of such problem or circumstance, then the performance time shall be considered extended for a period of time equivalent to the time lost because of such delay. Other than such extension of time, Customer shall not be liable to Appriss for delay to Appriss' work by the act, neglect or default of the Customer, its agents, employees or designees, or any cause beyond Customer's control.

### **7. CUSTOMER REPRESENTATIONS AND WARRANTIES**

Customer represents and warrants that:

1. It is a county or political subdivision of the State of Texas.
2. It has the authority to execute, deliver and perform its obligations hereunder.
3. The execution, delivery and performance of this Agreement has been duly authorized by it.
4. It shall comply with all laws and regulations applicable to Customer and shall obtain all applicable permits and licenses required of Customer in connection with its obligations hereunder.
5. Subject to Customer's duties or responsibilities imposed by law, including but not limited to the Texas Public Information Act, it has not disclosed, nor will it disclose, any Appriss Confidential Information.

EXCEPT FOR THE EXPRESS WARRANTIES MADE OR REFERENCED IN THIS AGREEMENT, CUSTOMER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT.

### **8. APPRISS WARRANTIES**

Appriss represents and warrants that:

1. It is a corporation duly incorporated, validly existing and in good standing.
2. It has all requisite corporate power and authority to execute, deliver and perform its obligations hereunder.
3. It is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it except when the failure to be so licensed, authorized or qualified would not have a material adverse effect on Appriss's ability to fulfill its obligations hereunder.
4. The execution, delivery and performance of this Agreement has been duly authorized by it.

5. It shall comply with all applicable laws and regulations applicable to Appriss and shall obtain all applicable permits and licenses required of Appriss in connection with its obligations hereunder.
6. It has not disclosed, nor will it disclose, any Customer Confidential Information.
7. All software proprietary to Appriss and which is to be used in connection with the Appriss's performance hereunder does not and will not infringe upon the proprietary rights of any third party (except as may be caused by a modification by Customer or Customer's combination, operation or use with devices, data or programs furnished by Customer and not approved or authorized by Appriss).
8. It is not a party to any agreement with a third party, the performance of which is reasonably likely to adversely affect the ability of Customer or Appriss to fully perform their respective obligations hereunder.
9. It is not a party to any pending litigation, the resolution of which is reasonably likely to adversely affect the ability of Customer or Appriss to fully perform their respective obligations hereunder, nor is any such litigation reasonably contemplated. Appriss agrees to inform Customer in the event any such litigation occurs or becomes reasonably contemplated during the Term hereof.
10. It has read and fully understands this Agreement and the Parties' rights and obligations hereunder.
11. It has been fully informed of and will comply with all Customer physical security policies and procedures, Customer's policies and procedures regarding security and safeguarding of Customer Confidential Information and other Customer proprietary materials, and Customer's procurement policies and procedure as such policies and procedures apply to Appriss's provision of Products and/or Services hereunder. It will perform all services in a manner that complies with all of the above policies and procedures.
12. It has informed all subcontractors of the terms and conditions of this Agreement, and such subcontractors have agreed to be bound by such terms and conditions (provided that such agreement shall in no way limit Appriss's responsibility for the performance of Appriss's obligations hereunder).
13. It will perform the Services in accordance with high professional standards in the applicable area or areas of expertise required to perform such Services, all Appriss personnel shall be fully qualified to perform the tasks assigned them and shall be in compliance with all immigration laws, and all Appriss personnel shall be legally qualified to work and receive compensation in the jurisdiction in which they are employed. If there are no applicable or recognized professional standards in the applicable area or areas of expertise required to perform such Services, then Appriss will perform all Services in a good and workman like manner, which also is to say that Appriss has completed the job, work or provided the Service and has substantially performed his job, work or provided the Service, for if the job, work or provided the Service is not complete and is not substantially complete, it does not meet the test of being good and workmanlike.
14. All Software developed, provided or used by Appriss in performance of the Services shall be compatible with equipment and applicable hardware and software platforms, upgrades and interfaces used by Customer.



15. The Services shall be free from defects in performance or material, shall conform strictly to the Service Levels and other requirements of this Agreement, and shall be fit and sufficient for the purposes expressed in, or reasonably inferred from, this Agreement. Without limitation on any other rights of Customer hereunder, Appriss further warrants that in the event of its failure to fulfill all or part of the warranty in this item (15) at any time during the period Appriss is providing Services to Customer, Appriss shall take all necessary or appropriate actions to correct such failure, at no cost to Customer. Appriss will use its best efforts and correct any such failure as promptly as practicable in the most expeditious manner practicable.
16. It shall have, as of the effective date of this Agreement and throughout the applicable period of performance of Services, free and clear title to, and the right to possess, use sell, transfer, assign, license, or sublicense, any and all Equipment and software Products that are sold, licensed or otherwise provided to Customer in connection with Appriss's performance of Services hereunder.
17. With respect to any Service hereunder, Customer shall be entitled to possess and use such Service during the period in which such Services are being performed by Appriss, without interruption by Appriss or any person claiming by or through Appriss, provided only that Customer shall duly perform its obligations pursuant to this Agreement.
18. No software developed, provided or used by Appriss in performance of the Services shall, unless authorized in advance by Customer: (i) contain hidden files; (ii) replicate, transmit or activate itself without the control of a person operating the computing equipment on which it resides; (iii) contain any key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, which restricts or may restrict use or access to any programs or data developed, provided or used under this Agreement, based on residency on a specific hardware configuration, frequency or duration of use, or other limiting criteria.

Provided and to the extent any program has any of the foregoing attributes, and notwithstanding anything elsewhere in this Agreement to the contrary, Appriss shall be in default of this Agreement, and no cure period shall apply. In addition to any other remedies available to it under this Agreement, Customer reserves the right to pursue any civil and/or criminal penalties available to it against Appriss.

Appriss agrees, in order to protect Customer from damages which may be intentionally or unintentionally caused by the introduction of Illicit Code to Customer's computer network, no software will be installed, executed, or copied on Customer equipment without the express approval of the Customer Program Manager.

EXCEPT FOR THE EXPRESS WARRANTIES MADE OR REFERENCED IN THIS AGREEMENT, Appriss MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

## **9. CHARGES; INVOICING**

### **9.1 *Maximum Liability of Customer***

The parties stipulate and agree that the total liability of Customer to Appriss in consideration of full, satisfactory and timely performance of all its duties, responsibilities, obligations, liability, and for reimbursement of all expenses, if any, as set forth in this



Agreement or arising out of any performance herein shall not exceed Fifty Two Thousand Eight Eight Hundred Forty Three AND NO/100 (\$52843) DOLLARS for the Term of this Agreement. The parties stipulate and agree that any act, action or representation by either party, their agents or employee that purport to increase the liability of the Customer is void, without first executing a written amendment to this Agreement and specifically amending this section. The parties acknowledge and agree that nothing in this Agreement will be interpreted to create an obligation or liability in excess of the funds currently stated in this Agreement.

The parties acknowledge, stipulate and agree that funding for these Services and this Agreement is subject to the actual receipt of grant funds from the Office of the Attorney General and such funds are sufficient satisfy all of Customers duties, responsibilities, obligations, liability, and for reimbursement of all expenses, if any, as set forth in this Agreement or arising out of any performance pursuant to this Agreement. The parties further understand, acknowledge, stipulate and agree that the grant funds, if any, received from the Office of the Attorney General are limited by the term of each state biennium and by specific appropriation authority to the Office of the Attorney General for the subject matter of this Agreement. Notwithstanding the forgoing, Customer at Customer's sole option, may elect to fund the Agreement from sources of funding independent of monies received from the Office of the Attorney General. Such Customer's option shall be made by written notice to Appriss and such notice may only be made by such Customer's officer or employee with such legal and express authorization to contractually bind Customer.

The parties stipulate and agree that Appriss shall not have any third-party or third-party beneficiary claim or cause of action directly or indirectly, for specific performance or money, against the Office of the Attorney General.

## **9.2 Schedule of Payments**

In consideration of full, complete, satisfactory and timely performances by Appriss as contemplated by the terms and conditions of this Agreement, the Customer shall pay Appriss according to the terms and conditions of the Agreement and at such times as limited by Section 9, according to Exhibit K-01 Schedule of Payments.

## **9.3 Application of Charges**

Customer will determine the applicability of charges by the following criteria: (i) except as otherwise expressly stated in this Agreement, no Service or related Deliverable shall be deemed to be accepted by Customer and Customer shall have no obligation to Appriss for any payment unless and until Customer has notified Appriss of its acceptance of such Service or Deliverable and all other requirements prerequisite to payment have been complied with as provided for under this Agreement; and (ii) Customer shall not be billed or liable for any charges or expenses other than those charges or expenses stated and expressly authorized in this Agreement.

## **9.4 Most Favored Customer**

Notwithstanding any other provision of this Agreement, all of the prices, benefits, warranties and terms granted by Appriss to Customer pursuant to this Agreement are hereby warranted by Appriss to be comparable to, or more favorable than, the comparable prices, benefits, warranties and terms that:



1. have been offered by Appriss to any of its other customers for the provision of substantially similar services during the period August 31, 2001 to the effective date of this Agreement; and
2. are being offered and/or will be offered by Appriss to any of its other customers for the provision of substantially similar services during the Term hereof.

If at any time during the periods stated in subparagraphs (1) or (2) above, Appriss shall contract, or have contracted, with any other customer for the purchase, lease, rental, license, service, or other delivery of services substantially similar to those to be performed pursuant hereto, on a basis that provides prices, benefits, warranties or terms to the customer more favorable than those provided to Customer hereunder, then:

(i) Appriss shall, within thirty (30) calendar days after the effective date of such other contract, notify Customer in writing of such fact, explaining the more favorable basis in detail; and (ii) regardless of whether such notice is sent by Appriss or received by Customer, this Agreement shall be deemed to be automatically amended, effective retroactively to the effective date thereof, to provide the more favorable prices, benefits, warranties or terms to Customer; provided, however, that Customer shall have the right and option at any time to decline to accept any such change, in which event such automatic amendment shall be deemed to be null and void effective retroactively to the effective date of this Agreement.

Upon Customer's request, Appriss shall provide to Customer a written certificate, signed by an executive officer of Appriss, certifying that this Section 9.4 has not been contravened by any transaction entered into by Appriss since the later of (i) the effective date of this Agreement, or (ii) the date of the most recent certification provided by Appriss pursuant to this Section 9.4. If Appriss fails to provide such a certificate promptly because of a transaction entered into by Appriss contravening this Section 9.4, this Agreement shall be deemed automatically amended in the same manner and subject to the same conditions as described in the preceding paragraph as if Appriss had given notice of such a more favorable transaction.

#### **9.5 Right of Set-Off**

With respect to any amount which (i) should be reimbursed to a Party, or (ii) is otherwise payable to the Party pursuant to this Agreement, such Party may, upon notice to the other Party, deduct the entire amount owed to such Party against the charges otherwise payable or expenses owed to the other Party pursuant to this Agreement.

#### **9.6 Out-of-Pocket Expenses**

1. Except for expenses for travel covered by subsection (2) below, all expenses relating to Appriss's performance hereunder are included in Appriss's charges therefore, and shall not be reimbursed by Customer unless otherwise agreed to by Customer in writing.
2. To the extent Customer agrees that to reimburse Appriss for any travel or other out-of-pocket expenses related to services outside the scope of this Agreement, Appriss shall itemize expenses for travel incurred directly in the performance of such services outside the scope of this Agreement. Customer shall reimburse Appriss for its out-of-pocket expenditures for such travel pursuant to subsection (3) below.
3. To the extent Customer agrees that to reimburse Appriss for any out-of-pocket expenditure, such expenditure shall be passed through to Customer at actual cost



with no mark-up. To be eligible for reimbursement, such expenses must be properly documented and incurred by Appriss in connection with its performance hereunder, in accordance with Customer's then-current policy for such expenses; provided, however, that Appriss shall be responsible for travel expenses relating to Appriss's internal operations that are not directly related to performing Appriss's obligations for such services outside the scope of this Agreement, including account management, meetings and seminars.

### **9.7 Invoicing Standards**

Appriss shall render one (1) copy of an invoice not later than one month following the month for which the charges in the invoice accrue. Provided that the amounts covered by the invoice are in fact due and payable by Customer hereunder, each invoice shall be paid in accordance with the provisions of this Section 9. Invoices shall be constructed to reflect the content of the Deliverables and/or services to which such charges relate and the impact of performance levels. Invoices shall differentiate the costs between tangible and non-tangible services and Deliverables on the invoice, and include as a minimum: (i) type and description of Deliverable and Service; (ii) basic charge for each Deliverable and Service; (iii) other charges as applicable; and (iv) total charges.

Appriss shall provide third-party charges for services procured by Appriss and shall provide Customer statistics detailed by category of resource consumption by each Customer entity or unit in such frequency, methodology and detail as may be required by Customer.

Without limitation on the foregoing, Appriss agrees to provide Customer with additional supporting documentation and other information as requested by Customer to verify the accuracy of the invoice.

### **9.8 Issuance and Delivery of Invoices**

Invoices shall be issued and delivered to the entities and units specified by the Customer Project Manager with the pricing detail requested by the Customer Project Manager, and in a format and on the media agreed upon by Customer and Appriss. Customer may change the invoice format, as well as the detail and summary billing formats, and Appriss shall implement such changes as soon as reasonably practicable.

### **9.9 Payment Terms and Conditions**

Appriss shall provide Customer with invoices relating to services provided hereunder following the completion by Appriss and acceptance or approval by Customer of all prerequisites to payment for the relevant services or Deliverables, or, in cases when this Agreement reflects that payment shall be based on a calendar event, upon the occurrence of such calendar event. The last business day of each calendar month shall be the cut-off for services and Deliverables to be invoiced in the next calendar month. For invoices received by Customer by the 15th of a calendar month, Customer shall pay the invoiced amounts or such portions thereof for which Appriss has furnished all requested information and supporting documentation, and which Customer has approved, no later than the 25th day of the month following receipt of the invoice.

### **9.10 Fee Disputes**

In the event Customer disputes all or any portion of an invoice submitted by Appriss, Customer may withhold payment of the amount subject to the dispute; provided, however, that (i) Customer shall continue to pay the undisputed amount when it becomes due and



payable in accordance with the terms hereof; and (ii) Appriss shall continue to perform its obligations hereunder. The Parties shall resolve the dispute in accordance with the procedures set forth in Section 10. No failure by Customer to identify a contested fee or charge prior to payment of the invoiced amount shall limit or waive any of Customer's rights or remedies with respect to such fee or charges, including Customer's right to withhold such disputed amounts from subsequent fees or charges due to Appriss. Unpaid fees or charges that are in dispute shall not be considered a basis for default hereunder.

#### **9.11 Increase in Charges Pursuant to Change Orders**

If either Party proposes a Change in or addition to the Products or Services to be provided hereunder pursuant to the Change Order Procedures, the price for such Change or addition shall be determined in the manner set forth below:

1. To the extent the proposed Change or addition can be accommodated within the existing level of resources then being used by Appriss in performing its obligations hereunder, and without degradation to Appriss's compliance with all applicable performance requirements, the charges payable by Customer under this Agreement shall not be increased. To the extent a Change or addition proposed by either Party will lower Appriss's cost to perform its obligations fully hereunder, the charges payable by Customer under this Agreement shall be equitably adjusted to reflect such projected cost savings.
2. To the extent the proposed Change or additional Products and/or Services are not subject to clause (1) above, Appriss shall quote Customer a charge for such Change or addition equal to Appriss's incremental cost of providing such changed or additional Products and/or Services plus a profit margin on such incremental cost not exceeding the profit margin then charged by other suppliers similarly situated to Appriss to the type or types of Products or Services included in the Change or addition. Appriss shall include with its quote the information used by Appriss to determine its incremental costs and the appropriate profit margin, and a certificate, signed by an executive officer of Appriss, certifying that such quote complies with this clause (2).

At Customer's request, Appriss shall grant to Customer's auditors the information reasonably necessary for Customer to verify such compliance. If Customer's auditors determine that the quote proposed by Appriss did not comply with this clause (2), the charges to Customer shall be equitably adjusted to a rate that does comply with this clause (2), retroactive to the first date on which Appriss provided the changed or additional Products and/or Services, and Appriss shall reimburse Customer for the cost of the audit.

### **10. RESOLUTION OF DISPUTES**

#### **10.1 Resolution of Disputes of Invoices**

Disputes arising out of or relating to this Agreement shall first be discussed by the Customer Project Manager and Appriss Project Manager. Any dispute that cannot be resolved within five (5) business days at the Project Manager level (or such other date as agreed upon by the Project Managers) shall be referred to Director level personnel of Customer and Appriss. Any dispute that cannot be resolved in ten (10) days at the



Director level shall then be discussed by the Vice President level personnel of Appriss and an individual at a corresponding level of Customer. Upon notification to this higher level personnel, the Parties may pursue available legal and equitable remedies.

## **10.2 Continuity of Performance**

Both Customer and Appriss acknowledge that the performance of this Agreement is critical to the business and operations of Customer and Appriss. Accordingly, in the event of a fee dispute between Customer and Appriss pursuant to which Customer in good faith believes it is entitled to withhold payment or for which either Party in good faith believes payment is due, Appriss shall continue to perform its obligations hereunder and Customer shall continue to pay undisputed invoiced amounts to Appriss as set forth in Section 9.7.

## **11. INDEMNIFICATION**

### **11.1 Indemnification by Appriss**

Appriss shall, at its sole expense, indemnify and hold harmless Customer, its assigns and its officers, directors, employees, agents and representatives, and any third parties with whom Customer has or may in the future contract with to perform any aspect of Customer's Information Technology business functions, from and against any and all losses, damages, injuries (including death), causes of action, claims, demands and expenses (whether based upon tort, breach of contract, patent or copyright infringement, failure to pay employee taxes or withholdings, failure to obtain worker's compensation insurance, or otherwise), including reasonable legal fees and expenses, of any kind or nature arising out of or on account of, or resulting from, any intentional or negligent act or omission of, or default in the performance of its obligations pursuant to this Agreement by Appriss, its assigns, or its subcontractors, officers, directors, employees, agents or representatives, including but not limited to the breach of any representation or warranty of Appriss.

### **11.2 Notice**

Customer shall give Appriss prompt notice of any claim or liability hereby indemnified against by Appriss and thereupon Appriss shall be entitled to control, and shall assume full responsibility for, the defense of such matter. If Appriss elects to assume such responsibility, it shall so notify the Customer. The indemnities contained herein shall not be deemed to be a waiver of or in limitation of any other rights either Party may have, including but not limited to any rights of indemnity or contribution.

The Customer shall cooperate in all reasonable respects with Appriss and its attorneys in the investigation, trial and defense of such claim or liability and any appeal arising there from; provided, however, that the Customer may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim or liability and any appeal arising there from. No settlement of a claim that involves a remedy other than the payment of money by the indemnifying Party shall be entered into without the consent of the indemnified Party. After notice by Appriss to the Customer of its election to assume full control of the defense of any such claim, Appriss shall not be liable to the Customer for any legal expenses incurred thereafter by Customer in connection with the defense of such claim.

If Appriss does not assume full control over the defense of a claim subject to defense as provided in this Section 11.2, the Customer may participate in such defense, at its sole



cost and expense, and the Customer shall have the right to defend such claim in the manner it deems appropriate, at the cost and expense of Appriss.

### **11.3 Intellectual Property Indemnity**

Appriss warrants that each Product and Service furnished by it hereunder, and any program or other software, will not infringe upon or violate any patent, copyright, trade secret or any other proprietary right of any third party or contain the confidential information of any third party. If any claim by a third party against the Party asserting or involving a patent, copyright, trade secret or proprietary right violation involving any Product acquired or provided by Appriss hereunder, then Appriss will defend, at its expense, and will indemnify the Customer against any loss, cost, expense, or liability arising out of such claim, whether or not such claim is successful.

The Customer shall not have liability for infringement to the extent that such claim is based on the use, license, or sale of a Product in combination with other Products (including software) furnished by Appriss, use of the Product in a manner not allowed under any license granted to the Customer, or modification of the Product by the Customer, when without such combination, use, or modification the claim would not have arisen.

### **11.4 Use of Infringing Products**

If an injunction or order shall be obtained against the Customer's use of any such Product or Service by reason of the allegations, or if in Appriss' opinion any such Product is likely to become a subject of a claim of infringement or violation of a copyright, trade secret or other proprietary right of a third party, Appriss will, at its option and its expense:

(i) procure for the Customer the right to continue using the Product; (ii) replace or modify the same so that it becomes non-infringing (which modification or replacement shall not adversely affect the applicable specifications for, or the use or operation by the indemnified Party of, the Product or Service); (iii) if the Product or Service is purchased, and the other options stated are not practicable, repurchase the Product or Service; or (iv) if the Product or Service is licensed, and the other options stated are not practicable, remove such Product or Service from the Customer's site(s) and refund to the Customer any charges paid by the Customer, other than charges for license payments for any actual period of use by the Customer in excess of twenty-four (24) months, and release the Customer from any further liability hereunder.

### **11.5 Discontinuation of Payments**

In no event shall Customer be liable to Appriss for any license or maintenance payments after the date, if any, that Customer is no longer legally permitted to use any Product or Service because of such actual or claimed infringement. If removal or replacement of the Product or Service is required or undertaken pursuant to this Agreement, Appriss shall use reasonable care in the removal or modification thereof and shall, at its own expense, restore the premises as nearly to their original condition as is reasonably possible.

## 12. DEFAULTS AND REMEDIES

### 12.1 *Defaults by Either Party*

The occurrence of any of the following shall constitute a default:

1. Either Party shall fail to pay when due any undisputed amount due hereunder, and such failure shall continue for a period of sixty (60) days after written notice from one Party to the other; or
2. Any representation or warranty made by either Party in this Agreement shall prove to have been false or misleading in any material respect as of the date on or as of which the same was made; or
3. Either Party shall fail to perform or observe any representation, warranty, covenant, condition or agreement required by the Agreement to be performed or observed by it, and such failure continues for thirty (30) days after written notice of one Party to the other; or
4. Bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other proceedings shall be instituted by or against either Party or all or any substantial part of its property under any federal or state law, and such proceedings shall continue for sixty (60) days.

### 12.2 *Remedies of Either Party*

If a default by either Party shall occur and be continuing, the other Party shall have the following remedies except as set forth in Section 5.9:

1. Terminate this Agreement and return any and all Products covered hereunder to the Party furnishing same, in the same manner as contemplated for return of such Product(s) at the end of the Product's term, except that such return shall be at the sole expense of the defaulting Party; and/or
2. By written notice to the defaulting Party declare this Agreement to be terminated, without prejudice to either Party's rights in respect to the obligations then accrued and remaining unsatisfied; and/or
3. Pursue the recovery of actual damages arising out of such default, subject to the limitations set forth in Section 12.7; and/or
4. Seek specific performance by the defaulting Party of its obligations hereunder; and/or
5. Exercise any other right or remedy that may be available at law or in equity.

### 12.3 *No Waiver*

In no event shall the acceptance by Customer, or the application by Appriss, of any service or Deliverable pursuant to this Agreement be deemed to be a waiver by Customer of any of its rights under this Agreement or at law or in equity. Notwithstanding the foregoing, either Party's failure or delay in performing any minor or technical aspect of its performance obligations hereunder shall not be considered as a default under this Agreement unless and until such failure or delay remains uncured for a period of thirty (30) days following the first occurrence thereof, or recurs repeatedly to the extent that the successful performance of this Agreement may be adversely affected.



**12.4 Time to Cure**

In addition to the time periods specified herein, above, either Party shall be permitted a period of thirty (30) days to cure any default; provided, however, that if the defaulting Party has commenced the curing of any default, other than a default in the payment of amounts due to be paid by one Party to the other, within the thirty (30) day period so provided and the defaulting Party is diligently and continuously pursuing the curing of such default, the thirty (30) day period shall be extended to permit the defaulting Party to complete the cure.

**12.5 Mitigate Damages**

Each Party shall in all events be required to mitigate its damages arising from any act or omission of the other Party hereunder.

**12.6 Consequential Damages**

In no event shall either Party be liable to the other for indirect, incidental, special, or consequential damages arising out of this agreement for the existence, furnishing, functioning, or Customer's use of the Work Product, documentation or tools provided by Appriss. The foregoing limitation of liability shall not apply to: (i) claims for damages in tort against either Party; or (ii) indemnification claims under Section 11. Claims for damages in tort shall be allowed and/or limited according to applicable Texas law.

**12.7 Direct Damages**

Except as allowed or limited by Section 9, neither Customer nor Appriss shall be liable to the other Party for any direct damages arising out of or relating to its performance hereunder, whether based on an action or claim in contract, equity, negligence, tort or otherwise, for all events, acts or omissions, in an amount to exceed in the aggregate an amount equal to the total amount of fees payable to Appriss during the twelve (12) month period immediately preceding the occurrence of the event, act or omission in question (the Direct Damages Cap). In the event a Party is liable hereunder for damages in excess of the Direct Damages Cap, the other Party may terminate this Agreement, in whole or in part, without regard to Section 17.3. The following shall be considered direct damages and Appriss shall not assert that they are consequential damages pursuant to Section 12.6 to the extent that they result from Appriss's failure to perform its obligations in accordance with the terms of this Agreement:

1. Costs and expenses of replacing lost, stolen or damaged equipment, software and materials; and
2. Costs and expenses incurred by Customer to procure from an alternate supplier all or any part of Services or Deliverables the performance of which is the obligation of Appriss hereunder, to the extent in excess of Appriss's charges hereunder; and
3. Straight time, overtime or related expenses incurred by Customer, including overhead allocations of Customer for Customer's employees, wages and salaries of additional employees, travel expenses, overtime expenses, telecommunications charges and similar charges, due to failure of Appriss to provide all or any part of the Deliverables or services incurred in connection with (1) or (2) above.

## **12.8 Exclusions**

The limitations of liability set forth in Sections 12.6 and 12.7 are not applicable to (i) indemnification claims as set forth in Section 11; (ii) liability resulting from the gross negligence or willful misconduct of a Party; and (iii) Appriss' liability under Section 13.

## **13. CONFIDENTIAL INFORMATION**

### **13.1 Confidential Information of Customer**

Appriss and its employees, subcontractors, suppliers, representatives and agents shall not (without first obtaining the prior written consent in each instance of Customer) during the Term of this Agreement or thereafter, disclose, make commercial or other use of, give or sell to any person, firm, or corporation, any information received directly or indirectly from Customer or acquired or developed in the course of this Agreement, including, by way of example only, ideas, inventions, methods, designs, formulas, systems, improvements, prices, discounts, business affairs, products, product specifications, manufacturing processes, data and know-how, and technical information of any Customer whatsoever (Customer Confidential Information) unless:

- (i) required to do so pursuant to law (and then only on the entry of a protective order acceptable to Customer);
- (ii) it was rightfully in the possession of Appriss from a source other than Customer prior to the time of disclosure of said information to Appriss hereunder (Time of Receipt);
- (iii) it was in the public domain prior to the Time of Receipt;
- (iv) it became part of the public domain after the Time of Receipt by any means other than an unauthorized act or omission on the part of Appriss;
- (v) it is supplied to Appriss after the Time of Receipt without restriction by a third party who is under no obligation to Customer to maintain such information in confidence; or
- (vi) it was independently developed by Appriss prior to the Time of Receipt.

With respect to the Customer Confidential Information, Appriss further agrees:

- (i) that all of Customer Confidential Information so accessed or acquired by it or its employees or agents under this Agreement shall be and shall remain Customer's exclusive property,
- (ii) to return such Customer Confidential Information to Customer at its request, and
- (iii) to use the Customer Confidential Information only for the purpose of fulfilling Appriss's obligations under this Agreement.



### **13.2 Confidential Information of Appriss**

Unless otherwise authorized by this Agreement, Customer agrees that it shall not, during the Term of this Agreement or thereafter, disclose, make commercial or other use of, give or sell to any person, firm, or corporation, any information of Appriss that is treated and identified to Customer by Appriss as confidential (Appriss Confidential Information), except Customer can disclose such information if:

- (i) required to do so pursuant to applicable law, including but not limited to disclosures required by the Texas Public Information Act;
- (ii) it was rightfully in the possession of Customer from a source other than Appriss prior to the time of disclosure of said information to Customer hereunder (Time of Receipt);
- (iii) it was in the public domain prior to the Time of Receipt;
- (iv) it became part of the public domain after the Time of Receipt by any means other than an unauthorized act or omission on the part of Customer;
- (v) it is supplied to Customer after the Time of Receipt without restriction by a third party who is under no obligation to Appriss to maintain such information in confidence;
- (vi) it was independently developed by Customer prior to the Time of Receipt;
- (vii) it was developed by Appriss at Customer's expense;
- (viii) it is necessary for Customer to authorize its designee to examine and monitor the performances herein and in such event Customer's designee shall be required to comply with the confidentiality provisions of this Agreement.

With respect to Appriss Confidential Information, Customer further agrees:

- (i) that all of Appriss Confidential Information so accessed or acquired by it or its employees or agents under this Agreement shall be and shall remain Appriss's exclusive property,
- (ii) to return such Appriss Confidential Information to Appriss at its request, and
- (iii) to use the Appriss Confidential Information only for the purpose of fulfilling Customer's obligations under this Agreement.

### **13.3 Reproduction of Manuals, Documentation and Software**

Notwithstanding the limitations of the foregoing Section 13.2, Customer shall have the right, at no additional cost, to reproduce any and all public information or media kit information, manuals, documentation, and software media supplied pursuant to this Agreement, regardless of whether the same be copyrighted or otherwise restricted as proprietary information; provided, however, that such reproductions shall be subject to the same restrictions on use and disclosure as are set forth in this Agreement. Appriss agrees to execute any non-exclusive copyright assignments or reproduction authorizations that may be necessary for Customer to utilize the rights granted in this subparagraph. Any and all copies of manuals, documentation, and software media made by Customer shall include a valid copyright notice indicating Appriss's proprietary interest therein.

### **13.4 Standard of Care**

With respect to financial, statistical, personnel and other private data relating to each Party's business, and which is made available to either Party by the other Party in order to carry out this Agreement, both Parties agree that such information is Confidential Information of the respective Parties, and agree not to (without first obtaining the prior written consent of the other Party in each instance) during the Term of this Agreement or thereafter, disclose, make commercial or other use of, give or sell to any person, firm or corporation, any such Confidential Information received directly or indirectly from the other Party or acquired or developed in the course of this Agreement unless required to do so pursuant to applicable law. This paragraph does not apply to information developed in the course of monitoring Appriss's performances under this Agreement. Any information developed or acquired or relating to auditing, performance, test events, satisfaction surveys or benchmarking shall be deemed public information.

### **13.5 Individual Confidentiality Agreements**

Appriss shall communicate the requirements of Section 13.1 to its employees and agents. Appriss shall be responsible for the execution of an Individual Confidentiality Agreement (in accordance with Section 5.7) by each such Appriss employee and agent who is to be allowed access to Customer Confidential Information reflecting such individuals' agreement to be personally bound by the restrictions on the disclosure of Customer Confidential Information as set forth in Section 13.1.

### **13.6 Unauthorized Access**

Each Party shall:

1. As soon as reasonably practicable, notify the other Party of any unauthorized possession, use or knowledge, or attempt thereof, of the other Party's Confidential Information, of which it becomes aware, including any material breach or potential material breach of security on a system, LAN or telecommunications network that contains, processes or transmits Confidential Information of the other party.
2. As soon as reasonably practicable, furnish to the other Party full details of the unauthorized possession, use or knowledge, or attempt thereof, and use reasonable efforts to assist the other Party in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information.
3. Use reasonable efforts to cooperate with the other Party in any litigation and investigation against third parties deemed necessary by the other Party to protect its proprietary rights. Customer shall have the right to conduct and control any investigation relating to such breach or potential breach of its Confidential Information that it determines is appropriate.
4. Use all reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information.
5. Bear the cost it incurs as a result of compliance with this Section 13.6. In the event of the expiration or termination of this Agreement, the applicable Confidential Information disclosed and all copies thereof shall upon request by the disclosing Party be returned to the disclosing Party, or at such Party's option, destroyed by the recipient, and the recipient shall provide to the disclosing Party certificates evidencing such destruction.



## **14. PROPRIETARY RIGHTS**

### **14.1 Customer Software**

Customer hereby grants to Appriss, solely to provide the Services, a non-exclusive, non-transferable right to (i) use, (ii) copy for archival purposes, and (iii) to the extent permitted by the licenses in respect of Third-Party Software and with Customer's prior approval, modify the Customer Software; provided, however, that Appriss may not decompile, disassemble, or otherwise reverse engineer the Customer Software in any manner. As of the effective date of this Agreement, Customer shall upon Appriss's request at no cost to Appriss, provide Appriss with access to the Customer Software in the form in use by Customer as of such effective date.

To the extent approved by Customer, Appriss may sublicense to Appriss's subcontractors the right to have access to and operate the Customer Software as may be necessary in connection with the provision of the Services. Upon the expiration of this Agreement or the termination of this Agreement for any reason, Appriss's rights to the Customer Software shall terminate and Appriss shall return same to Customer, except to the extent the Customer Software is necessary or appropriate in connection with Appriss's provision of Termination Assistance Services.

### **14.2 Appriss Software**

Customer shall have no rights or interests to the Appriss Software except as described in this Section. Prior to using any Appriss Software to provide any of the Services, Appriss shall notify Customer that it intends to use Appriss Software and obtain Customer's consent to such use. If Customer does not consent to such use, Appriss shall recommend a functionally equivalent alternative which Appriss shall use upon Customer's consent.

As part of the Services, Appriss shall during the performance of the Services: (i) use the Appriss Software set forth in this Agreement and such other software as Customer and Appriss may agree upon from time to time, as may be required to provide the Services, (ii) make available to Customer such Appriss Software for use by Customer solely in connection with the Services.

Upon the expiration of this Agreement or the termination of this Agreement for any reason, Customer's rights to the Appriss Software shall terminate and Customer shall return same to Appriss, except to the extent the Appriss Software is necessary or appropriate in connection with Appriss's provision of Termination Assistance Services.

### **14.3 Appriss Third-Party Software**

Appriss may utilize Software that is licensed from a third party in order to provide the Services (Appriss Third-Party Software). The Appriss Third-Party Software shall be and shall remain the exclusive property of Appriss's third-party licensors, and Customer shall have no rights or interests in the Appriss Third-Party Software except as described in this Section.

As part of the Services, Appriss shall during the period of Appriss's performance of the Services: (i) use such Appriss Third-Party Software as Customer and Appriss may agree to add from time to time, as may be required to provide the Services; (ii) make available to Customer such Appriss Third-Party Software for use by Customer solely in connection with the Services; and (iii) deliver to Customer at its request, no more than once during every quarter during the performance of the Services, to the extent permissible under the

applicable agreements for the Appriss Third-Party Software, a copy of the Appriss Third-Party Software (including related source code) for archival purposes only.

Upon the expiration or termination of this Agreement for any reason, Customer's rights to the Appriss Third-Party Software shall terminate except as such continued use is necessary or appropriate in connection with the provision of Termination Assistance Services.

#### **14.4 Developed Software**

Appriss may develop Software by original authorship or through contracts with third parties as part of and/or in order to perform Services specifically for Customer (the Developed Software). The Developed Software shall be and will remain the exclusive property of Customer and the State of Texas. In consideration of the payments made pursuant to this Agreement, Appriss hereby assigns to Customer and the State of Texas all of Appriss's rights in and interests to the Developed Software. Customer hereby grants to Appriss a non-exclusive, royalty-free, transferable right to use the Developed Software solely to provide the Services to Customer and to any other Appriss governmental customer.

As part of the Services, Appriss shall deliver to Customer a list that is continuously updated which identifies with particularity all Developed Software and, immediately upon Customer's request, deliver a copy of the Developed Software (including related source code). Upon the expiration of this Agreement or the termination of this Agreement for any reason, Appriss shall at no cost to Customer, deliver to Customer a current copy of all such Developed Software in the form in use as of the date of such expiration or termination.

The provisions of this Section 14.4 apply to the Developed Software and all updates, modifications and revisions thereof.

#### **14.5 Changes and Upgrades to Systems**

Except as may be approved by Customer, Appriss may not make any changes or modifications to the Customer Software or the Developed Software. Except as may be approved by Customer, any changes or modifications to the Appriss Software made by Appriss pursuant to this Agreement shall not have an adverse effect on the functionality or performance of any Critical Systems or other Customer operating systems except as may be necessary on an emergency basis to maintain the continuity of the Services.

#### **14.6 Documentation**

Except as set forth in Section 14.1 with respect to the Appriss Software, all Documentation shall be and will remain the exclusive property of Customer. In consideration of the payments to be made pursuant to this Agreement, Appriss hereby assigns to Customer or its assigns all rights in and interests to the Documentation.

#### **14.7 Consents**

Appriss shall be responsible for, and shall pay any costs associated with, obtaining consents, approvals, authorizations, notices, requests and acknowledgments that are necessary to allow:

1. Appriss to use the Customer Software, Customer Equipment and the services under Customer's third-party service contracts, to provide the Services; and



2. Appriss to use the Appriss Software and Appriss Equipment to provide the Services; and
3. Appriss to assign to Customer all rights and title to the Developed Software and Work Product; and
4. Customer to use the Appriss Software, the Developed Software, and Appriss Intellectual Property during the period Appriss is to perform the Services requiring such use, and upon the expiration or termination thereof.

Customer shall cooperate with Appriss in obtaining such consents.

#### **14.8 Work Product**

Inventions, designs, mask works, processes, methodologies, literary works and works of authorship, as those terms are understood under United States law, created, developed or prepared by Appriss under or in support of the performance of its obligations hereunder, including manuals, reports, all public information or media kit information, training materials and documentation, but excluding software (the Work Product) shall be owned by Appriss. In consideration of the payments made pursuant to this Agreement, Appriss hereby assigns to Customer and the State of Texas the right to use, reproduce, publish (in any media or form either known or unknown), modify and create derivative works in and to any interests to the Work Product.

Appriss agrees to execute any documents or take any other actions as may reasonably be necessary, or as Customer may reasonably request, to perfect Customer's rights in any such Work Product. Appriss shall at no cost to Customer: Deliver to Customer, upon Customer's request during the Term and the expiration or termination of all or part of Appriss's performance hereunder, a current copy of all Work Product in the form and on the media in use as of the date of Customer's request, or, as of such expiration or termination, as the case may be,

#### **14.9 Intellectual Property**

All inventions, designs, mask works, processes, methodologies, literary works and works of authorship as those terms are understood under United States law, including any improvements or modifications thereto, created, developed or prepared by Customer, or that are proprietary to or otherwise owned by Customer or its third-party licensor, shall remain the property of Customer or its third-party licensor, as the case may be (Customer Intellectual Property). "Appriss Intellectual Property" shall mean inventions, designs, mask works, processes, methodologies, literary works, and works of authorship as those terms are understood under United States law, created, developed or prepared by Appriss and used in connection with Appriss's performance hereunder, but not including Software, Work Product or Customer Intellectual Property. Appriss: Hereby grants to Customer a perpetual, worldwide, nonexclusive, nontransferable, royalty-free license to use, operate, maintain, copy, modify and create derivative works, and to grant the right to use, operate, maintain, copy, modify and create derivative works to third parties engaged by Customer, for Customer's business operations, the Appriss Intellectual Property in connection with the Services.

## **15. ASSIGNMENT**

### **15.1 Assignment by Appriss**

Appriss may assign any of its rights or obligations hereunder to any parent or subsidiary entity of Appriss. Appriss may assign any of its rights or obligations hereunder to an entity not affiliated with Appriss. Except when otherwise agreed in writing by Customer, no such assignment shall release Appriss from its obligations pursuant to this Agreement. Upon any such assignment by Appriss, Customer may terminate this Agreement in whole or in part without recourse, liability, cost or penalty, upon at least thirty (30) calendar days' notice to Appriss.

### **15.2 Assignment by Customer**

Customer may assign this Agreement in whole or in part to any Customer affiliate or subsidiary of Customer, or other unit of government upon written notice to, but without the consent of, Appriss. Upon such assignment and an assumption of liability hereunder by the assignee, Customer shall be discharged of any further liability pursuant to this Agreement. Any other assignment of this Agreement in its entirety by Customer may occur only with the prior written consent of Appriss, which consent shall not be unreasonably withheld or delayed.

### **15.3 Transfer of Documentation and Manuals**

The right of Customer to sell, rent, lease, or otherwise transfer or assign all or any part of any Product, or the right to use or operate all or any part of any Product, shall include the right to sublicense, transfer, or assign any Appriss manuals, public information or media kit information and documentation, provided or to be provided to Customer, relating to any such Product; provided, however, that upon written request the transferee thereof shall enter into an agreement with Appriss providing for the confidential treatment by such transferee of such manuals and documentation, which agreement shall be on terms and conditions comparable to those then binding Customer and Appriss with respect to such matters.

## **16. INSURANCE**

### **16.1 Appriss Insurance**

Appriss shall maintain insurance coverage, and on all certificates for coverage under general liability, automobile liability, employer's liability, worker's compensation, and any other coverage required under State law, shall:

- (i) name Customer as an additional insured, including without limitation, as an insured with respect to third-party claims or actions made or brought directly against Customer or against Customer and Appriss as co-defendants and arising out of or in connection with this Agreement;
- (ii) contain a provision that Customer, although named an insured, shall nonetheless be entitled to recovery for any loss suffered by Customer as a result of Appriss's negligence;
- (iii) be written as a primary policy not contributing with any other coverage which Customer may carry; and
- (iv) stipulate that Customer shall receive thirty (30) days prior written notice of any cancellation or reduction in coverage; provided that such



cancellation or alteration shall not relieve Appriss of its continuing obligation to maintain insurance coverages in accordance with this Section 16.

Appriss agrees to maintain general liability, automobile, employer's liability, completed operations, errors and omissions, and fidelity insurance in amounts of at LEAST ONE MILLION (\$1,000,000) DOLLARS per occurrence. Such insurance shall be maintained at all times during the performance of this Agreement, and the completed operations insurance and the errors and omissions insurance shall be maintained for a further period of two (2) years thereafter. Any and all exclusions to other limits or restrictions on coverage of any such insurance shall be subject to Customer's authorization.

#### **16.2 Insurance Documentation**

Appriss shall furnish Customer with certificates of insurance executed by the insurers evidencing all of the insurance referred to herein (including renewals of insurance). Appriss's obligations under this Section 16 shall in no way affect the indemnification, remedy, or warranty provisions set forth in this Agreement.

### **17. TERMINATION**

#### **17.1 Termination for Convenience**

Customer may, in its sole discretion, terminate this Agreement in whole or in part, without recourse, liability or penalty, upon thirty (30) calendar days notice to Appriss.

#### **17.2 Notice of Change in Control of Appriss**

In the event of a sale, transfer or assignment of all or substantially all of the assets of Appriss, Appriss will provide Customer, at least ninety (90) calendar days' notice to Customer of the sale, transfer or assignment.

#### **17.3 Termination for Cause**

1. If either Customer or Appriss fails to perform any of its obligations or breaches any representations or warranties hereunder (except as provided in subsection (2)), and such failure is not cured within thirty (30) calendar days after notice is given to the defaulting Party, then the non-defaulting Party may, upon further notice to the defaulting Party, terminate this Agreement as to all or part of the Deliverables or Services being or to be provided by Appriss hereunder, as of the date specified in the notice of termination; provided, however, that if, after the defaulting Party's best efforts such default could not be cured within such thirty (30) day period, the time to cure a default shall extend for up to fifteen (15) calendar days from the date on which a notice of default is received by the defaulting Party, if the defaulting Party has promptly commenced to cure the default and continues to use its best efforts to cure such default during the fifteen (15) day period.
2. If either Customer or Appriss repeatedly fails to perform any of its obligations or breaches any representations hereunder, regardless of whether such failures or breaches are cured, the non-defaulting Party may, upon further notice to the defaulting Party, terminate all or part of the Deliverables or Services being or to be provided by Appriss hereunder, as of the date specified in such notice of termination.

**17.4 Termination for Insolvency**

In the event either Party is unable to pay its debts generally as they come due, or is declared insolvent or bankrupt, or is the subject of any proceedings relating to its liquidation, insolvency or for the appointment of a receiver or similar officer for it, makes an assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, extension, or adjustment of all or substantially all of its obligations, then the other Party hereto may, by giving written notice thereof to such Party, terminate this Agreement as of the date specified in the notice of termination.

**17.5 Other Terminations**

This Agreement may also terminate pursuant to Section 12.8 and Section 20.6. Any termination effected pursuant to these Sections shall not be subject to Section 17.3.

**17.6 Effect of Partial Termination**

In the event of a termination of this Agreement pursuant to this Section 17 as to part of the Deliverables or Services provided or to be provided by Appriss hereunder, this Agreement shall remain in effect with respect to those Deliverables and/or Services still to be provided by Appriss.

**17.7 Funding Out**

Unless Appriss is otherwise notified in writing by Customer, the obligations, duties, responsibilities and liabilities of Customer to Appriss automatically terminate, cease, expire upon the termination, cessation or expiration of grant funding from the Office of the Attorney General of Texas.

**18. AUDIT RIGHTS; RECORDS RETENTION****18.1 Duty to Maintain Records**

Appriss shall maintain adequate records to support its charges, procedures, and performances to Customer for all work related to this Agreement. Appriss also shall maintain such records as are deemed necessary by the Customer, Customer's auditor, the OAG and auditors of the State of Texas, the United States, or such other persons or entities designated by the Customer, to ensure proper accounting for all costs and performances related to this Agreement.

**18.2 Records Retention**

Appriss shall maintain and retain for a period of four (4) years after the submission of the final expenditure report, or until full and final resolution of all audit or litigation matters which arise after the expiration of the four (4) year period after the submission of the final expenditure report, whichever time period is longer, such records as are necessary to fully disclose the extent of services provided under this Agreement, including but not limited to any daily activity reports and time distribution and attendance records, and other records that may show the basis of the charges made or performances delivered.



### **18.3 Audit Trails**

Appriss shall maintain appropriate audit trails to provide accountability for updates to mission critical information, charges, procedures, and performances. Audit trails maintained by Appriss will, at a minimum, identify the supporting documentation prepared by Appriss to permit an audit of the system by tracing the activities of individuals through the system. Appriss's automated systems must provide the means whereby authorized personnel have the ability to audit and to verify contractually required performances and to establish individual accountability for any action that can potentially cause access to, generation of, or modification of confidential information. Appriss agrees that Appriss's failure to maintain adequate audit trails and corresponding documentation shall create a presumption that the services or performances were not performed.

### **18.4 Access**

Appriss shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, and any other items relevant to the performance of this Agreement and the operation and management of Appriss to the Customer, auditors of Customer, the OAG, the State of Texas, the United States, or such other persons or entities designated by Customer for the purposes of inspecting, auditing, or copying such items. All records, books, documents, accounting procedures, practices, and any other items, in whatever form or media, relevant to the performance of this Agreement shall be subject to examination or audit in accordance with all contract performances and duties, all applicable state and federal laws, regulations or directives, by the Customer, auditors of Customer, the OAG, the State of Texas, the United States, or such other persons or entities designated by Customer. Appriss will direct any subcontractor to discharge Appriss's obligations to likewise permit access to, inspection of, and reproduction of all books and records of the subcontractor(s) that pertain to this Agreement.

### **18.5 Location**

Any audit of documents listed in Section 18.4 shall be conducted at the Appriss's principal place of business and/or the location(s) of the Appriss's operations during the Appriss's normal business hours and at the Customer's expense. Appriss shall provide to Customer and such auditors and inspectors as Customer may designate in writing, on Appriss's premises (or if the audit is being performed of a subcontractor, the subcontractor's premises if necessary) space, office furnishings (including lockable cabinets), telephone and facsimile services, utilities and office-related equipment and duplicating services as Customer or such auditors and inspectors may reasonably require to perform the audits described in this Section 18.

### **18.6 Reimbursement**

. If an audit or examination reveals that Appriss's invoices for the audited period are not accurate, Appriss shall promptly reimburse Customer for the amount of any overcharge, unallowable or excessive amount.

### **18.7 Reports**

Appriss shall provide to Customer periodic status reports in accordance with Customer's audit procedures regarding Appriss's resolution of any audit-related compliance activity for which Appriss is responsible.

## 19. TERMINATION ASSISTANCE

### 19.1 Termination Assistance Services

In the event of the expiration or termination of all or part of the Services hereunder, Appriss shall, upon Customer's request, continue to provide the Services that were provided by Appriss prior thereto as well as any new Services requested by Customer that may be required to facilitate the transfer of the affected Services to Customer or a third-party service provider, as applicable, including providing to Customer or third-party personnel training in the performance of the affected Services (collectively, the Termination Assistance Services) in accordance with the following:

1. At no additional cost, Appriss shall provide to Customer and any designated third-party service provider: (i) in writing, to the extent available, applicable requirements, standards, policies, operating procedures and other documentation relating to the affected Services, and (ii) necessary access to the systems and sites from which the affected Services were provided.
2. If and to the extent requested by Customer, Appriss shall assist Customer in developing a plan that shall specify the tasks to be performed by the Parties in connection with the Termination Assistance Services and the schedule for the performance of such tasks.
3. Appriss will provide the Termination Assistance Services for a period of up to one (1) year as may be reasonably required by Customer for the orderly transition of the affected Services (the Termination Assistance Period), as agreed upon by Customer and Appriss, except to the extent that resources included in the fees otherwise being paid by Customer to Appriss can be used to provide the Termination Assistance Services.
4. Following the Termination Assistance Period, Appriss shall: (i) answer questions from Customer regarding the Services on an "as needed" basis as agreed upon by Customer and Appriss, and (ii) deliver to Customer any remaining Customer-owned reports and documentation still in Appriss's possession.
5. Upon request from Customer, Appriss shall, to the extent permitted by third-party contracts:
  - a. Make available any Appriss Equipment dedicated to the performance of the affected Services, by allowing Customer or its designee to: (i) purchase, at the lesser of fair market value and book value, any such Appriss Equipment owned by Appriss, and (ii) assume the lease of any such Appriss Equipment leased by Appriss.
  - b. Transfer or assign, upon Customer's request, any third-party contracts applicable to the affected Services for maintenance, disaster recovery services or other necessary third-party services being used by Appriss and dedicated to the performance of the affected Services, to Customer or its designee, on terms and conditions acceptable to all parties.
  - c. License to Customer, or assist Customer in obtaining a license to, Software then being used by Appriss in providing the Services in accordance with the provisions of Section 14 of this Agreement.
6. Continue to provide the Services and any new Services requested by Customer that may be required to facilitate the transfer of Services requested by Customer to Customer or Customer's designee.



7. Appriss shall provide to Customer, in the form and of the content requested by Customer, inventories of the Equipment and Software used in connection with the provision of the Services as needed.

Appriss shall not degrade the quality or level of its performance during the Termination Assistance Period.

### **19.2 Divested Entities**

In the event an entity or unit of Customer is sold or otherwise divested (the Divested Entity), Appriss shall, upon Customer's request and subject to the Divested Entity providing Appriss with reasonable assurances that it will pay all amounts due, provide all or part of the Services to the Divested Entity for a period of one (1) year after the effective date of the sale or divestiture, on the same terms as the terms under which such Services are then being provided to Customer hereunder.

### **19.3 Third-Party Consents for Termination Assistance**

Appriss shall ensure that all consents or approvals to allow Appriss to provide the Termination Assistance Services hereunder have been obtained, on a contingent basis, in advance and will be provided by the applicable third parties at no cost or delay to Customer.

## **20. MISCELLANEOUS PROVISIONS**

### **20.1 Taxes**

The fees paid to Appriss pursuant to this Agreement are inclusive of any applicable sales, use, personal property or other taxes attributable to periods on or after the applicable effective date of this Agreement and based upon or measured by Appriss's cost in acquiring or providing products and/or services and related materials and supplies furnished or used by Appriss in performing its obligations hereunder, including all personal property and use taxes, if any, due on equipment or software owned by Appriss.

### **20.2 Compliance with Laws and Regulations**

Appriss agrees that it will comply with the provisions of all applicable federal, state, county and local laws, ordinances, regulations and codes in the performance of this Agreement, including the procurement of permits and certificates where needed. Appriss further agrees to indemnify and hold harmless Customer for any loss or damage that may be sustained by reason of Appriss's failure to comply with the aforementioned federal, state, county and local laws, ordinances, regulations and codes.

### **20.3 Compliance with Customer Security Policies and Procedures**

Appriss agrees that it will comply with all Customer policies and procedures applicable to the security and safety of Customer's information in the possession of Appriss, and shall establish and maintain safeguards for the protection thereof.

### **20.4 Independent Contractor Status and General Liability Provision**

Appriss shall be deemed to be an independent contractor hereunder and shall not be considered or permitted to be an agent, servant, joint venturer, joint enterpriser or partner of Customer. Appriss agrees to take such steps as may be necessary to ensure that each subcontractor of Appriss will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, joint enterpriser or partner

of Customer. All persons furnished, used, retained, or hired by or on behalf of Appriss or any of its subcontractors shall be considered to be solely the employees or agents of Appriss or such subcontractor, and Appriss shall be responsible for ensuring that there is payment of any and all unemployment, social security, and other payroll taxes for such persons, including any related assessments or contributions required by law. Appriss further agrees to indemnify and hold harmless Customer for any loss or damage that may be sustained by reason of claims or actions to recover damages against Customer for vicarious liability or for claims by Appriss' employees, servants, agents, subcontractors or designees seeking damages for any and all unemployment, social security, and other payroll taxes for such persons, including any related assessments or contributions required by law.

#### **20.5 Publicity**

Neither Party shall use the other Party's name or refer to the other Party directly or indirectly in any media release, public announcement or public disclosure relating to this Agreement or any acquisition pursuant hereto, including in any promotional or marketing materials, customer lists, referral lists or business presentations, without consent from the other Party for each such use or release. Neither Party may use any trademark or service mark of the other Party without that Party's consent, which consent shall be given in the Party's sole discretion.

#### **20.6 Force Majeure**

Neither Party shall be deemed to be in default of any provision of this Agreement for failures in performance resulting from acts or events beyond the reasonable control of such Party. Such acts shall include, but not be limited to, acts of God, civil or military authority, civil disturbance, war, strikes, fires, other catastrophes, or other similar events beyond the Parties' reasonable control (Force Majeure Event); provided, however, that the provisions of this Section shall not preclude Customer from canceling or terminating this Agreement as permitted hereunder, regardless of any Force Majeure event occurring to Appriss.

Should a Force Majeure event continue for more than thirty (30) days, either Party will have the right to immediately terminate this Agreement as to all or part of the Services provided or to be provided hereunder.

#### **20.7 Notices**

Any and all notices permitted or required to be given hereunder shall be deemed duly given (i) upon actual delivery, if delivery is by hand; or (ii) upon delivery into the United States mail if delivery is by postage paid registered or certified return receipt requested mail. Each such notice shall be sent to the respective Party at the address indicated below or to any other address as the respective Party may designate by notice delivered pursuant to this Section.

#### **Appriss Address:**

10401 Linn Station Road, Suite 200  
Louisville, KY 40223



**Customer Address:**

Hunt County  
2801 Stuart  
Greenville, TX 75401-4240

**20.8 Cumulative Remedies**

Except as specifically provided herein, no remedy made available to Customer hereunder is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy provided hereunder or available at law or in equity.

**20.9 Amendment**

This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by authorized personnel of the Parties for that express purpose. All amendments or modifications of this Agreement shall be binding upon the Parties despite any lack of consideration. Any attempted amendment or modification of this Agreement that does not comply with this Section will be deemed void.

**20.10 Non-waiver**

The failure of any party to insist upon strict performance of any of the terms or conditions herein, irrespective of the length of time for which such failure shall continue, shall not be a waiver of that party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any breach or default in the performance of the same or any other obligation of this Agreement. No term or provision of this Agreement or of any document incorporated herein by reference shall be deemed waived and no breach shall be deemed excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented.

**20.11 Partial Invalidity**

If any term or provision of this Agreement, or of any document incorporated herein by reference, shall be found to be illegal or unenforceable then, notwithstanding such illegality or unenforceability, this Agreement, and each incorporated document, shall remain in full force and effect and such term or provision shall be deemed to be deleted.

**20.12 Non-hire of Staff**

The Parties agree that during the Term hereof and for a period of one year following the termination of this Agreement, neither Party shall directly or indirectly solicit or in any manner attempt to hire any employee of the other Party or otherwise encourage any such employee to pursue any other employment or career opportunities.

**20.13 Successors and Assigns**

To the extent permitted by law, this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns, if any, of the Parties, except that nothing contained in this Section shall be construed to permit any attempted assignment that would be unauthorized or void pursuant to any other provision of this Agreement.

#### **20.14 Attorney's Fees**

With respect to any dispute arising out of or relating to this Agreement, or the breach hereof, the prevailing Party shall be entitled to recover its reasonable attorney's fees and costs incurred in connection with any action or proceeding related to such dispute.

#### **20.15 Table of Contents; Headings**

The Table of Contents and the Section, Paragraph and Subparagraph headings used in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

#### **20.16 Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

#### **20.17 Entire Agreement**

This Agreement reflects the entire agreement between the Parties with respect to the subject matter therein described, and there are no other representations, understandings or agreements between the Parties relative to such subject matter.

#### **20.18 Rights Upon Orderly Termination**

Upon termination or other expiration of this Agreement, each Party shall forthwith return to the other all papers, materials and properties of the other held by such Party and required to be returned by this Agreement. In addition, each Party will assist the other Party in the orderly termination of this Agreement and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party.

#### **20.19 Survival of Representations and Warranties**

The terms and provisions contained in this Agreement that by their sense and context are intended to survive the performance hereof by either or both Parties hereto shall so survive the completion of performance and termination of this Agreement, including without limitation the making of any and all payments due hereunder.

#### **20.20 Governing Law; Venue**

This Agreement is made and entered into in the State of Texas, and this Agreement and all disputes arising out of or relating thereto shall be governed by the laws of the State of Texas, without regard to any otherwise applicable conflict of law rules or requirements.

Appriss agrees that any action, suit, litigation or other proceeding (collectively "litigation") arising out of or in any way relating to this Agreement, or the matters referred to therein, shall be commenced exclusively in the Customer's District Court or the United States District Court in the District and Division where Customer is located, and hereby irrevocably and unconditionally consent to the exclusive jurisdiction of those courts for the purpose of prosecuting and/or defending such litigation. Appriss hereby waives and agrees not to assert by way of motion, as a defense, or otherwise, in any suit, action or proceeding, any claim that (a) Appriss is not personally subject to the jurisdiction of the above-named courts, (b) the suit, action or proceeding is brought in an inconvenient forum or (c) the venue of the suit, action or proceeding.



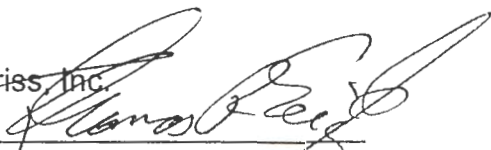
**20.21 Covenant of Further Assurances**

The Parties covenant and agree that, during the Term hereof and without any additional consideration, each of Customer and Appriss shall execute and deliver any further legal instruments and perform any acts which are or may become necessary to effectuate the purposes of this Agreement and any amendment or modification hereto.

The Parties have read this Agreement, understand it, agree that the terms hereof shall be incorporated into the Agreement, and agree to be bound thereby.

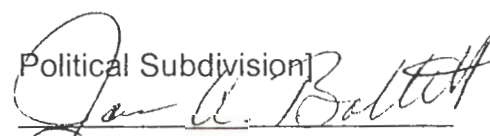
IN WITNESS WHEREOF, this Agreement has been executed by the Parties to be effective as herein above provided.

Appriss, Inc.

  
 title: Vice President of Government Sales

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

Political Subdivision]

  
 [authorized signatory]
Date: 12-22-03**21. SERVICES AGREEMENT EXHIBITS**

Separate Exhibits are attached and incorporated.

Exhibits to be attached to as addenda and incorporated into the Services Agreement will include the following:

- S-01 Service Specification
- S-11 Service Level Standards
- S-12 Service Performance Reports
- K-01 Schedule of Payments
- V-01 Vendor Certification

04-05605



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

# Texas VINE GRANT CONTRACT

## Hunt County



## GRANT CONTRACT

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## GRANT CONTRACT

**THIS GRANT CONTRACT**, including all Exhibits and Schedules attached hereto and incorporated herein by reference (the Agreement) is made and entered into by and between Hunt County hereinafter referred to as 'COUNTY' and the Office of the Attorney General of Texas (OAG). COUNTY and the OAG may be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

**NOW, THEREFORE**, in consideration of the covenants, agreements and conditions herein contained, the Parties agree as follows:

### 1. PURPOSE; CONSTRUCTION OF AGREEMENT

#### 1.1 Purpose.

The purpose of this Agreement is to reimburse COUNTY for certain cost incurred in the participation in a statewide crime victim notification service.

To ensure a standard statewide service to all interested counties, including COUNTY, the OAG will reimburse COUNTY for services delivered to COUNTY by the vendor certified by the OAG to provide such standard statewide services. The certification and the certification process is documented in that certain document dated November 22, 2002 and entitled: Vendor Certification for the Statewide Automated Victim Notification Service (SAVNS). This document is hereinafter referred to as the 'Certification' is expressly incorporated herein by reference. The vendor certified to provide the services is Appriss, Inc. a Kentucky corporation authorized to do business in Texas (hereinafter 'Certified Vendor').

This Agreement documents the requirements, conditions, obligations, limitations, and other terms for the COUNTY to be eligible for cost reimbursement by the OAG.

**1.2 Construction of Agreement.** The provisions of this Section 1 are intended to be a general introduction to this Agreement, and to the extent the terms and conditions of this Agreement do not address a particular circumstance or are otherwise unclear or ambiguous, such terms and conditions are to be interpreted and construed consistent with the objectives, expectations and purposes stated in this Section 1. All Exhibits and Schedules attached hereto are hereby incorporated by reference herein in their entirety for all purposes.

### 2. COUNTY OBLIGATIONS

**2.1 County Implementation Plan.** As a condition precedent to any reimbursement of allowable costs, COUNTY will prepare a plan to implement the services in the COUNTY (County Implementation Plan). Before commencing any compensable work,

the County Implementation Plan, at a minimum will include:

1. a list of tasks and activities required of COUNTY and that are necessary for the successful implementation and testing of the services;
2. a schedule that describes the time frames that each increment of work will be performed and completed;
3. identification and commitment of staff resources and equipment necessary install and implement the services in a timely manner;

**2.2 Services Contract.** COUNTY will execute a services contract with the Certified Vendor to provide services consistent with the Certification document. The COUNTY services contract will include terms and conditions that are intended to provide the COUNTY such rights and remedies as are necessary to ensure the delivery of the services in accordance with the **Scope of Services** section herein. For the convenience of COUNTY, a template services contract is made available to COUNTY. The OAG is not acting as an attorney for the COUNTY, therefore the COUNTY is advised to have attorneys of its choice to review and modify the template services contract to protect the interest of the COUNTY and to assure that the services will be delivered according the Certification document.

**2.3 Implementation.** COUNTY will implement the services in a manner consistent with the Scope of Services and the COUNTY Implementation Plan. COUNTY agrees to execute the County Verification Plan within thirty (30) calendar days after the Certified Vendor verification and testing is complete. COUNTY agrees to provide documentation of any programming or system errors to the Certified Vendor within that same thirty (30) calendar day period.

**2.4 Maintenance Plan.** COUNTY will prepare and maintain a maintenance plan that at a minimum is to designed to:

1. make available offender information that is timely, accurate and relevant to support the victim notification services;
2. verify the Certified Vendor's performance according to the COUNTY services contract;
3. satisfactorily discharge such COUNTY obligations as described in the COUNTY services contract.

**2.5 Monitoring of Services; Statewide Stakeholders.** COUNTY will inspect, monitor and verify the performances required of the Certified Vendor. COUNTY will reasonably cooperate with and participate in Statewide Stakeholders meetings and



efforts to monitor and improve the services on a statewide basis. COUNTY may reasonably agree to designate third-parties to assist COUNTY and the other Statewide Stakeholders, in the overall monitoring, inspection and verification of the Certified Vendor's performances.

### 3. SCOPE OF SERVICES

**3.1 Statewide Deliverables.** The services are described by two sets of documents: (1) the Statewide Deliverables, and (2) the COUNTY Deliverables. The Statewide Deliverables describe the services and structure of the victim notification system on a statewide basis. The Statewide Deliverables may be modified from time to time by the OAG upon the recommendation of the Statewide Stakeholders Committee. The Statewide Deliverables include:

S-01	Service Specification
S-02	Questionnaire Template
S-03	Statewide Implementation Plan
S-04	Stakeholder Communication Plan
S-05	Call Center Infrastructure
S-06	County Implementation Plan Template
S-07	Web Sites(s)
S-08	Statewide Promotions Package
S-09	Internal Test Guide
S-10	Statewide Implementation Status Reports
S-11	Service Level Standards
S-12	Service Performance Reports
V-01	Vendor Certification

The Statewide Deliverables are incorporated herein by reference.

**3.2 COUNTY Deliverables.** The COUNTY deliverables reflect the Statewide Deliverables, as customized to meet the specific needs of COUNTY (COUNTY Deliverables). COUNTY deliverables include:

C-02	County Implementation Plan
C-03	County Infrastructure
C-04	Application Interface
C-05	Customer Verification Plan
C-06	County Support Document
C-07	County Promotions Package
C-08	Production Notice
C-09	County Web Access

County will implement these deliverables through the COUNTY services contract. After these deliverables are completed and approved by COUNTY, these COUNTY

Deliverable are incorporated herein by reference.

**3.3 Service Levels.** Certain standards and levels of performance to be provided by the Certified Vendor to COUNTY are described in the Statewide Deliverable S-11 Service Level Standards and the COUNTY services contract. Other standards and levels of performance are described in the other Statewide and COUNTY Deliverables. COUNTY will inspect, monitor and verify the performances required of the Certified Vendor. In addition to the requirements in the COUNTY services contract to inspect, monitor and verify the performances required of the Certified Vendor, County agrees to register for, verify, and document at least eight notification events each month. COUNTY will provide the OAG with periodic reports as requested by the OAG describing COUNTY monitoring, findings and observations.

**3.4 XML Extract.** To the extent permitted by law, COUNTY agrees to provide the OAG with a copy of data transmitted by COUNTY to the Certified Vendor. COUNTY authorizes the Certified Vendor to directly provide such data to the OAG. The Parties agree that this data may be used to monitor COUNTY performance and the Certified Vendor's performance. This data may be used for such other purposes allowed by law. The data will be provided in such electronic format (including but not limited to an XML extract) as requested by the OAG.

**3.5 COUNTY Scope of Services Obligations.** For the purpose of this Agreement, the requirements, duties and obligations contained in the Statewide Deliverables, COUNTY Deliverables, Service Levels and other requirements of this section 3 are collectively referred to as the 'Scope of Work'. As a condition of reimbursement, County agrees to faithfully, timely and in a good and workman like manner implement and maintain the services in compliance with the Scope of Work.

#### **4. REIMBURSEMENT**

**4.1 Maximum Liability of the OAG.** The parties stipulate and agree that the total liability of the OAG to COUNTY in consideration of full, satisfactory and timely performance of all its duties, responsibilities, obligations, liability, and for reimbursement of all expenses, if any, as set forth in this Agreement or arising out of any performance herein shall not exceed FORTY-NINE THOUSAND THREE HUNDRED SEVENTY-THREE AND NO/100 (\$49,373.00) DOLLARS for the Term of this Agreement. The parties stipulate and agree that any act, action or representation by either party, their agents or employee that purport to increase the liability of the OAG is void, without first executing a written amendment to this Agreement and specifically amending this section. The parties acknowledge and agree that nothing in this Agreement will be interpreted to create an obligation or liability in excess of the funds currently stated in this Agreement.

The parties acknowledge, stipulate and agree that funding for this Agreement is subject



to the actual receipt of grant funds appropriated to the Office of the Attorney General and such funds are sufficient to satisfy all of OAG's duties, responsibilities, obligations, liability, and for reimbursement of all expenses, if any, as set forth in this Agreement or arising out of any performance pursuant to this Agreement. The parties further understand, acknowledge, stipulate and agree that the grant funds, if any, received from the Office of the Attorney General are limited by the term of each state biennium and by specific appropriation authority to the Office of the Attorney General for the subject matter of this Agreement.

**4.2 Grant Contract Not Entitlement or Right.** COUNTY understands and agrees that: (1) reimbursement from grant funds is not an entitlement or right; and (2) it may not be reimbursed for costs incurred during the grant term or expenses paid during or subsequent to the grant term unless the COUNTY strictly complies with all terms, conditions, and provisions of this Agreement. **COUNTY understands and agrees that it will not be reimbursed for the cost of vendor services provided or delivered before the commencement date of this contract.**

**4.3 Reimbursable Cost; Generally.** Upon evidence of satisfactory compliance with the terms and conditions of this Agreement, the OAG will reimburse COUNTY, subject to the limitations in Section 4.1, for such actual, reasonable and necessary amounts expended in the performance of this Agreement. Only those costs allowable under applicable UGMS cost principles are eligible for reimbursement under this contract. The COUNTY acknowledges that it is a sub-recipient of state pass-through funds from the Crime Victims Compensation Fund. Therefore, the following cost principles, audit requirements, and administrative requirements shall apply:

<u>Cost Principles</u>	<u>Administrative Requirements</u>	<u>Audit Requirements</u>
OMB A-87 as modified by UGMS	OMB A-102 as modified by UGMS	OMB A-133 as modified by UGMS
Uniform Grant Management Standards (UGMS) pursuant to Government Code Chapter 783	Uniform Grant Management Standards (UGMS) pursuant to Government Code Chapter 783	Texas State Single Audit Circular

Copies of these documents referenced above will be provided to the COUNTY by OAG upon request and are incorporated by reference as a part of this Agreement.

Before incurring any out-of-state travel expenses, the COUNTY must obtain prior written authorization for that travel from the OAG.

To be eligible for reimbursement under this contract, a cost must have been incurred or

obligated by the COUNTY within the applicable contract period prior to claiming reimbursement from the OAG. Costs incurred by the last day of the applicable contract term must be liquidated no later than 30 calendar days after the end of the applicable contract period.

If the COUNTY expends \$300,000 or more in state financial assistance during its fiscal year, it shall arrange for a single audit of that fiscal year. The audit must be conducted by an independent CPA and must be in accordance with the applicable government auditing standards, the Texas State Single Audit Circular and the UGMS published by the Governor's Office of Budget and Planning. For the purposes of this contract, the audit provisions of OMB Circular A-133 shall apply to county contracting entities.

If the COUNTY is expending less than \$300,000 in total state financial assistance during its fiscal year, it shall arrange for an annual independent financial audit in accordance with generally accepted government auditing standards of that fiscal year.

For purposes of this Article, the COUNTY shall comply with the applicable OMB Circulars with the following modifications: All references to "Federal Grantor Agency(ies)" shall be expanded to read "Federal or State Grant Agency(ies)." All references to "Federal Grant Funds" or "Federal Assistance" shall be expanded to read "Federal and State Assistance;" "Federal Law" shall be expanded to read "Federal or State Law;" and all references to "Federal Government" shall be expanded to read "Federal or State Government," as applicable.

In procuring any audit services required by this contract and/or by law, the COUNTY shall comply with applicable state procurement procedures, as well as any requirements found in UGMS regarding such procurement.

The COUNTY shall submit to the OAG two (2) bound copies of any and all applicable audit reports, management letters, and management responses. Such reports, letters, and responses must be submitted on or before whichever of the following dates occurs first:

- a. thirty (30) days after the issuance of the audit report;
- b. within nine (9) months after the end of the audited fiscal year for those COUNTY whose fiscal year begins on or after October 1.

The COUNTY shall provide physical access, without prior notice, and shall direct any contractor and subcontractor to likewise grant access to all program delivery sites to representatives of the State of Texas and or the OAG.

**4.4 Reimbursement; COUNTY Service Contract.** Upon evidence of satisfactory compliance with the terms and conditions of this Agreement, the OAG will reimburse COUNTY such actual, reasonable and necessary amounts expended, subject to the limitations in Section 4.1, for the COUNTY Service Contract.



**4.5 Advance Funding to COUNTY.** In lieu of the reimbursement processes addressed above, the OAG will provide limited, advance funding to COUNTY, if the COUNTY states in writing that advance funding is required for implementation.

The OAG will provide an advance funding to COUNTY for the each payment milestone in the COUNTY Service Contract as follows: (1) an amount equal to the payment milestone 1 will be advanced to COUNTY no sooner than thirty (30) calendar days prior to the payment milestone becoming due and payable under the COUNTY Service Contract; (2) an amount equal to the payment milestone 2 will be advanced to COUNTY no sooner than thirty (30) calendar days prior to payment milestone becoming due and payable under the COUNTY Service Contract.

The COUNTY must submit an invoice to the OAG specifically requesting an advance funding, the amount of the payment and the invoice must state the date that the work underlying the payment milestone will be completed. The COUNTY should submit an invoice to the OAG no sooner than forty-five (45) days and no later than thirty (30) days before the COUNTY needs to receive the funding.

## **5. Invoice for Reimbursable Cost**

**5.1 Form of Invoice.** The form of any invoice for reimbursement of expenses submitted under this section must comply with such invoicing requirements and such detail and supporting documentation that the OAG may from time to time require. The OAG is under no obligation to reimburse COUNTY if supporting documentation is not provided on a timely basis.

Each invoice presented must include the OAG's contract number. The invoice must identify COUNTY vendor identification number, a description of the expense, and a notation that the requested reimbursement in regards to the Crime Victim Services Division, Victim Notification Services Grants.

The invoices must be submitted to:

Attn.: Contract Processing  
Office of the Attorney General  
Accounting Division, Mail Code 003  
Post Office Box 12548  
Austin, Texas 78711-2548

**5.2 Timing of Invoice.** The COUNTY shall submit its claims for reimbursement to the OAG within twenty (20) calendar days following the end of the month that a reimbursable expenditure was incurred. The COUNTY may submit a make-up claim as a final close-out invoice not later than the earlier of (1) forty-five (45) calendar days after termination; or (2) forty-five (45) calendar days after the end of a state fiscal biennium.

**5.3 Direct Deposit.** The COUNTY may make a written request to the OAG to be placed on Direct Deposit status by completing and submitting to the OAG the State Comptroller's Direct Deposit Authorization Form. After the direct deposit request is approved by the OAG and the setup is completed on the Texas Identification Number System by the State Comptroller's Office, payment will be remitted by direct deposit and the OAG will discontinue providing the COUNTY with copies of reimbursement vouchers.

**5.4 Excess Payments; Refund; Setoff.** Payment under this Agreement will not foreclose the right of the OAG to recover excessive or unallowable payments from the COUNTY. The COUNTY shall refund to the OAG within thirty (30) calendar days from date of request any funds the COUNTY claims and receives from the OAG for the reimbursement of costs which are subsequently determined by the OAG to be ineligible for reimbursement.

The OAG will have the right to withhold all or part of any future payments to the COUNTY to offset any reimbursement made to the COUNTY for any ineligible expenditures not yet refunded to the OAG by COUNTY. The OAG may withhold reimbursement(s) from either this contract or an expired contract between the parties with the same funding source, in amounts necessary to fulfill the repayment obligations of the COUNTY.

## **6. AGREEMENT TERM**

**6.1 Initial Term.** This term of this Agreement shall commence on the final approval, execution by the OAG and the delivery of this grant contract to COUNTY and terminate on August 31, 2005, unless terminated earlier as provided by another provision of this Agreement. No commitment of grant funds is permitted prior to the first day or subsequent to the last day of the Initial Term. Nothing herein shall prevent the parties from revising the term of this Agreement by a written amendment.

**6.2 Renewal Term.** Subject to the availability of future grant funds for this Agreement, this Agreement may be renewed for an additional period to coincide with the term of future appropriations for the purposes of this Agreement. Such renewal shall be by a written amendment and executed with the same formalities as this Agreement.

## **7. TERMINATION**

**7.1 Termination for Convenience.** Either Party may, in its sole discretion, terminate this Agreement in whole or in part, without recourse, liability or penalty, upon thirty (30) calendar days notice to other party.



**7.2 Termination for Cause.** In the event that COUNTY fails to perform its obligations according to the provisions of this Agreement, or fails to comply with any of the terms or conditions of this Agreement, the OAG may, upon written notice of default to COUNTY, immediately terminate all or any part of this Agreement. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law, or under this Agreement.

**7.3 Rights Upon Termination or Expiration.** Upon termination of the Agreement for cause, all work product, Deliverables, equipment, all files, records, reports, data, intellectual property license or right and other documents obtained, used, prepared or otherwise developed by COUNTY in the performance of the scope of work authorized by this Agreement shall vest in the OAG, and upon request of the OAG shall be delivered to the OAG within thirty (30) business days after expiration or termination. The OAG is granted the unrestricted right to use, copy, modify, prepare derivative works, publish and distribute, at no additional cost to the OAG, in any manner the OAG deems appropriate in its sole discretion, any component of the work product or other deliverable made the subject of this Agreement.

**8. Intellectual Property.** The COUNTY understands and agrees that where funds obtained under this Agreement may be used to produce original books, manuals, films, or other original material and intellectual property, the COUNTY may copyright such material subject to the royalty-free, non-exclusive, and irrevocable license which is hereby reserved to the OAG, or state government. The OAG is granted the unrestricted right to use, copy, modify, prepare derivative works, publish and distribute, at no additional cost to the OAG, in any manner the OAG deems appropriate in its sole discretion, any component of such intellectual property made the subject of this Agreement.

The COUNTY may publish at its expense the results of its contract performance if it first obtains prior OAG review of that publication. Any publication (written, visual, or sound) must include acknowledgment of the support received from the OAG and the appropriate state grant, if applicable. At least three (3) copies of any such publication must be provided to the OAG. The OAG reserves the right to require additional copies before or after the initial review. All copies shall be provided to the OAG free of charge.

## **9. AUDIT RIGHTS; RECORDS RETENTION**

**9.1 Duty to Maintain Records.** COUNTY shall maintain adequate records to support its charges, procedures, and performances to OAG for all work related to this Agreement. COUNTY also shall maintain such records as are deemed necessary by the OAG, OAG's auditor, the OAG and auditors of the State of Texas, the United States, or such other persons or entities designated by the OAG, to ensure proper accounting for all costs and performances related to this Agreement.

**9.2 Records Retention.** COUNTY shall maintain and retain for a period of four (4) years after the submission of the final expenditure report, or until full and final resolution of all audit or litigation matters which arise after the expiration of the four (4) year period after the submission of the final expenditure report, whichever time period is longer, such records as are necessary to fully disclose the extent of services provided under this Agreement, including but not limited to any daily activity reports and time distribution and attendance records, and other records that may show the basis of the charges made or performances delivered.

**9.3 Audit Trails.** COUNTY shall maintain appropriate audit trails to provide accountability for updates to mission critical information, charges, procedures, and performances. Audit trails maintained by COUNTY will, at a minimum, identify the supporting documentation prepared by COUNTY to permit an audit of the system by tracing the activities of individuals through the system. COUNTY's automated systems must provide the means whereby authorized personnel have the ability to audit and to verify contractually required performances and to establish individual accountability for any action that can potentially cause access to, generation of, or modification of confidential information. COUNTY agrees that COUNTY's failure to maintain adequate audit trails and corresponding documentation shall create a presumption that the services or performances were not performed.

**9.4 Access.** COUNTY shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, and any other items relevant to the performance of this Agreement and the operation and management of COUNTY to the OAG, the State of Texas, the United States, or such other persons or entities designated by OAG for the purposes of inspecting, auditing, or copying such items. All records, books, documents, accounting procedures, practices, and any other items, in whatever form or media, relevant to the performance of this Agreement shall be subject to examination or audit in accordance with all contract performances and duties, all applicable state and federal laws, regulations or directives, by the OAG, the State of Texas, the United States, or such other persons or entities designated by OAG. COUNTY will direct any contractor to discharge COUNTY's obligations to likewise permit access to, inspection of, and reproduction of all books and records of the subcontractor(s) that pertain to this Agreement.

**9.5 Location.** Any audit of documents listed in Section 9.4 shall be conducted at the COUNTY's principal place of business and/or the location(s) of the COUNTY's operations during the COUNTY's normal business hours and at the OAG's expense. COUNTY shall provide to OAG and such auditors and inspectors as OAG may designate in writing, on COUNTY's premises (or if the audit is being performed of a subcontractor, the subcontractor's premises if necessary) space, office furnishings (including lockable cabinets), telephone and facsimile services, utilities and office-related equipment and duplicating services as OAG or such auditors and inspectors may reasonably require to perform the audits described in this Section 9.



**9.6 Reimbursement.** If an audit or examination reveals that COUNTY's invoices for the audited period are not accurate, COUNTY shall promptly reimburse OAG for the amount of any overcharge, unallowable or excessive amount.

**9.7 Reports.** COUNTY shall provide to OAG periodic status reports in accordance with OAG's audit procedures regarding COUNTY's resolution of any audit-related compliance activity for which COUNTY is responsible.

**10. Independent Contractor Status and General Liability Provision.** COUNTY shall be deemed to be an independent contractor hereunder and shall not be considered or permitted to be an agent, servant, joint venturer, joint enterpriser or partner of OAG. COUNTY agrees to take such steps as may be necessary to ensure that each contractor of COUNTY will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venturer, joint enterpriser or partner of OAG. All persons furnished, used, retained, or hired by or on behalf of COUNTY or any of its subcontractors shall be considered to be solely the employees or agents of COUNTY or such subcontractor, and COUNTY shall be responsible for ensuring that there is payment of any and all unemployment, social security, and other payroll taxes for such persons, including any related assessments or contributions required by law.

**11. Publicity.** COUNTY not shall use the other OAG's name or refer to the other Party directly or indirectly in any media release, public announcement or public disclosure relating to this Agreement or any acquisition pursuant hereto, including in any promotional or marketing materials, without consent from the OAG for each such use or release.

**12. Amendment.** This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by authorized personnel of the Parties for that express purpose. All amendments or modifications of this Agreement shall be binding upon the Parties despite any lack of consideration. Any attempted amendment or modification of this Agreement that does not comply with this Section will be deemed void.

**13. Non-waiver.** The failure of any party to insist upon strict performance of any of the terms or conditions herein, irrespective of the length of time for which such failure shall continue, shall not be a waiver of that party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any breach or default in the performance of the same or any other obligation of this Agreement. No term or provision of this Agreement or of any document incorporated herein by reference shall be deemed waived and no breach shall be deemed excused unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented.

**14. Partial Invalidity.** If any term or provision of this Agreement, or of any document incorporated herein by reference is found to be illegal or unenforceable then, notwithstanding such illegality or unenforceability, this Agreement, and each incorporated document, shall remain in full force and effect and such term or provision shall be deemed to be deleted.

**15. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**17. Entire Agreement.** This Agreement reflects the entire agreement between the Parties with respect to the subject matter therein described, and there are no other representations, understandings or agreements between the Parties relative to such subject matter.

**18. Governing Law; Venue.** This Agreement is made and entered into in the State of Texas, and this Agreement and all disputes arising out of or relating thereto shall be governed by the laws of the State of Texas, without regard to any otherwise applicable conflict of law rules or requirements.

Except where state law establishes mandatory venue, COUNTY agrees that any action, suit, litigation or other proceeding (collectively "litigation") arising out of or in any way relating to this Agreement, or the matters referred to therein, shall be commenced exclusively in the Travis County District Court or the United States District Court in the Western District and Austin Division, and to the extent permitted by law, hereby irrevocably and unconditionally consent to the exclusive jurisdiction of those courts for the purpose of prosecuting and/or defending such litigation. COUNTY hereby waives and agrees not to assert by way of motion, as a defense, or otherwise, in any suit, action or proceeding, any claim that (a) COUNTY is not personally subject to the jurisdiction of the above-named courts, (b) the suit, action or proceeding is brought in an inconvenient forum or (c) the venue of the suit, action or proceeding.



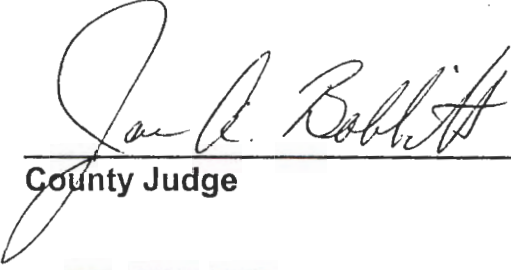
19. **Official Capacity.** The Parties stipulate and agree that the signatories hereto are signing, executing and performing this Agreement only in their official capacity.

Office of the Attorney General of  
Texas

HUNT COUNTY

  
\_\_\_\_\_  
Attorney General or his designee

Date: 3/28/04

  
\_\_\_\_\_  
County Judge

\_\_\_\_\_  
Printed Name

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

County of Hunt

State of Texas

# 8962  
Resolution

FILED FOR RECORD  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M  
DEC 22 2003  
By County Clerk LINDA BROOKS  
Hunt County, Tex.

WHEREAS, Hunt County is responsible for the operation and management of many and various governmental programs as required or authorized by law; and

WHEREAS, some county government programs are fully or partially supported with funds disbursed by the state of Texas pursuant to the state appropriations process; and

WHEREAS, the state of Texas, acting through the Texas Legislature or through a state agency or executive order, may enact laws or promulgate rules that have the effect of imposing mandatory financial obligations upon Texas counties; and

WHEREAS, the state of Texas, through the Texas Legislature or through a state agency or executive order, mandates that counties implement certain governmental programs or perform certain duties and obligations including financial commitments by a county to expend county funds in connection therewith; and

WHEREAS, during each regular session of the Texas Legislature, all state funds that support county programs are reviewed through the state appropriation process and by other state budgetary review systems; and

WHEREAS, the aforementioned review process may result in a reduction, or cessation, of state financial support of county government programs causing an unforeseeable disruption and reduction of the county budget and operations; and

WHEREAS, Texas counties cannot achieve reliable financial planning and the necessary bond ratings sufficient to support county related obligations when the state mandates a new program that is not fully funded or under conditions where the state reduces or fully withdraws prior funding and disbursement for county government programs.



NOW, THEREFORE, the County of Hunt does hereby resolve that for the foregoing reasons, it is in the best interests of Texas counties and their taxpayers to support and favor the passage of legislation, including an amendment to the Constitution of the State of Texas, that would expressly prohibit the imposition of a mandatory governmental program on Texas counties, whether by an act of the Texas Legislature or a state agency or by executive order, unless the state of Texas has fully funded and disbursed all necessary funds to enable Texas counties to operate said governmental program.

ADOPTED THE 22 DAY OF December 2003.

SIGNED AND ENTERED ON THE ABOVE DATE BY THE  
FOLLOWING MEMBERS OF THE COMMISSIONERS COURT

Jan A. Bellitt  
County Judge

Kenneth D. Thornton  
County Commissioner  
Precinct No. 1

Ralph Dean  
County Commissioner  
Precinct No. 2

Phillip A. Master  
County Commissioner  
Precinct No. 3

James L. Linder  
County Commissioner  
Precinct No. 4

# TEXAS ASSOCIATION OF COUNTIES

1210 San Antonio • Austin, TX 78701



P.O. Box 2131 • Austin, TX 78768-2131

Sam D. Seale • Executive Director

The Subcommittee on Unfunded Mandates of the Policy Analysis Group (PAG) recently supported action regarding counties' need for a constitutional amendment to prohibit unfunded mandates by the state. Unfunded mandates impose costs on Texas counties and their taxpayers exceeding millions of dollars statewide and can force counties to increase property tax rates to pay for unfunded or under-funded directives passed by the state.

Subcommittee members are seeking the assistance of all county officials in Texas to support the proposed amendment leading up to and during the 79th legislative session in 2005.

First, the members request that counties pass resolutions supporting the unfunded mandate amendment and issue news releases explaining and supporting the amendment. Resolutions passed by commissioners courts should be faxed to 512-478-3573.

Second, the subcommittee members will seek placement of a non-binding referendum on both the Republican and Democratic primary ballots on March 9, 2004. The referendum will demonstrate voter support of the constitutional amendment.

Third, the subcommittee members urge all county officials to raise public awareness regarding the problem of unfunded mandates, including contacting their local news media and community leaders.

Subcommittee members are Brazoria County Commissioner Jack Harris, subcommittee chairman; Dallas County Commissioner Jim Jackson; Fort Bend County Tax Assessor-Collector Marsha Gaines; Bee County Tax Assessor-Collector Andrea Gibbud; Bell County District Attorney Henry Garza; and Wichita County Auditor Deborah Stevens.

The members have requested that documents relating to unfunded mandates be distributed to all county officials. Pursuant to their request, the documents are enclosed. They also are available on the TAC Web site at <http://www.county.org/resources/legis/ufm.asp>

The informational package includes:

- a resolution for consideration by county commissioners courts;
- a news release for local media;
- examples of newspaper editorial comments on the issue;
- a proposed referendum for the Republican and Democratic primary elections on March 9, 2004;
- general talking points;
- examples of unfunded mandates stemming from the 78th Legislature;
- examples of unfunded mandates stemming from previous sessions of the Legislature.

County officials may copy the enclosed documents or download them from the Web to use as needed. If you need additional information, contact the TAC Legislative Department at 1-800-456-5974.

(512)-478-8753 • 1-(800)-456-5974 • FAX (512)-478-0519



FOR IMMEDIATE RELEASE  
[FILL IN DATE OF RELEASE]

CONTACT: [NAME]  
[PHONE AND/OR E-MAIL]

***LOCAL COUNTY OFFICIAL SEEKS TO PROTECT TAXPAYERS  
FROM UNFUNDED MANDATES***

[Full name and title] supports allowing voters to decide if unfunded mandates from the state to counties should be reined in to protect taxpayers from being saddled with higher property taxes.

[Last name] joins county officials from across Texas in seeking a constitutional amendment that would limit state actions which mandate counties to spend additional funds, unless the state pays for its mandates.

“Our property taxpayers currently have no protection against state actions that force counties to raise taxes,” [Last name] said. “We believe a constitutional amendment would curtail many of the unfunded mandates. The mandates are often unintended consequences of legislative action or state administrative action. While legislators and state executives do not willingly intend to cause local tax increases, their actions too often result in tax hikes because they do not include statewide funding mechanisms to pay for the directives to counties.”

To initiate the effort, the Subcommittee on Unfunded Mandates of the Policy Analysis Group (PAG) met recently at the Texas Association of Counties (TAC) in Austin. The subcommittee decided to seek a referendum in both the Republican and Democratic Party primary elections next spring.

The referendum was proposed by Bee County Tax Assessor-Collector Andrea Gibbud and quickly approved by other members of the subcommittee who were present, including its Chairman and Brazoria County Commissioner Jack Harris, Fort Bend County Tax Assessor-Collector Marsha Gaines, Dallas County Commissioner Jim Jackson and Gibbud.

The referendum would give primary voters the opportunity to express their feelings on better protecting local taxpayers from state mandates through a proposed constitutional amendment. The referendum states: “For or against a constitutional amendment protecting taxpayers by prohibiting state mandates that require local property tax increases.” The constitutional amendment will be presented to the Legislature at its next session.

Subcommittee members noted that legislative budget actions during tough financial times often have a direct impact on counties and property taxpayers, even when legislators do not intend such a burden. During the 78<sup>th</sup> session that ended earlier this year, examples include cuts to health care, mental health and the Children’s Health Insurance Program (CHIP) that have resulted in counties being forced to assume additional costs. Under-funded or unfunded mandates from previous legislatures have included the 1985 Indigent Health Care Act and the 2001 law mandating indigent criminal defense services.

TAC is composed of local elected officials from all Texas’ 254 counties. The PAG was formed in 1997, and its members selected issues upon which to focus, including unfunded mandates.

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[For additional background information, contact Elna Christopher at 1-800-456-5974 or [elnac@county.org](mailto:elnac@county.org).]

## A SAMPLING OF REPORTS & EDITORIAL COLUMNS FROM TEXAS NEWSPAPERS

“Across Texas, local governments saddled with state-mandated costs have had to raise taxes... Counties were hit particularly hard by a state budget that sloughed obligations onto them. Locally, our county faces pressing needs like juvenile justice, overburdened courts and jails.”

*John Young, Opinion Page Editor  
Waco Tribune-Herald, Oct. 1, 2003*

“[State budget cuts] will shrink government, but they will do nothing to stanch demand driven by current need and burgeoning population. Nor will the proposed cuts prevent county governments from raising local taxes to make up the difference and, down the road, pick up the tab for added strain on emergency and trauma care centers, crisis services for patients with uncontrolled mental illness, and county-run operations, like jails and probation programs, because of the problems that festered...”

“‘The pain will fall squarely on the county’s shoulders to do more with even less funding from outside,’ Harris County Commissioner El Franco Lee says... Lee is a Democrat, but the budget concerns cut across party lines. Harris County Constable Bill Bailey, a Republican, is president of TAC... The group also is working to pass a resolution for a constitutional amendment, HJR91, that would require the state to fund all mandates it prescribes for local governments.”

*Houston Chronicle Editorial Board  
May 9, 2003*

“Government is like water, says Hunt County Judge Joe Bobbitt. It all runs downhill. In Texas, county governments are at the bottom of that hill...”

“...reductions in programs like Medicaid and the Children’s Health Insurance Program will roll down the hill toward counties and force them to face their own tough questions...”

*William McKenzie, Editorial Columnist  
Dallas Morning News  
April 29, 2003*

“To the state of Texas: Don’t send El Paso any mandates you can’t fund. Following that common-sense advice would go a long way toward making El Paso a participant in, rather than a victim of, the state’s budget process.”

*El Paso Times Editorial Board  
April 29, 2003*

“Here’s another economic lesson that taxpayers should understand: The need for health care and the delivery of it in crisis circumstances for the working poor will not end when the Legislature leaves Austin... No, the burden will shift to the John Peter Smiths (public hospitals) of Texas – and when the money runs out there, the Tarrant County Commissioners Court will have to step



up. And you do know that increased taxes from the county show up on the property tax bill, don't you?"

*Fort Worth Star-Telegram Editorial Board  
May 10, 2003*

"An 'unfunded mandate' is a law passed from a higher branch of government down to a lower one with no means provided to pay for it. In many states, the practice is illegal. In Texas, counties have tried without success for years to get funding provided for all new laws. Comal County officials have long lamented unfunded state and federal mandates."

*Ron Maloney, Reporter  
New Braunfels Herald-Zeitung  
August 14, 2003*

"The Texas Legislature effectively pulled the plug Friday on visiting judges, leaving one felony court in Smith County with no judge and courts at law preparing to juggle increasing criminal dockets with civil tort trials expected to last for several months...(George Cowart, office manager for the First Judicial District) said dealing with unexpected court matters and crowded dockets without relying on visiting judges will be a first in Texas. 'We're trying to be as creative as possible to keep the wheels of justice from falling apart' Cowart said."

*Anne Wright, Reporter  
Tyler Morning Telegraph  
August 30, 2003*

"For example, it's the state that requires (El Paso's) Thomason Hospital to provide emergency medical services to anyone who walks in the door. Yet, Thomason...is not allowed to ascertain citizenship...More poor people will seek treatment in Thomason's emergency room. Simple infections that could be treated for a few dollars will cost hundreds, possibly thousands, to treat in the ER. Who will pay for this? You, the local taxpayer."

*Bernadette Self, Editorial Columnist  
El Paso Times  
May 9, 2003*

"...the county gets stuck prosecuting many federal drug cases, and paying to hold these inmates in the county jail. Local taxpayers are footing the bill, to the tune of millions of dollars, for state and federal responsibilities."

*Bernadette Self, Editorial Columnist  
El Paso Times  
May 9, 2003*

*Referendum  
for Republican & Democratic Primary Ballots  
March 9, 2004 Primary Election*

“For or against a constitutional amendment protecting taxpayers by prohibiting state mandates that require local property tax increases.”



## UNFUNDED MANDATES GENERAL TALKING POINTS

*Definition of Unfunded Mandates (UFM):* Financial burdens placed upon county governments by state actions, often resulting in increased property taxes at the local level. Such state actions include:

- directives to counties without providing the necessary funding to carry out the directives;
- withdrawal of or cuts in state funding to carry out existing directives; and
- changes in state operations which inadvertently result in county expenses and inefficiencies.

County government is an arm of state government and carries out the state's directives. However, it is important to remember that the burden of paying for unfunded state directives falls squarely upon local property taxpayers.

Unfunded mandates are often an unintended consequence of legislative action or state administrative action. In other words, legislators and state executives do not willingly intend to cause increases in local property tax rates, but their directives result in local tax hikes because they do not put in place statewide mechanisms to pay for their directives and administrative changes.

The problem of unfunded mandates did not begin with the most recent legislative session. Past legislatures and state agencies have done the same thing to counties and taxpayers. It is an on-going dilemma and will continue to be so, especially in times of economic stress for the state.

This is not a partisan issue. It cuts across both political parties, and no one political party is to blame.

Currently, the financial circumstances and economic climate in the state are not that wholesome, and the projections for recovery may not be as sound as some would have us believe. There is the worry that the state will resort to even more severe cuts in existing programs that will keep counties in a state of financial uncertainty, materially interfere with meeting budgetary essentials and cause a loss in bond ratings.

Local property taxpayers often do not understand the subtleties of the way our governments are organized. Hence, when their property taxes rise due to unfunded mandates, taxpayers know only to blame their local elected officials, whose hands are tied by state government. It is crucial to educate the public so they will understand the workings of unfunded mandates and make their concerns known to their legislators.



## Unfunded Mandates from the 78<sup>th</sup> Legislative Session

HB 401 relating to the testing of certain public safety personnel for accidental exposure to hepatitis B or hepatitis C. Requires the employer of EMS personnel, firefighters, peace officers or first responders to pay the cost of a Hepatitis B and Hepatitis C test on the patient who received services from the EMS personnel, firefighter, peace officer or first responder, if there is a belief of exposure to one of the providers. This would also apply to volunteers who are rendering assistance. While such services are essential to the well being of emergency personnel and should be rendered, the state elected not to help counties pay for the program.

HB 1 relating to the appropriations of money for the 2004-2005 Biennium.

### Article I

Historical Commission-Courthouse Preservation, loss of \$5 million for the biennium

### Article II

Health Department-Indigent Health Care Program, loss of \$22,965,580 for the biennium

Other areas of concern under Article II, possible fiscal impacts to counties.

- The CHIP Program keeps eligibility at 200% of the poverty level, but adds an asset limit to CHIP and eliminates most income disregards. Additionally, there are additional changes to the program which reduce benefits as follows: (1) a 90-day waiting period for enrollment, (2) reducing continuous eligibility to 6 months (from the current 12 months), and (3) requiring higher co-payments and premiums from clients. According to the Center for Public Policy Priorities these changes are projected to reduce the number of children enrolled by 169,295 below projected enrollment in 2005 (or, 166,897 below May 2003 enrollment). These kids will no longer be treated for acute care and will be treated in the emergency room of a hospital at a much higher cost. This will be in a public hospital or a hospital district, both of which are supported to a substantial extent by county tax dollars.
- Due to the cuts in Medicaid services such as mental health services and podiatry services the costs of these services will be shifted to the county either by using a public funded hospital or by using the county jail as the mental health facility. It is not possible to quantify the amount; however, county leaders expect the costs will be substantial.

#### Article IV

Office of Court Administration, Texas Judicial Council  
 Information Technology, loss of \$1,072,168 for the biennium  
 Assistance to administrative judicial regions, loss of \$52,756 for the biennium  
 Rider 5-Information services for trial courts, reduced by \$288,344

Judiciary Section, Comptroller's Department  
 Visiting retired judges, (regions) loss of \$5,499,934 for the biennium  
 Witness expenses, loss of \$1 million for the biennium  
 Statutory court judge GR supplement, loss of \$140,000 for the biennium  
 Felony prosecutors travel, loss of \$23,500  
 Prosecutors expenses, loss of \$213,924 for the biennium

#### Article V

As listed in the 2004-2005 State Appropriations Budget, counties will lose funding under the Challenge Grant and Non-Residential Program funding under the Juvenile Probation Commission's budget (funding for both programs was cut for fiscal years 2004 and 2005).

- The **Challenge Grant Program** assisted 24 counties (Bexar, Brazoria, Brazos, Comal, Dallas, El Paso, Gray, Guadalupe, Hale, Harris, Hidalgo, Jefferson, Lubbock, Montgomery, Nueces, Randall, San Patricio, Smith, Tarrant, Taylor, Tom Green, Travis, Van Zandt, Williamson) and was budgeted at **\$677,721.00** in 2002-2003.
- The **Non-Residential Program** assisted 11 counties (Coke, Dewitt, Hale, Harrison, Houston, Karnes, Kaufman, Lampasas, Milam, Polk, Rockwall) and was budgeted at **\$250,000.00** in 2002-2003.

Another area of concern under Article V, is the elimination of the Criminal Justice Policy Council. The Council served as great resource for counties when looking at jail overcrowding issues. The statistical data generated by the Policy Council that assisted counties in making financial projections and construction plans (jail contracts and personnel) is no longer available. It is not possible to estimate or quantify this loss to counties. However, the elimination of the Policy Council will most assuredly result in substantial financial adversities to counties, including inefficiencies and waste attributable to incarceration emergencies and jail inmate contingencies that were previously predictable.

#### Article VII

Texas Department of Transportation, Rider 18: Road Materials. A fiscal appropriation for counties is now transferred into a physical appropriation of road maintenance materials. Whereas Rider 22 of the 2002-2003 biennium provided for counties to receive a portion (\$4.1 million in calendar 2002) of Gross Weight and Axle Weight fees collected by the state (Transportation Code 621.353), Rider 18 of the 2004-2005 biennium provides for disbursement of double the amount of road materials, but no fiscal appropriations.



## Examples of Unfunded Mandates from Past Legislative Sessions

Unfunded mandates are not a new creation. They did not begin with the most recent legislative session but have occurred in years past.

Two glaring examples stem from 1985 and 2001 respectively:

- Prior to the enactment of the *Indigent Health Care Act* (Health & Safety Code), counties had a general obligation to care for paupers. The Act, passed in 1985, established 138 counties and all public hospitals as the payer of last resort and statutorily set out specific duties and responsibilities. The mostly unfunded state mandate provided for a county spending limit of \$30,000.00 per person and statutory list of mandated health care services and medication regimen. The state did provide for a reimbursement threshold for funds expended by a county on indigent health care in excess of 10% of the county budget (since been lowered to 8%). However, the reimbursement is limited and subject to funds being available.
- County governments continue to wrestle with the fiscal impacts of *Senate Bill 7* from the 77<sup>th</sup> Legislature. The law, passed in 2001, requires counties to provide criminal defense services to indigent defendants but was only partially funded by state lawmakers. Its continuing impact on county budgets showed up in a resolution passed by the County Judges and Commissioners Association of Texas at its annual conference in October 2003. Resolution No. 13: Indigent Criminal Defense asked that the 78<sup>th</sup> Legislature address the issue in any upcoming special session and states:
  - WHEREAS, Senate Bill 7 has required additional county taxpayer expense to provide indigent criminal defense services; and
  - WHEREAS, Senate Bill 7 has added administrative duties and reporting requirements to county offices; and
  - WHEREAS, the current appropriation is insufficient to reimburse counties for these mandated costs; now
  - THEREFORE, BE IT RESOLVED that the County Judges and Commissioners Association of Texas urges the Legislature, during special session, to revise the provisions of Senate Bill 7 to simplify the administrative and reporting requirements and improve the efficiency of the indigent criminal defense program; and
  - BE IT FURTHER RESOLVED that the Legislature, during special session, either 1) authorize sufficient funds to commensurate counties for the full costs of implementing the mandates of the indigent criminal defense program or 2) repeal the mandatory, unfunded and/or under-funded provisions of Senate Bill 7.

#8964

**INTERGOVERNMENTAL SERVICES AGREEMENT**

THIS AGREEMENT is entered into on the 1<sup>st</sup> day of January 2004 by and between Texas A & M University and Hunt County, a political subdivision of the State of Texas.

FILED FOR RECORD  
LINDA BROOKS  
COUNTY CLERK HUNT CO., TX  
04 MAR -2 AM 10:10  
BY: J. J. J. J. J.  
DEPUTY

**SECTION 1. TERM**

- 1.01 Term. The term of this agreement shall commence on the 1<sup>st</sup> day of January 2004. This agreement, which terminates as of its effective date, all prior agreements, written or oral, between the parties concerning the same services, shall become effective on January 1, 2004 and shall continue in full force and effect thereafter until terminated by either party on thirty (30) days written notice to the other.

ORIGINAL

**SECTION 2. SERVICES**

- 2.01 Hunt County will do the dirt work for repairs at the firing range.
- 2.02 Hunt County will do the dirt work on access road to firing range.
- 2.03 Hunt County will do maintenance on President's ditch should erosion become a problem.

**SECTION 3. COMPENSATION**

Texas A & M University agrees to let Hunt County law enforcement have use of the firing range, at such time that construction is completed,



**SECTION 4. CIVIL LIABILITY**

Any civil liability relating to the furnishing of services under this agreement shall be the responsibility of Texas A & M University. The parties agree that the County shall be acting as agent for Texas A & M University in performing services contemplated by this agreement.

Texas A & M University shall hold the county free and harmless from any obligation, costs claims judgments, attorney's fees, attachments, and other such liabilities arising from or growing out of the services rendered to Texas A & M University pursuant to the terms of the Agreement or in any way connected with the rendering of said services, except when the same shall arise because of willful misconduct or culpable negligence of the County, and the County is adjudged to be guilty of willful misconduct or culpable negligence by a court competent jurisdiction.

**SECTION 5. AMENDMENT**

This Agreement shall not be amended or modified other than in written agreement signed by both parties.

**SECTION 6. CONTROLLING LAW**

This agreement shall be deemed to be made, under, governed by and construed in accordance with the laws of the State of Texas.

**SECTION 7. AGREEMENTS**

This Agreement is the only agreement with the County or any other party pertaining to the firing range within Texas A & M University.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**COUNTY OF HUNT****STATE OF TEXAS**By: Title: Hunt County Commissioner, Precinct 4Date: 12/22/03**TEXAS A & M UNIVERSITY****COUNTY OF HUNT****STATE OF TEXAS**By: 

Bert A. White

Title: Director, Purchasing & Contract AdministrationDate: 2/23/04



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89.4

2.