

COURT ORDER

ORDER NO. 2005 658  
DATE MARCH 29, 2005

STATE OF TEXAS )(   
COUNTY OF DALLAS )(

BE IT REMEMBERED, at a regular meeting of the Commissioners Court of Dallas County, Texas, held on the 29th day of March, 2005, on a motion made by Mike Cantrell, Commissioner of District #2, and seconded by Kenneth A. Mayfield, Commissioner of District #4, the following order was adopted:

WHEREAS, on January 25, 2005, Court Order #2005-199 was signed by the Commissioners Court authorizing staff to enter into contract negotiations with BearingPoint with respect to RFP #2004-064-1785 (Recording, Indexing and Imaging System for the Dallas County Clerk); and

WHEREAS, it is requested that the Commissioners Court authorize award of RFP #2004-064-1785 (Recording, Indexing and Imaging System for the Dallas County Clerk) to BearingPoint and grant the County Judge the authority to execute the contract as drafted and approved by the Civil District Attorney's Office

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Dallas County Commissioners Court authorizes: 1) award of RFP #2004-064-1785 (Recording, Indexing and Imaging System for the Dallas County Clerk) to BearingPoint, 2) the County Judge to execute the Software License and Professional Services Agreement between BearingPoint and Dallas County and 3) all payments/documents to reflect accordingly.

DONE IN OPEN COURT this the 29th day of March, 2005.

Margaret Keiher      Maurine Dickey      Mike Cantrell  
Margaret Keiher, County Judge      Maurine Dickey, District #1      Mike Cantrell, District #2  
John Wiley Price      Kenneth A. Mayfield  
John Wiley Price, District #3      Kenneth A. Mayfield, District #4

Recommended By: Philip J. Vasquez  
Philip J. Vasquez, Purchasing Director/lb

GOVERNMENT EXHIBIT NO. 246  
3:14-CR-293-M

**RECORDING, INDEXING, & IMAGING SYSTEM AGREEMENT**  
**FOR THE COUNTY CLERK'S OFFICE**  
**BETWEEN**  
**DALLAS COUNTY**  
**AND**  
**BEARINGPOINT**

STATE OF TEXAS

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COUNTY OF DALLAS

**RECORDING, INDEXING, & IMAGING SYSTEM  
AGREEMENT ("AGREEMENT")  
FOR THE COUNTY CLERK'S OFFICE**

**BETWEEN**

**DALLAS COUNTY ("COUNTY")**

**AND**

**BEARINGPOINT ("CONTRACTOR")**

This Recording, Indexing, and Imaging System Agreement for The Dallas County Clerk's Office, including all Exhibits attached hereto and incorporated herein by reference (collectively, this "Agreement") is made and entered into as of the 8th day of April, 2005, (the "Effective Date") by and between Dallas County, Texas, with its principal place of business located at Administration Building, 411 Elm Street, 2nd Floor, Dallas, Texas 75202 ("County"), and BearingPoint, a Texas corporation with its principal place of business located at 301 Congress Avenue, 13<sup>th</sup> Floor, Austin, Texas 78701, with reference to the following facts:

**WHEREAS**, the County sought a contractor to develop and implement a system to record, index, and image the records (hereinafter "System") of the Dallas County Clerk's Office; and

**WHEREAS**, pursuant to its authority under Texas Government Code § 262.030, the County accepted competitive bids for the development and implementation of the System; and

**WHEREAS**, BearingPoint (hereinafter "Contractor") responded to the competitive solicitation, RFP No. 2004-064-1485, by the County for the development and implementation of the System; and

**WHEREAS**, as a result of the competitive bidding process and negotiation, the County awarded this Agreement to Contractor for the development and implementation of the System based on Contractor's response to that solicitation; and

**WHEREAS**, Dallas County desires to obtain from Contractor the services necessary to implement and maintain the System in Dallas County; and

**NOW, THEREFORE**, in consideration of the promises, inducements, covenants, agreements, conditions and other good and valuable consideration, the receipt of which is hereby acknowledged and confessed, Dallas County and Contractor agree as follows:

**DEFINITIONS**

If a term is not defined in this Definitions Section, the meaning of the term shall be interpreted so as to give the Agreement as broad and complete an effect as possible.

**Contractor** means BearingPoint.

**County** means Dallas County, Texas.

**CPU** means any computer or computer system that is used by County to store, process, or retrieve data or perform other functions using operating systems and applications software.

**Deliverable** means any work product identified as a deliverable in the Statement of Work.

**Document or Unit** means each real estate filing notwithstanding the total number of pages per filing.

**Documentation** means the user's manuals and any other materials in any form or medium customarily provided by Contractor to the users of the Licensed Software, which is designed to effectively provide sufficient information to the County to enable the County to operate the Licensed Software and the standard manuals provided by the manufacturer for Embedded Third Party Software.

**Embedded Third Party Software** means the Hart Software that is required by the Licensed Software to provide the functionality as specified in any Specifications.

**Escrow Material** shall mean the materials described in the source code escrow agreement attached a Exhibit E.

**Escrow Release Event** shall mean the licensor's becoming insolvent, initiating proceedings for bankruptcy or for termination of business, or failing to support the software.

**Final Proposal** shall have the meaning set forth in Section V.

**Hart Software** means the software licensed from Hart Inc. by BearingPoint to provide Services to County.

**Implementation Plan** has the meaning defined in Exhibit B.

**Licensed Software** includes any and all software (except for Third Party Software) and Documentation that the County obtains from or through Contractor or is granted any rights under this Agreement from or through Contractor.

**Manufacturer's Specifications** shall mean the generally available published documentation delivered by Contractor.

**Operating System** means the control program in a computer that provides the interface to the computer hardware and peripheral devices, and the usage and allocation of memory resources, processor resources, input/output resources, and security resources.

**Other Third Party Software** means the third party software used by Contractor to provide services hereunder, excluding the Embedded Third Party Software.

**Platform** means a specific hardware and Operating System combination that is different from other hardware and Operating System combinations to the extent that a different version of the Licensed Software product is required to execute properly in the environment established by such hardware and Operating System combination.

**Services** shall mean those services described in the Statement of Work and Service Level Agreement within Exhibits A, B, and C.

**Statement of Work** has the meaning described in Exhibit A.

**Third Party Software** consists of both Embedded Third Party Software and Other Third Party Software.

**Upgrade** shall be any improvement or change in the Licensed Software that improves or alters its basic function.

## I. INTRODUCTION

### A. Format

This Agreement sets forth the terms and conditions whereby Contractor agrees to provide to County and County agrees to acquire from Contractor a license to use the client portion of Licensed Software and Embedded Third Party Software in accordance with documentation to access the server portion of Licensed Software and related documentation on Contractor's system, as well as personal computers which will be installed and implemented at County Clerk's Office, based on the Implementation Plan as mutually agreed by Contractor and County. Contractor also agrees to provide County with recording, indexing, imaging, and maintenance and support services. The parties agree to work together in good faith.

During the Term of this Agreement, all transactions between Contractor and County related to the licensing of the Licensed Software and implementation and operation of the System shall be governed by this Agreement as may be amended from time to time by written agreement of both parties authorized representatives.

### B. Statement of Work

The Statement of Work describes the processes required to be performed by Contractor and County during the implementation of the project.

The Statement of Work further describes the responsibilities of Contractor and County for interfaces, conversions, installation, and training. To the extent the parties are required to meet and further define the interfaces, conversions, installation and training, the parties agree to work together to not exceed the scope of the Project or to unnecessarily alter the timetables set forth in the Agreement.

Contractor and County agree that meeting the final implementation date in the Implementation Plan is a material term of this agreement.

### C. Implementation Plan

Contractor and the County will identify in Exhibit B an Implementation Plan with the milestones and timetables required for the completion of the tasks in Exhibit A. The responsibilities of the parties set forth herein at times require the parties to meet and jointly agree on certain matters. To the extent the parties are required to meet and negotiate certain Addenda to this Agreement or other things that could affect the Implementation Plan, the parties agree to work together so as not to unnecessarily alter the timetables set forth in the Implementation Plan. Each party will use commercially reasonable efforts to perform its obligations under this Agreement in accordance with the timetables set forth in the Implementation Plan, subject to the foregoing sentences and any documented assumptions.

### D. Service Level Agreements

Contractor and the County has identified in Exhibit C a Service Level Agreement which describes ongoing outsourced business processing services including hardware and software support services, indexing and microfilm production and storage. In addition, the Service Level Agreement has identified (i) performance metrics, (ii) penalties for not meeting the established measures, and (iii) incentives for meeting or exceeding the standards.

## II. TERM

**A. Initial Term/Renewal.** The term of this Agreement shall begin on the Effective Date. The term shall continue for a period of five (5) years ("Initial Term"), unless earlier terminated in accordance with the provisions of the Agreement, with an option to renew annually thereafter for additional one (1) year periods based on existing terms, conditions, and fiscal year funding as evidenced by formal written approval of the Dallas County Commissioners Court and

Contractor. For each week that the final milestone in the Implementation Plan is delayed, this Agreement will be extended correspondingly. The Initial Term or any term of renewal is subject to earlier termination in accordance with the provisions of this Agreement.

With regards to any subsequent terms after the Initial Term of this Agreement, the County has not allocated any funds for any future terms. Therefore, the continuation of this Agreement is subject to future allocation and budgeting of funds for such terms.

**B. No Renewal.** In the event a Party does not elect to renew this Agreement, the Party shall deliver to the other Party a sixty (60) day prior written notice of termination in accordance with the formalities required by Section XXXII (Notice) of this Agreement.

**C. Hold Over Period.** Upon expiration of the Initial term of this Agreement or any period of renewal or termination of this Agreement, Contractor agrees to hold over the terms and conditions of this Agreement for such a period of time as may be reasonably necessary, but not to exceed one hundred twenty (120) days, to renew or re-solicit this Agreement, provided that County continues to pay the fees in Section III below and any amounts due for Additional Services, if any, during such period.

### III. FEES

The per unit cost for this Agreement is \$1.05 per Document. A Document is a real property filing irrespective of how many pages the document contains. The consideration to be paid to Contractor shall be for the actual real property filings multiplied by the corresponding price per unit, hereinafter "Cost". Contractor shall not be entitled to the \$1.05 fee for the re-filing of any document which must be re-filed due to an error by Contractor.

The Cost includes all of the Services provided under this Agreement. Contractor will include in the per document pricing the requirements wherein Contractor responded within the Final Proposal "Yes" or "Partial." For the requirements wherein Contractor responded within the Final Proposal "Modification," Contractor shall accomplish those requirements at no additional cost.

### IV. LIMITATION OF APPROPRIATIONS

Prior to the execution of this Agreement, Contractor has been advised by County and Contractor clearly understands and agrees, such understanding and agreement being of absolute essence to this Agreement, that County has available the total maximum sum of Six Hundred and Forty-Six Thousand Eight Hundred and 00/100 Dollars (\$646,800.00) per year specifically allocated to fully discharge any and all liabilities that may be incurred by County for up to 616,000 documents, including all costs for any and all things or purposes, under or out of this Agreement, irrespective of their nature, and notwithstanding any word, statement, or thing contained in or inferred from other provisions of this Agreement, which might in any light by any person be interpreted to the contrary, unless additional funds for this Agreement are approved by the Dallas County Commissioners Court. Contractor shall have no obligation to process documents in excess of 616,000 per year unless County allocates and pays additional funds for each additional document at the rate specified in Section III.

### V. INCORPORATED DOCUMENTS

All documents below ("Contract Documents") are incorporated herein by reference in the following order of precedence:

- A. Statement of Work ("Exhibit A")
- B. Implementation Plan ("Exhibit B")

- C. Service Level Agreement ("Exhibit C")
- D. List of Hardware Included In Pricing ("Exhibit D")
- E. Source Code Escrow Agreement ("Exhibit E")
- F. The Proposal as amended by the Best and Final Offer ("Final Proposal") submitted by Contractor in response to RFP No. 2004-064-1485; and
- G. The Request for Proposal ("RFP") No. 2004-064-1485 issued by the County; and

In the event of any inconsistency between the provisions of this Agreement and any incorporated documents as described herein, it is agreed by the parties that the provisions of this Agreement shall take precedence. In the event of any inconsistency between the provisions of any of the incorporated documents listed above, it is agreed by the parties that the provisions of the document first appearing in the list shall take precedence over any document appearing later in the list.

## VI. INVOICES

The original invoice is to be sent to the County Auditor's Office 500 Main Ste. 407 Dallas, Texas 75202. A copy of the invoice is to be sent to the Dallas County Clerk for approval. Any disputes in billing must be resolved by the County Auditor and the Dallas County Clerk.

Acceptance of Contractor's invoice is contingent upon compliance with County's invoicing procedures. Invoice period cannot be for less than a thirty (30) day period. Service Penalties and/or Incentives will be invoiced in the month following the month in which they are accrued. In addition, County may withhold any disputed amounts, but shall pay all undisputed amounts. Following approval of invoices by County Clerk and approval by County Auditor, County will pay Contractor promptly, i.e., within thirty (30) days of County's approval of invoice. Contractor agrees that a temporary delay in making payments due to County's accounting and disbursement procedures shall not place the County in default of this Agreement. All payments to Contractor shall be in accordance with the Prompt Payment Act, Tex. Gov't Code § 2251.001, et seq.

## VII. SOFTWARE LICENSE

**A. Grant of License:** Subject to the terms of this agreement, Contractor hereby grants to the County a limited fee bearing license to use the client portion of Licensed Software and Embedded Third Party Software (in accordance with applicable documentation) to access the server portion of Licensed Software and Embedded Third Party Software on Contractor's system only for the County's internal business purposes. Subject to the terms and conditions set forth herein, Contractor agrees to provide and County hereby agrees to purchase the license and Services described in this Agreement at a cost provided in Section III (Fees).

**B. Restrictions:** Unless otherwise expressly agreed in writing by Contractor, the County shall not reverse engineer, de-compile, or disassemble any portion of the Licensed Software, or transfer, rent or lease the Licensed Software or its usage.

**C. Copies:** The County shall have the right to make unlimited copies of all training documents for purposes reasonably incidental to the County's use of the Licensed Software.

## VIII. ESCROW AGREEMENTS

Contractor agrees to execute an Escrow Agreement with Hart ("Software Owner"), that enables Contractor to receive the Escrow Material in the event of a Software Owner Escrow Release Event.

## IX. DELIVERY AND INSTALLATION

### A. Delivery and Risk of Loss

All deliveries under this Agreement shall be F.O.B. destination. Title and risk of loss of all hardware shall remain with Contractor at all times during the term of this Agreement.

### B. Installation by Contractor

- i. Contractor shall install the Licensed Software on the designated Platform at Contractor's site and use commercially reasonable efforts to make it ready for productive use in accordance with the timetables set forth in the Implementation Plan.
- ii. Upon installation, Contractor shall conduct its standard diagnostic evaluation to determine that the Licensed Software is properly installed and fully ready for productive use and shall notify the County's Project Manager after completion thereof.
- iii. The Licensed Software shall be deemed to be installed upon successful completion of the diagnostic test and notification to the County's Project Manager of the results. The installation procedures of this Section are in addition to all other procedures required pursuant to the Acceptance Testing outlined in Exhibit A (Statement of Work).
- iv. Contractor shall meet all functional and technical requirements as outlined in the Final Proposal.

## X. CONTRACTOR'S KEY PERSONNEL

Key BearingPoint Personnel are identified in Exhibit A. County requires a dedicated Project Manager to be assigned during the full term of the project. Moreover, in the course of implementation of a project, it is important to have consistent team members.

Upon at least thirty (30) days prior written notice to Contractor, County shall be entitled to require Contractor to replace any of the key personnel and/or the Project Manager upon the conclusion of such thirty (30) day period. Such right may be exercised by County, in its sole discretion, including, without limitation, upon a determination that any individual simply is not compatible with County personnel. BearingPoint shall have no liability for any project or service level impact due to removal of Key BearingPoint Personnel at the request of County if such request was not for cause.

Contractor will make its best efforts to minimize changes in key personnel. Contractor shall notify County of any change in Key Personnel and such change in key personnel shall be subject to prior approval by County. Key Personnel may be temporarily replaced by Contractor for absences due to vacations, illness, accident or other events outside of Contractor's control.

## XI. CONTRACTOR'S PERSONNEL

County reserves the right to review Contractor's personnel qualifications for applicability to the requested services. County reserves the rights to perform or to have Contractor provide criminal background verifications for Contractor's personnel. In addition, County reserves the right to have

Contractor's personnel replaced on the project if, in County's sole opinion, the person does not meet the qualifications for the task, project or other duties assigned.

County may require Contractor 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 County'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 County or County's personnel. BearingPoint shall have no liability for any project or service level impact due to removal personnel at the request of County if such request was not for cause.

## **XII. SUBCONTRACTORS**

- A. By appropriate agreement, written where legally required for validity, the Contractor shall where applicable, require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Contractor by terms of this Agreement including, but not limited to the insurance requirements in Section XXII, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's work, which the Contractor, by this Agreement, assumes toward the County. Each subcontract agreement shall preserve and protect the rights of the County under the Contract Documents with respect to the work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate and applicable, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors.
- B. The Contractor is fully responsible and liable for acts and omissions of its Subcontractors, and persons or entities either directly or indirectly employed by them, or under their control, as the Contractor is for its own employees.
- C. If during the term of this Agreement the County has reasonable objection to a person or entity subcontracted by the Contractor because of performance standards not being met, the Contractor shall propose another to whom the County has no reasonable objection.
- D. The Contractor shall not substitute, or replace Hart or Force V if the County makes a reasonable objection to such substitute or replacement.
- E. Acceptance of or failure to object to any Subcontractor by the County does not relieve the Contractor of any responsibility or liability for that Subcontractor.
- F. Nothing in this Agreement creates any contractual relationship between any Subcontractor and Sub-subcontractor or other tiers, and the County.

## **XIII. COUNTY'S OBLIGATIONS**

- A. **County Project Manager.** County shall designate in writing one individual to serve as its Project Manager during the term of this Agreement and provide to Contractor contact information for such County Project Manager. To the maximum extent practicable, County's communications with Contractor shall be through the County Project Manager and the County Project Manager shall be deemed to have authority to issue, execute, grant or provide any approvals, requests, notices or other communications required hereunder or requested by Contractor. This authority does not include the authority to amend or modify this Agreement; provided, however, this authority does give the County Project Manager authority to discuss any reasonable requests by Contractor for amendments, modifications, or extension with the Dallas County Commissioners Court.

- B. Access to County Sites and Facilities.** County agrees to grant Contractor access to County's sites and facilities as are reasonably requested by Contractor and necessary to enable and assist Contractor in performing its obligations hereunder. In the event County grants Contractor such access, Contractor agrees to comply with all County site rules and regulations given to Contractor in writing or verbally to the BearingPoint Project Manager, including any and all safety policies in effect during the term of this Agreement.
- C. Access to County Information, Data, and Information Technology Contracts.** To the extent allowed by law or allowed by County's other contracts, County agrees to provide Contractor with access to County information, data and other information technology related contracts as reasonably requested by Contractor and as necessary to enable and assist Contractor in performing its obligations hereunder.
- D. Contractor Approval to Place Additional Software on Equipment.** County will obtain Contractor's consent before placing software not contemplated by this Agreement on Contractor-provided equipment.
- E.** County shall have no obligations hereunder except as listed in this Section the Proposal, the Statement of Work, the Implementation Plan or otherwise specifically set forth herein. County shall have no other responsibilities or obligations hereunder other than the County Obligations which it must perform as a condition to the full and timely performance by Contractor of its obligations under this Agreement.

#### **XIV. CONTRACTOR'S OBLIGATIONS**

- A.** Contractor shall provide to County the Services described in Exhibit A (Statement of Work and Pricing for implementation services) and Exhibit C (Service Level Agreement for outsourced services) and County shall pay to Contractor the fees described in Section III, in accordance with the terms and conditions as set forth in this Agreement.
- B. Acceptance of Phases.** The parties may agree and set forth a schedule whereby Contractor shall perform its obligations according to one or more phases. In such event, each such phase or stage of performance shall be in writing and executed by the parties hereto and shall constitute a separate obligation of Contractor, the performance of which shall be subject to all remedies available to County hereunder.
- C. Meetings.** During the term of this Agreement, and as mutually agreed, County and Contractor shall meet at a location mutually agreed to by both the parties, or conduct a telephone conference call, to discuss the progress made by Contractor and County in the performance of their respective obligations under this Agreement.
- D. Additional Services.** In the event Contractor and/or County determines that additional services or equipment outside of the scope of services as provided for herein (hereinafter, "Additional Services") are needed to meet County's goals and objectives under this Agreement, the scope of such Additional Services shall be in writing and executed by the parties hereto by way of a formal amendment to this Agreement. Contractor is not authorized to receive payment for any services not specifically included in this Agreement or by formal written amendment approved and executed by the Dallas County Commissioners Court and shall have no obligation to perform such services.
- E. Third Party Products and Services.** With regards to indexing services, County shall have the right to contract with a third party to provide such services or bring such services in-house. In the event County contracts with a third party for such products and/or services or brings those services in-house, Contractor shall cooperate with County and such third party to the extent reasonably required by County. County shall pay

Contractor for such cooperation and/or assistance, the scope and payment of which shall be mutually agreed upon in writing and executed by the parties hereto.

**XV. TAXES**

County is a governmental tax-exempt entity and shall not be responsible for any taxes for any Licensed Software or Services provided for herein, whether federal or state. The fees paid to Contractor 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 Contractor's cost in acquiring or providing products and/or services and related materials and supplies furnished or used by Contractor in performing its obligations hereunder, including all personal property and use taxes, if any, due on equipment or software owned by Contractor.

Contractor accepts full and exclusive liability for the payment of any and all contributions or taxes for Contractor employees for Social Security, Workers' Compensation Insurance, Unemployment Insurance, or Retirement Benefits, Pensions, or annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries, or other remuneration paid to persons employed by Contractor for work performed under the terms of this Agreement.

**XVI. CONFIDENTIAL OR PROPRIETARY MARKING:**

Any information or documents the Contractor uses in the performance of the services provided under this Agreement that Contractor considers confidential or proprietary or that contains trade secrets must be clearly marked accordingly. This marking must be explicit as to the designated information. County will treat such marked documents in accordance with applicable law.

**XVII. CONFIDENTIALITY, INTELLECTUAL PROPERTY RIGHTS, AND COUNTY SYSTEM:**

- A. Confidentiality.** The parties hereto shall not disclose privileged or confidential communications or information acquired in the course of the performance of the services under this Agreement, unless authorized by law or under this Agreement. "Confidential Information" means information designated as confidential or which would be recognized as confidential by a reasonable person from its nature and the circumstances surrounding its disclosure. Confidential Information includes, without limiting the generality of the foregoing, the terms of this Agreement, and information: (1) relating to the Disclosing Party's technical and non-technical information, formulae, tools, patterns, compilations, programs, devices, techniques, drawings, methodologies and processes; (2) relating to the Disclosing Party's business, policies, strategies, operations, finances, plans or opportunities, including the identity of, or particulars about, the Disclosing Party's clients, customers or service providers; or (3) marked or otherwise identified as confidential, restricted, secret or proprietary, including, without limiting the generality of the foregoing, information acquired by inspection or oral disclosure provided such information was identified as confidential at the time of disclosure or inspection.
- B. Exceptions.** Notwithstanding the foregoing, Confidential Information does not include information that the Receiving Party can establish: (1) has become generally available to the public or commonly known in either party's business other than as a result of a breach by the Receiving Party of any obligation to the Disclosing Party; (2) was known to the Receiving Party prior to disclosure to the Receiving Party by the Disclosing Party by reason other than having been previously disclosed in confidence to the Receiving Party; (3) was disclosed to the Receiving Party on a non-confidential basis by a third party who did not owe an obligation of confidence to the Disclosing Party with respect to the disclosed information; (4) was independently developed by the Receiving Party without any recourse to any part of the Confidential Information; (5) in the case of

County, any information related to the services which County has publicly disclosed in connection with an RFP for information technology services, including, without limitation, information of an operational, technical or financial nature related to County; or (6) in the case of County, any information which is an open record generally available from the County Clerks' office. If such information has previously been requested of and provided to Contractor by County under the Texas Public Information Act. Notwithstanding the foregoing, use of the real property records in accordance with this agreement shall not be considered a breach of any confidentiality obligation.

- C. Use of Confidential Information.** During the term of this Agreement, the Receiving Party may: (1) disclose Confidential Information received from the Disclosing Party only to its employees, agents, officers, directors, attorneys, and subcontractors who have a need to know such information exclusively for the purpose of performing pursuant to this Agreement and who have executed a nondisclosure agreement containing provisions no less restrictive than those contained herein, who are subject to other equivalent means to ensure confidentiality; (2) reproduce the Confidential Information received from the Disclosing Party only as required to perform pursuant to this Agreement; and (3) disclose Confidential Information as required by law, provided the Receiving Party gives the Disclosing Party prompt notice prior to such disclosure to allow the Disclosing Party to make a reasonable effort to obtain a protective order or otherwise protect the confidentiality of such information. Except as otherwise specifically provided in this Agreement, the Receiving Party shall not during the term and after expiration or earlier termination of this Agreement: (1) disclose, in whole or in part, any Confidential Information received directly or indirectly from the Disclosing Party; or (2) sell, rent, lease, transfer, encumber, pledge, reproduce, publish, market, transmit, translate, modify, reverse engineer, compile, disassemble or otherwise use the Confidential Information in whole or in part.
- D. Care.** The Receiving Party shall exercise the same care in preventing unauthorized disclosure or use of the Confidential Information that it takes to protect its own information of a similar nature, but in no event less than reasonable care.
- E. Return of Confidential Information.** Immediately upon the Disclosing Party's request, and at the expiration or earlier termination of this Agreement or any other applicable renewal or extension hereto, the Receiving Party shall return or destroy all materials containing Confidential Information, including without limitation, all originals, copies, reproductions and summaries, and all copies of Confidential Information present on magnetic media, optical disk, volatile memory or other storage device, in a manner that assures the Confidential Information is rendered unrecoverable.
- F. Third Party Software.** Contractor shall identify any Third Party Software, and, unless otherwise stated in this Agreement, Contractor shall, to the extent necessary to provide the services under this Agreement: (1) maintain and upgrade as necessary licenses and maintenance agreements for Third Party Software Licenses; (2) obtain licensed authorization for use of Embedded Third Party Software by Contractor's employees or agents and assignment of the Hart software license to the County as contemplated in Section XX; and (3) install fixes, modifications, releases or versions of Third Party Software which are identified by the licensor of Third Party Software as required.
- G. Access to County Systems; Viruses.** Contractor shall not have access to any County data processing, hardware, software or other information technology systems (hereinafter, "County Systems"), unless specifically stated herein. County agrees to provide Contractor with access to County Systems as necessary to enable and assist Contractor in performing its obligations hereunder. In the event County grants Contractor access to County Systems, such access shall be read-only access and Contractor agrees to make no change in the technical environment of County Systems,

nor shall Contractor make any change which could adversely affect the function or performance of, or decrease the resource efficiency of, County Systems. In addition, Contractor shall use commercially reasonable efforts to ensure that no viruses are negligently or intentionally coded or introduced into County Systems by Contractor. If a virus is introduced by Contractor at no fault of County on County Systems or on Contractor's systems used by County pursuant to this Agreement, Contractor shall, at its own expense: (i) eliminate such virus; (ii) mitigate any losses or damages caused by such virus by restoring data and/or reinstalling software; and (iii) **indemnify County for third party claims or causes of action caused by such virus.**

- H. Disabling Software and Equipment Removal:** Provided that County timely pays all undisputed amounts the following terms shall apply unless and until either party terminates the Agreement pursuant to Section XXV. In the event of a dispute between the parties, including a dispute involving an allegation by Contractor of a breach of this Agreement by County, Contractor shall not deny the County access to or use of the Licensed Software, shall not invoke or utilize disabling code which would have the effect of impairing or impeding County's access to or use of the Licensed Software, and shall not remove equipment or otherwise interfere with County's use of the equipment provided under this Agreement, except pursuant to a Court order after notice and a hearing. If, at any time, the licensor of any Third Party Software, said Third Party Software being licensed to Contractor and of such an essential nature that its unavailability could adversely affect the services provided under this Agreement, threatens such a denial of access or use or such an invocation, use or removal, Contractor shall use commercially reasonable efforts to preclude such action on the part of the licensor.
- I. Security.** Contractor will comply with the security procedures that are in effect during the term of this Agreement and that are provided to Contractor in writing for the security of County's facilities and County Data, as determined by site rules and regulations, subject to change control.

**XVIII. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES:**

Limited Warranties: Contractor warrants that:

- A.** the services described herein shall be performed in a professional and workmanlike manner conforming to generally accepted consulting services for information technology services. This warranty extends for sixty (60) days past termination or expiration of this Agreement. This warranty is limited to rework of the unsatisfactory product without change to the original specifications and without regard to the amount of the effort expended on the original work product; the Licensed Software shall, upon completion of the Implementation Plan, possess all material functions and features described in the functional and technical requirements of the Final Proposal and with respect to the Embedded Third Party Software, the Manufacturers Specifications.
- B.** the scanning devices and printers will perform at least 95% of the performance specification stated in the Manufacturer's Specifications.
- C.** upon installation and during the term of the contract, the Licensed Software shall be compatible with the Operating System, application programs, CPUs, and networks specified in the Manufacturer's Specifications and in the Final Proposal, and the recommended hardware configuration.
- D. Intellectual Property Warranty:** Contractor represents that, to the best of its knowledge,

the Licensed Software and any Embedded Third Party Software [open subject to Hart], do not, and will not, infringe any patent, copyright, trademark, trade secret, owned by any other person or third party. County's sole and exclusive remedy for any breach of the foregoing warranty shall be Contractor's indemnification obligations under Section XXVII.

- E. Contractor warrants that it has and will continue to have the right to transfer the license to the HART software to County as set forth in Section XXI.
- F. to the best of its knowledge, the Services shall be free from material defects in performance and shall conform to the requirements of this agreement, including being fit for the purpose of providing the functionality described in Section 13 of the Final Proposal.
- G. County shall notify Contractor of any breach of the foregoing limited warranties, and Contractor shall, as County's sole and exclusive remedy, repair or replace defective equipment and/or Licensed Software or re-perform defective Services until such time as the SLA becomes effective. After the SLA becomes effective, County's sole and exclusive remedy shall be the service credits described therein.

General Warranties: Contractor warrants that:

- A. it is a corporation duly incorporated, validly existing and in good standing;
- B. it has all requisite corporate power and authority to execute, deliver and perform its obligations hereunder;
- C. the execution, delivery and performance of this Agreement have been duly authorized by it;
- D. it shall comply with all applicable laws and regulations applicable to Contractor and shall obtain all applicable permits and licenses required of Contractor in connection with its obligations hereunder;
- E. 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 County or Contractor to fully perform their respective obligations hereunder;
- F. it is not a party to any pending litigation, the resolution of which is reasonably likely to adversely affect the ability of County or Contractor to fully perform their respective obligations hereunder, nor is any such litigation reasonably contemplated. Contractor agrees to inform County in the event any such litigation occurs or becomes reasonably contemplated during the term hereof;
- G. it, to the best of its knowledge, has no actual or potential conflicts of interest in providing services to County under this Agreement and that Contractor's provision of services under this Agreement, to the best of its knowledge, would not reasonably create an appearance of impropriety;
- H. it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this Agreement;
- I. Pursuant to Article 2.45 of the Business Corporation Act, Texas Civil Statutes, which prohibits Dallas County from entering into a contract with a corporation which is delinquent in paying taxes under Chapter 171 of the Texas Tax Code, Contractor, by executing this Agreement, hereby certifies that it is not delinquent in its Texas franchise

tax payments, or that it is exempt from, or not subject to such a tax. A false statement concerning the corporation's franchise tax status shall constitute grounds for termination of this Agreement at the sole option of the County.

- J. County shall have no liability to any subcontractors in the event Contractor does not pay or delays payment to any subcontractors.
- K. **Fraud Prevention:** Contractor shall establish, maintain and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Agreement. Any known or suspected incident of fraud or program abuse involving Contractor's employees or agents shall be reported immediately by the County to the County Project Manager, the Dallas County Auditor, and the Chief of the Civil Division of the Dallas County District Attorney's Office for appropriate action. Contractor and County agree that every person who, as part of their employment, receives, disburses, handles or has access to funds collected pursuant to this Agreement does not and shall not participate in accounting or operating functions that would permit them to conceal accounting records and / or misuse said funds .

EXCEPT FOR THE FOREGOING WARRANTIES, THE LICENSED SOFTWARE, THIRD PARTY SOFTWARE AND SERVICES ARE PROVIDED "AS IS", AND CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE SERVICES PERFORMED UNDER THIS AGREEMENT.

**XIX. COUNTY'S REPRESENTATIONS AND WARRANTIES:**

General Warranties: County warrants that:

- A. it has all requisite power and authority to execute, deliver and perform its obligations hereunder;
- B. the execution, delivery and performance of this Agreement have been duly authorized by it;
- C. 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 County or Contractor to fully perform their respective obligations hereunder;

**XX. LIMITATION OF DAMAGES:**

PROVIDED THAT (I) BEARINGPOINT REGULARLY DELIVERS UPDATES OF THE COUNTY'S DATA AND (II) ESTABLISHES BY CONTRACT WITH HART THAT COUNTY CAN TAKE OVER THE LICENSE TO THE HART SOFTWARE AND BECOME A BENEFICIARY TO THE HART ESCROW AGREEMENT FOR THE REMAINDER OF THE TERM OF THIS AGREEMENT (FOR NO ADDITIONAL TRANSFER FEE) BEARINGPOINT'S TOTAL LIABILITY HEREUNDER SHALL NOT EXCEED TWO (2) TIMES THE ANNUAL CONSIDERATION (AS MEASURED DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING TERMINATION) PAID BY COUNTY PURSUANT TO THE AGREEMENT.

**XXI. DISCLAIMER OF CONSEQUENTIAL DAMAGES**

BEARINGPOINT SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES OF ANY KIND

(INCLUDING LOST REVENUES OR PROFITS, OR LOSS OF BUSINESS) ARISING OUT OF OR IN CONNECTION WITH OR RELATED TO THIS AGREEMENT OR THE RIGHTS PROVIDED HEREUNDER SUFFERED BY COUNTY OR BY ANY ASSIGNEE OR OTHER TRANSFEREE OF, OR THIRD PARTY CLAIMING RIGHTS DERIVED FROM COUNTY, EVEN IF INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

## XXII. INSURANCE REQUIREMENTS

### A. Insurance

Contractor and Subcontractors, at Contractor's and Subcontractors' sole cost, shall additionally purchase and maintain in force the following minimum insurance coverage during the term of this Agreement. Such insurance shall be in the amounts and in full compliance with the following terms and conditions:

County requires and Contractor agrees that the following insurance coverage will be met and in effect without interruption for the term of the Agreement and any renewal or extension. Contractor will submit within ten (10) days after the term of this Agreement to the Dallas County Purchasing Department a certificate of insurance, or if requested by County, a certified copy of the insurance policy, providing verification of the herein required coverage. The certificate of insurance shall list "Dallas County" as a certificate holder. All certificates of insurance shall be identified with the RFP number, Contractor's Name and the address of the Premises. Full verification and prior acceptance by the County of the insurance provided shall be a condition precedent to the commencement of the Agreement. Moreover, the County should proceed under the Agreement only after he/she gets a written "Notice to Proceed" from the County Purchasing Department. Acceptance of the verification of insurance shall not relieve or decrease the liability of the Contractor. All policies shall be issued by an insurance company acceptable to County, having a rating of "A" or better by *A.M. Best Co* and authorized to do business in the State of Texas. All insurance cost, including any deductibles (which shall not exceed ten percent [10%] of the coverage) shall be paid in full by Contractor without cost to or contributions from the County. The following minimum insurance coverage is required:

#### 1. Workers Compensation Insurance

Worker's Compensation Insurance coverage in the amount and in compliance with the provisions as provided for by Texas law as established by the Texas Workers Compensation Act, Title 5, Subtitle A, Texas Labor Code for all of its employees assigned to operate or work under this Agreement. **Contractor shall require subcontractors to provide Workers' Compensation Insurance for all of the latter's employees unless the Contractor affords such employees protection.**

<u>Types of Coverage</u>	<u>Limits of Liability</u>
a. Workers' Compensation	Statutory
b. Employer's Liability	
Bodily Injury by Accident	\$500,000 Each Accident
Bodily Injury by Disease	\$500,000 Each Employee
Bodily Injury by Disease	\$500,000 Policy Limit

This insurance must be endorsed with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from the County.

2. **Commercial General Liability Insurance, including Contractual Liability– Commercial General Liability Insurance** coverage for the following: (1) Premises Operations; (2) Independent Contractors or Contractors; (3) Products/Completed Operations; (4) Personal Injury; (5) Contractual Liability; (6) Broad Form Property damage to include fire legal liability. Such insurance shall carry limits of One Million and 00/100 Dollars (\$1,000,000.00) for bodily injury and property damage per occurrence with a general aggregate of One Million and 00/100 Dollars (\$1,000,000.00) and products and completed operations aggregate of One Million and 00/100 Dollars (\$1,000,000.00). There shall not be policy exclusion or limitations for contractual liability covering the Contractor's obligations herein; person injury/advertising liability; medical payments; fire damage, legal liability; broad form property damage, and/or liability for independent contractors.

This insurance must be endorsed with a Waiver of Subrogation Endorsement, waiving the carrier's right of recovery under subrogation or otherwise from the County.

3. **Professional Liability Insurance** with limits of liability not less than Seven Hundred and Fifty Thousand and 00/100 Dollars (\$750,000.00).

- B. Contractor agrees that, with respect to the above referenced insurance, all insurance policies will contain following required provisions:

1. As applicable:
  - a. "This insurance shall not be canceled, limited in scope or coverage or non-renewed until after thirty (30) days prior written notice, or ten (10) days for non-payment of premium, has been given by the insurance company to the County."
  - b. "It is agreed that the Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the County for liability arising out of operations under the Agreement with the County."
  - c. "Dallas County, County Commissioners, County Judge, the County's elected officials, director, employees, agents representatives and volunteers are added as additional insured in respect to operations and activities of, or on behalf of the named insured performed under this Agreement with the County." (This is not applicable to the workers' compensation and professional liability policies).
2. Provide for an endorsement that the "other insurance" clause shall not apply to the County where County is an additional insured on the policy.
3. Provide for notice to the County by United States Postal Service registered mail, return receipt requested, and full postage paid, sent to:

**Purchasing Agent for Dallas County, Texas  
Records Building, 6<sup>th</sup> Floor  
509 Main Street, Room 623  
Dallas, Texas 75202-5799**

**Dallas County Auditor  
Records Building, 4<sup>th</sup> Floor  
509 Main Street, Suite 407  
Dallas, Texas 75202-5799**

4. All Insurance coverage shall be on an occurrence basis covering the term of the Agreement, unless specifically approved in writing, and executed by the County's Director and Risk Manager. In the event that a "claims made" basis is approved by the County in writing, such coverage shall be maintained during the Agreement term in one year increments for five (5) years following the expiration and/or termination of this Agreement.
5. In addition to any and all other remedies the County may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, County shall have the right, at its sole discretion, declare a material breach of this Agreement, which, at County's discretion may result in:
  - a. termination of this Agreement; or
  - b. demand on any bond, as applicable; or
  - c. any combination of the above.
6. Contractor shall advise County in writing within twenty-four (24) hours of any claim or demand against County or Contractor known to Contractor related to or arising out of Contractor's actions under this Agreement.
7. The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
8. Approval, disapproval or failure to act by the County regarding any insurance supplied by Contractor or the failure of the Contractor to provide required insurance shall not relieve Contractor of full responsibility or liability for damages and accidents, as set forth herein. Neither shall bankruptcy, insolvency or denial of liability by any insurance company exonerate Contractor from liability.
9. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor' or its subcontractors' use under this Agreement.
10. Recontract of Claims/Subrogation. Contractor releases County from any claim, by subrogation or otherwise for, including by not limited to, any damage to the premises, the building, the parking facility, if any, or personal property within the building, by reason of fire or the elements, regardless of cause, including negligence of County or Contractor. This release applies only to the extent that it is permitted by law, the damage is covered by insurance proceeds, and the release does not adversely affect any insurance coverage.
11. Notice to Insurance Companies. County and Contractor will notify the issuing insurance companies of the release set forth in the preceding paragraph and will have the insurance policies endorsed, if necessary, to prevent invalidation of the insurance coverage.
12. Waiver of Subrogation. All insurance policies will contain a waiver of subrogation of any and all claims against County.

### **XXIII. BONDING REQUIREMENTS**

With the execution and delivery of this Agreement, the Contractor shall furnish and file with Dallas County within thirty (30) days of award and in the amounts herein required the following surety bonds. Such Surety Bonds shall be in accordance with the provisions of Article 5160, Revised Civil Statutes of Texas, as amended by Acts of the Regular Session of the Legislature.

- A. Performance Bond:** Contractor is required to execute to Dallas County and maintain annually a good and sufficient bond in an amount equal to one hundred percent (100%) of the approximate yearly amount of the Agreement in the amount of Six Hundred and Forty-Six Thousand Eight Hundred and 00/100 Dollars (\$646,800.00), as evidenced by the Proposal tabulation (not to exceed amount), or otherwise guaranteeing the full and faithful execution of the work and performance of the Agreement in accordance with the plans, specifications and Agreement documents, including any extensions thereof, for the protection of Dallas County. The bond shall identify the Principal and Surety with the Owner. The Principal and Surety shall be identified by their full legal names, addresses, and legal status of the parties (i.e., sole proprietorship, general partnership, joint venture, unincorporated association, limited partnership, corporation (general or professional), etc.). The identification of the Owner will be for informational purposes only. The Agreement shall be described by the RFP Number for which services are being provided, date, amount and by official name and identification of the project. The amount of the Agreement and the dollar amount of the performance bond shall be in both written and numerical form. The date of the performance bond shall not be earlier than the date of the Agreement, which is adopted by reference. The bonds must be executed by a corporate surety authorized to do business in the State of Texas in accordance with Article 7.19-1 of the Texas Insurance Code. Each bond must be separately signed by the Principal and the Surety. The parties executing (signing) the bond should indicate their company, print their name and title, and impress the corporate seal, if any. Where appropriate, Contractor shall attach a copy of the resolution by law authorizing the individual to act on behalf of the firm or entity. Evidence of authority to sign on behalf of each party should be obtained. As to the Surety, this usually takes the form of a power of attorney issued by the Surety Company to the agent who signs on its behalf. The bonds must be payable to Dallas County.
- B.** The performance bond must clearly and prominently display on the bond or on an attachment to the bond the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent, or the toll-free telephone number maintained by the Texas Department of Insurance under Article 1.35D of the Texas Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.
- C.** Should the County exercise any Agreement extension option for additional Agreement terms, it will be Contractor's responsibility to have the surety company provide to County confirmation of the existing bond or provide a new bond, if applicable.
- D.** Bonds shall be executed by a duly authorized surety company satisfactory to the County. The County will accept only those bonds executed by those surety companies listed in Circular 570 "Surety Companies Acceptable on Federal Bonds published in the Federal Register, U.S. Department of the Treasury."
- E.** No surety will be accepted by County who is now in default or delinquent on any bonds or who is interested in any litigation against the County.
- F.** Each bond shall be executed by Contractor and surety. Each surety shall designate an agent resident in the State of Texas to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship.
- G.** In the event the Agreement is prematurely terminated due to Contractor's breach and/or non-performance of the Agreement, County reserves the right to act on the performance bond and/or seek monetary restitution. In the event civil suit is filed to enforce this provision, County will seek its attorney's fees and costs of suit from Contractor, which

amount Contractor shall immediately pay.

- H. All bonds shall be delivered to the Dallas County Purchasing Department, c/o Linda Boles, 509 Main Street, Room 623, Dallas, Texas 75202 with a copy to the Dallas County Auditor, Virginia Porter, 509 Main Street, Suite 407, Dallas, Texas 75202 within thirty (30) days after execution of this Agreement, or such non-delivery shall constitute a default of this Agreement subject to immediate termination at County's sole discretion.
- I. County will disburse no payments for goods, materials or services provided by Contractor unless a good and sufficient bond written to equal one hundred percent (100%) of the approximate yearly Agreement amount is on file in the amount of Six Hundred and Forty-Six Thousand Eight Hundred and 00/100 Dollars (\$646,800.00) with the County within thirty (30) days after execution of this Agreement.
- J. In the event Contractor does not secure and deliver a performance bond acceptable to County and in accordance with the provisions of this Section, or comply with the cash option in K below, County, at its sole discretion, may immediately terminate this Agreement.
- K. In lieu of a performance bond, Contractor may submit, within 30 (thirty) days after execution of this Agreement, a cashier's check in the amount of 5% of the total contract amount guaranteeing the full and faithful execution of the work and performance of the contract in accordance with the contract documents, including any extension thereof for protection of the County. On an annual basis, the total amount of Documents processed will be determined, and the deposited amount will be adjusted to reflect any increase or decrease in the number of Documents filed in the prior year.

#### XXIV. TERMINATION

##### A. Without Cause

County may without cause, at its sole option, and without prejudice to any other remedy to which it may be entitled at law or in equity, or elsewhere under this Agreement, terminate this Agreement, in whole or in part, by giving 30 days' written notice thereof to Contractor with the understanding that all products or services being delivered or performed under this Agreement shall cease upon the date specified in the notice. County shall compensate the Contractor in accordance with the terms of this Agreement for the products or services delivered or performed prior to the date specified in such notice and for the depreciated, unrecovered, reasonable costs of equipment and software provided under the agreement. Within 30 (thirty) days after execution of this agreement and annually thereafter, Contractor will provide County with a depreciation schedule of the hardware outlined in Exhibit D. The depreciation schedule will include the hardware's useful life, original cost, and depreciation method.

##### B. Non-Performance

Material breach of the terms of this Agreement shall be basis for termination of the Agreement by County if Contractor fails to cure such breach within 60 days of specific written notice of such failure. In the event the Agreement is prematurely terminated for material breach by the Contractor, County reserves the right to seek monetary restitution (to include, but not limited to, withholding monies owed to Contractor) from the Contractor to cover costs for interim services and/or to cover the difference of a higher cost (difference between termination Contractor's rate and new contractor's rate) beginning the date of Contractor's termination through the Agreement's expiration date. In the event civil suit is filed to enforce this provision, County will seek its attorney's fees and cost of suit from the Contractor.

Material breach of the terms of this Agreement shall be the basis for termination of the Agreement by Contractor if County fails to cure such breach within 60 days of specific written notice of such failure. In the event the Agreement is prematurely terminated for material breach caused by the County, Contractor reserves the right to seek monetary damages.

**C. Failure to Comply with Public Information Act**

Contractor agrees that if it fails to produce public information maintained or collected on behalf of the County in accordance with Section XXX of this Agreement (Public Information Act Requests), or the Texas Public Information Act (including the cost schedule of the Texas Administrative Code), Contractor is in breach of contract and County has the right to terminate this Agreement as set forth in Section B above.

**XXV. DUTIES OF CONTRACTOR UPON EXPIRATION OR TERMINATION OF AGREEMENT**

- A. Upon the expiration of the Agreement or any extension, or upon the earlier termination of the Agreement or any extension, Contractor shall have the following duties:
1. Provide reasonable cooperation in transitioning Services to the County or a succeeding Contractor, up to a total of 320 hours. Such cooperation shall not result in additional costs to County unless mutually agreed upon by the parties in writing.
  2. Provide to County, at no cost, all County records and data. Electronic data is to be provided in a format compatible with County's information technology capabilities.
  3. Perform additional services, as mutually agreed in writing. Contractor shall perform such services at its standard published QISV rates.
  4. In the event Contractor believes County has breached any obligation of County under the Agreement, or if Contractor stops performing any services under the Agreement, Contractor must deliver to County updated copies of all County records and, data. If Contractor fails to deliver all of these items, then Contractor is estopped from declaring County in breach of the Agreement.
- B. The items required to be furnished to County by Contractor under this section shall be provided as soon as reasonably practicable after the obligation of Contractor to provide it arises, whether by contract termination or expiration, alleged breach by the County, or cessation of any services by Contractor.
- C. The parties agree that County will have no adequate remedy at law should Contractor violate the terms of this Section XXV(B). County shall be entitled to injunctive relief and/or specific performance to enforce the terms of the Section XXV(B), and shall be entitled to recover its reasonable attorney's fees in the event of litigation to enforce the County's rights as set forth in this Section XXV(B).

**XXVI. SUSPENSION OF WORK**

Should the County desire to suspend the work and/or Services in whole or in part but not terminate the Agreement, the County will issue a written order providing thirty (30) days notice to stop work setting out the terms of the suspension which shall not exceed thirty (30) days. The

Contractor will stop all work and/or Services, and to the extent practicable, cease to incur costs during the term of the suspension.

The Contractor will resume work when notified to do so by the County in a written authorization to proceed. Suspension of work will not extend the Agreement period, but may extend timeframes under the Service Level Agreement.

If Contractor is delayed by the County due to a suspension of work, or otherwise, the Contractor's sole and exclusive remedy for delay shall be the right to a time extension for completion of the work and/or Services and not damages.

If the Project is suspended, Contractor shall be compensated for all services performed prior to the effective date suspension and reasonable unavoidable and unrecoverable costs incurred during suspension.

## **XXVII. INDEMNITY**

### **A. General**

DALLAS COUNTY, DALLAS COUNTY COMMISSIONERS, ELECTED OFFICIALS, APPOINTED OFFICIALS, OFFICERS, DIRECTORS EMPLOYEES, AGENTS AND REPRESENTATIVES (HEREINAFTER "INDEMNITEES") SHALL NOT BE LIABLE TO CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, ASSIGNS OR TO ANY OTHER PERSON WHOMSOEVER OR ENTITY WHATSOEVER, FOR ANY INJURY TO PERSON OR DAMAGE TO PROPERTY, ON OR ABOUT COUNTY PROPERTY, INCLUDING, BUT NOT LIMITED TO, CONSEQUENTIAL DAMAGE: (1) CAUSED BY ANY ACT OR OMISSION OF CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, ASSIGNS OR OF ANY OTHER PERSON ENTERING COUNTY PROPERTY BY EXPRESS OR IMPLIED INVITATION OF CONTRACTOR OR SUBCONTRACTOR; OR (2) OCCASIONED BY OR THROUGH ANY ACT OR OMISSION OF CONTRACTOR OR SUBCONTRACTOR ON COUNTY PROPERTY OR OF ANY OTHER PERSONS UNAFFILIATED WITH THE COUNTY, WHOMSOEVER; OR (3) ARISING OUT OF THE UNAUTHORIZED USE OR MISUSE OF COUNTY PROPERTY BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, LICENSEES, INVITEES OR ASSIGNS; OR (4) ARISING OUT OF ANY BREACH OR DEFAULT BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, LICENSEES, INVITEES OR ASSIGNS IN THE PERFORMANCE OF ITS OBLIGATIONS HEREUNDER; OR (5) OCCASIONED BY OR THROUGH THE UNAUTHORIZED USE OR MISUSE OF ANY COUNTY PROVIDED UTILITIES, COMPUTERS, SOFTWARE, FIRMWARE, HARDWARE OR ANY VIRUS OR SIMILAR RELATED ITEMS THAT MAY BE CONTRACTED BY CONTRACTOR OR PROJECT THROUGH SUCH USE.

CONTRACTOR ASSURES THAT IT IS AN INDEPENDENT CONTRACTOR AND NOT AN AGENT, SERVANT, OR EMPLOYEE OF COUNTY. CONTRACTOR AGREES, AND SHALL REQUIRE ALL SUBCONTRACTORS TO AGREE, TO PROTECT, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES AGAINST ALL THIRD PARTY CLAIMS, DEMANDS, ACTIONS, SUITS, LOSSES, DAMAGES, LIABILITIES, COSTS AND/OR EXPENSES OF EVERY KIND AND NATURE (INCLUDING, BUT NOT LIMITED TO, COURT COSTS, LITIGATION EXPENSES AND ATTORNEY'S FEES) AND ALL RECOVERABLE INTEREST THEREON, INCURRED BY OR SOUGHT TO BE IMPOSED ON INDEMNITEES BECAUSE OF BODILY INJURY (INCLUDING DEATH) OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY, TO THE EXTENT CAUSED BY: (1) THE NEGLIGENT PERFORMANCE OF, ATTEMPTED PERFORMANCE OF, OR FAILURE TO PERFORM, THE SERVICES UNDER THE CONTRACT BY CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, ASSIGNS; (2) THE NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, ASSIGNS IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT; (3) THE

CONDITION OF THE PREMISES (OTHER THAN COUNTY'S) ON WHICH SAID SERVICES ARE BEING PERFORMED; (4) THE NEGLIGENT SELECTION, PROVISION, USE OR FAILURE TO USE, BY ANY PERSON OR ENTITY, OF ANY POWER SOURCE, HARDWARE, SOFTWARE, TOOLS, SUPPLIES, MATERIALS, EQUIPMENT OR VEHICLES (WHETHER OWNED OR SUPPLIED BY INDEMNITEES, CONTRACTOR, OR ANY OTHER PERSON OR ENTITY) IN CONNECTION WITH SAID SERVICES; (5) THE NEGLIGENT ACTS OR OMISSIONS ON COUNTY PROPERTY OF CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, INDEPENDENT CONTRACTORS, AGENTS, INVITEES, LICENSEES, ASSIGNS OR ANY OTHER PERSON ACTING BY OR ON BEHALF OF CONTRACTOR; (6) THE UNAUTHORIZED WORK UPON OR ADJACENT TO ALL OR ANY PART OF COUNTY PROPERTY, WHETHER OR NOT CAUSED BY OR CONTRIBUTED TO BY THE PRESENCE IN OR OPERATION OF ANY FACILITY OR ANY OPERATION, STRUCTURE OR FACILITIES OF COUNTY, OR ANY OTHER PARTY, OR BY NEGLIGENCE OR ALLEGED NEGLIGENCE ON THE PART OF INDEMNITEES OR ANY OF INDEMNITEES' AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, INVITEES OR LICENSEES; AND (7) THE BREACH OF ANY OF THE REQUIREMENTS AND PROVISIONS OF THIS CONTRACT OR ANY FAILURE OF CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, AGENTS, INVITEES, LICENSEES, OR ASSIGNS IN ANY RESPECT TO COMPLY WITH AND PERFORM ALL OF THE REQUIREMENTS AND PROVISIONS. IN ADDITION, CONTRACTOR HEREBY COVENANTS AND AGREES THAT IT WILL HOLD INDEMNITEES HARMLESS FOR ALL PERSONAL PROPERTY OF CONTRACTOR, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, AGENTS, GUESTS, CONSULTANTS, SUBCONSULTANTS, LICENSEES, SUBLICENSEES, INVITEES OR OTHER PARTY HAVING ANY PERSONAL PROPERTY ON COUNTY PREMISES ARISING OUT OF THE CONTRACTOR'S USE OF THE AREA. CONTRACTOR FURTHER AGREES TO DEFEND, AT ITS SOLE COST AND EXPENSE (AT THE ELECTION OF COUNTY), AGAINST ANY CLAIM, DEMAND, ACTION OR SUIT FOR WHICH INDEMNIFICATION IS PROVIDED HEREUNDER.

APPROVAL AND ACCEPTANCE OF CONTRACTOR'S WORK BY COUNTY SHALL NOT CONSTITUTE NOR BE DEEMED A RELEASE OF THE RESPONSIBILITY AND LIABILITY OF THE CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, OFFICERS, AGENTS, INVITEES, LICENSEES OR ASSIGNS FOR THE ACCURACY AND COMPETENCY OF THEIR WORK; NOR SHALL SUCH APPROVAL AND ACCEPTANCE BE DEEMED TO BE AN ASSUMPTION OF SUCH RESPONSIBILITY BY THE COUNTY FOR ANY DEFECT, ERROR OR OMISSION IN THE WORK PERFORMED BY THE CONTRACTOR, ITS SUBCONTRACTORS, EMPLOYEES, OFFICERS, AGENTS, SUBCONTRACTORS, INVITEES, LICENSEES OR ASSIGNS IN THIS REGARD.

WITHOUT IN ANY WAY LIMITING OR RESTRICTING THE INDEMNIFICATION AND DEFENSE AGREEMENTS STATED ABOVE, CONTRACTOR AGREES THAT IT IS THE INTENTION OF THE PARTIES HERETO THAT CONTRACTOR, ANY SUBCONTRACTORS, AND THEIR INSURERS BEAR THE ENTIRE RISK OF LOSS OR INJURY TO ANY OF CONTRACTOR'S EMPLOYEES, "BORROWED SERVANTS," INDEPENDENT CONTRACTORS, AGENTS, REPRESENTATIVES, SUBCONTRACTORS, VENDORS, MATERIALMEN, OR ANY OTHER PERSON PRESENT ON THE PROPERTY OR PERFORMING ANY OTHER ACT OR SERVICE ON CONTRACTOR'S BEHALF OR AT ITS REQUEST, WHETHER OR NOT ANY SUCH LOSS OR INJURY IS CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENCE OR FAULT OF INDEMNITEES, AND WITHOUT SEEKING ANY CONTRIBUTION THEREFOR FROM INDEMNITEES OR ITS INSURERS.

CONTRACTOR SHALL, AT ITS EXPENSE, INDEMNIFY AND HOLD HARMLESS THE COUNTY FROM AND AGAINST ANY CLAIM WITH RESPECT TO WITHHOLDING TAXES, WORKER'S COMPENSATION, EMPLOYEE'S BENEFITS RELATING TO CONTRACTOR PERSONNEL, OR ANY OTHER EMPLOYMENT RELATED CLAIM, DEMAND, LIABILITY, DAMAGE, OR LOSS OF ANY NATURE ARISING OUT OF THE EMPLOYMENT

**RELATIONSHIP BETWEEN CONTRACTOR AND ITS PERSONNEL RELATING TO ANY OF THE PERSONNEL PROVIDED BY CONTRACTOR.**

**B. Indemnity for Third Party Infringement.**

IF ANY CLAIM IS ASSERTED, OR ACTION OR PROCEEDING BROUGHT AGAINST THE COUNTY THAT ALLEGES THAT ALL OR ANY PART OF THE LICENSED SOFTWARE OR EMBEDDED THIRD PARTY SOFTWARE, IN THE FORM SUPPLIED, OR MODIFIED BY CONTRACTOR, OR ITS SUBCONTRACTORS UNDER CONTRACTOR'S SOLE DIRECTIONS, OR THE COUNTY'S USE THEREOF AS PERMITTED BY THIS AGREEMENT, INFRINGES OR MISAPPROPRIATES ANY UNITED STATES COPYRIGHT OR PATENT OR TRADEMARK OR ANY TRADE SECRET, OR VIOLATES ANY OTHER CONTRACT, LICENSE, GRANT, OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY, THE COUNTY, AS SOON AS PRACTICABLE, SHALL GIVE CONTRACTOR PROMPT WRITTEN NOTICE THEREOF. CONTRACTOR SHALL DEFEND, AND HOLD COUNTY HARMLESS AGAINST ANY SUCH CLAIM OR ACTION AT CONTRACTOR'S EXPENSE AND SHALL INDEMNIFY THE COUNTY AGAINST ANY LIABILITY, DAMAGES AND COSTS RESULTING FROM SUCH CLAIM, WITHOUT WAIVING ANY RIGHTS UNDER SOVEREIGN IMMUNITY, THE COUNTY SHALL COOPERATE WITH AND MAY MONITOR CONTRACTOR IN THE DEFENSE OF ANY CLAIM, ACTION OR PROCEEDING. COUNTY WILL, MAKE EMPLOYEES AVAILABLE AS CONTRACTOR MAY REASONABLY REQUEST WITH REGARD TO SUCH DEFENSE, SUBJECT TO THE REIMBURSEMENT BY CONTRACTOR OF ALL OUT OF POCKET COSTS AND EXPENSES OCCASIONED BY THE COUNTY'S COOPERATION IN SUCH DEFENSE. CONTRACTOR AGREES NOT TO SETTLE ANY SUCH CLAIM IN A MANNER WHICH IMPOSES LIABILITY ON COUNTY WITHOUT THE COUNTY'S CONSENT. THIS INDEMNITY DOES NOT APPLY TO THE EXTENT THAT SUCH A CLAIM IS BASED, IN WHOLE OR IN PART, UPON MODIFICATIONS TO THE LICENSED SOFTWARE MADE BY THE COUNTY, OR ANY THIRD PARTY UNDER COUNTY'S DIRECTIONS, OR UPON THE UNAUTHORIZED USE OF THE LICENSED SOFTWARE BY THE COUNTY.

IF, AS A RESULT OF SUCH A CLAIM, LITIGATION OR THREAT OF LITIGATION, COUNTY IS ENJOINED, OR IN CONTRACTOR'S OPINION MAY BE ENJOINED FROM USING THE LICENSED SOFTWARE, CONTRACTOR MAY AT ITS SOLE OPTION AND EXPENSE PROCURE FOR COUNTY THE RIGHT TO CONTINUE TO USE THE LICENSED SOFTWARE, OR AT CONTRACTOR'S SOLE OPTION AND EXPENSE, MAY REPLACE OR MODIFY THE LICENSED SOFTWARE SO AS TO SETTLE SUCH CLAIM, LITIGATION OR LITIGATION THREAT. IF SUCH SETTLEMENT OR MODIFICATION OF THE SOFTWARE IS NOT REASONABLY PRACTICAL, THE LICENSE AND THIS AGREEMENT SHALL BE DISCONTINUED UPON WRITTEN NOTICE FROM EITHER PARTY.

THE PROVISIONS OF THIS SUBSECTION SET FORTH CONTRACTOR'S SOLE AND EXCLUSIVE OBLIGATIONS, AND COUNTY'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION THESE PROVISIONS SHALL SURVIVE TERMINATION, EXPIRATION OR CANCELLATION OF THIS CONTRACT OR ANY DETERMINATION THAT THIS CONTRACT OR ANY PORTION HEREOF IS VOID, VOIDABLE, INVALID OR UNENFORCEABLE WITH RESPECT TO ANY CAUSE OF ACTION ARISING BEFORE TERMINATION.

**C. No Indemnification by County.**

Contractor acknowledges and agrees that County is prohibited by Article XI, Section 7 of the Texas Constitution from indemnifying it or any other third party for damages arising under this Agreement.

**XXVIII. OWNERSHIP OF RECORDS**

All records in the possession of the Contractor which are furnished by County, or which are duplicates, copies, electronic images or digital files made from records furnished by County (whether in paper, microfilm, or electronic format) are the sole property of County. Contractor has no ownership interest, and no right to control the release, withholding, sale, or disposition of any record or data of County.

Pursuant to the Public Information Act, Contractor may obtain real estate records or other records from the County Clerk's Office through the same mechanisms and procedures generally available to the public. To avoid an unfair advantage over other members of the public, Contractor agrees that it will not access the records except to perform services under the Agreement until they are available for purchase to the public through the County Clerk's Office.

Additionally, the use, sale, distribution, or disclosure of any County data shall not be permitted in such a way to violate the Texas Public Information Act, ch. 552 of the Texas Government Code.

During the term of this Agreement, and except with respect to public records and any data shared with subcontractors or agents, Contractor shall not, without the prior written express consent of County, disclose to any third person any information that personally identifies the identity, usage, habits, or characteristics of County employees who are users of the Licensed Software

**XXIX. COUNTY RECORD DATA / BACKUPS**

Contractor agrees, as provided by Tex. Loc. Gov't Code § 205.009, that because it is under contract or agreement with County to create, file, or store local government record data electronically or to provide services, equipment, or the means for the creation, filing, or storage, it may not, under any circumstances, refuse to provide county record data to County in a timely manner on magnetic tape or CD.

Contractor agrees to provide weekly updates of the real property records and associated document images on magnetic tape or CDs. Because the information provided by the County is public information, Contractor agrees that it has no proprietary or copyright interest in this information as provided by the County.

Contractor agrees to establish a price within thirty (30) days of the signing of the Agreement to provide additional formats and to provide magnetic tapes and CDs to County.

**XXX. PUBLIC INFORMATION ACT REQUESTS**

Contractor and County understand that the County is subject, as a matter of law, to Chapter 552 of the Texas Government Code, also known as the Texas Public Information Act ("PIA"). Notwithstanding any other provision, Contractor and County agree that to the extent that if any provision in the Agreement, or other documents related to the RFP, response, any exhibit, attachment or incorporated document, is in conflict with the PIA, the same shall be of no force or effect, to the extent that it is in conflict, and the PIA shall govern.

Furthermore, it is expressly understood and agreed that the County may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the PIA to any software, hardware, firmware, or any part thereof, or other equipment or item, data or information, or any other thing or item furnished to or in the possession or knowledge of the County. It is further understood and agreed that the County, County Commissioners Court, County Judge, Elected Officials, Department Heads and employees have the right and obligation by law to rely on the advice, decisions and opinions of the Texas Attorney General.

Contractor agrees to release County, County Commissioners Court, County Judge, Elected Officials, Department Heads and employees from any and all liability or obligation of any type, kind or nature regarding any disclosure of any software, hardware, firmware, or any part thereof, or other equipment or item, data or information, or any other thing or item furnished by County or in the possession or knowledge of the County that is determined by County or in reliance on any opinion of the Texas Attorney General to be available to the public or any person or persons.

Contractor agrees that because it has contracted with the County to collect or maintain information for the County, the information is in the constructive custody of the County and therefore Contractor is subject to the PIA and the Texas Building and Procurement Commission's charge schedule (1 Tex. Admin. Code §§ 111.63 and 111.70) ("TBPC Charge Schedule"). If County is not able to provide the data to a requestor in a particular format or if such data is not available through the Website, Contractor must produce the requested information in the format requested if Contractor is capable of doing so for a price in compliance with the PIA and the Texas Building and Procurement Commission charge schedule. Such information should be provided within 10 days of the request or within a reasonable amount of time in accordance with the PIA. Contractor's failure to produce the information within a reasonable amount of time, or for a price in compliance with the PIA and the Texas Building and Procurement Commission charge schedule, may be deemed a breach of contract and grounds for termination of the Agreement. **Additionally, if Contractor fails to comply with the PIA or the TBPC Charge Schedule as required by an Attorney General opinion and the data is in the possession of Contractor, and if in the event that a third party claim is brought against County, Contractor will indemnify County for any litigation costs and attorney's fees.**

#### **XXXI. AUDITING / AUDIT REPORTS**

##### **A. Right to Audit**

County, its Auditor or its designated representative(s) shall have the unrestricted right to audit any and all accounting or other records regarding any funds paid or claimed under this Agreement, including, but not limited to all books, records, reports, tickets, deposits, expenditure, budget or any item therein, supporting data, computer records and programs, and all items of hardware, software or firmware, or any other item utilized by the Contractor regarding this Agreement. Contractor contracts and agrees that all records shall be kept and maintained for a period of time not less than four (4) years from the date of the termination of this Agreement. Such records shall be provided to the County in Dallas County, Texas and available for any audit at any time upon reasonable notice.

The results of any audit may be furnished to Contractor for comment. In the event that any audit shall determine that moneys are owed to County such sums are deemed to be due and payable to Dallas County, Texas within 30 days of the date of an invoice for such cost being deposited in the U.S. Mail, Certified Mail, Return Receipt Requested.

##### **B. Audit Reports**

Contractor agrees to provide up to five (5) customized reports as required by County requiring no more than sixty (60) hours to prepare including, but not limited to, reports showing receipt changes to allow for management review of internal control and deposit reports that includes general ledger account code associated with funds collected for each method of payment.

##### **C. Survival**

The audit provisions of this Agreement shall survive the termination of this Agreement until all claims brought by Dallas County, Texas are paid or reduced to judgment not subject to appeal and barred by Texas Statute regarding limitation of actions.

**XXXII. NOTICE**

Any notice to be given under this Agreement shall be deemed to have been given if reduced to writing and delivered by a nationally recognized personal delivery or courier service or mailed by certified or registered mail, return receipt requested, postage pre-paid, to the Party who is to receive such notice at the addresses set forth below or to such other address as either Party may specify in writing, unless otherwise provided herein. Such notice shall be deemed to have been given five (5) days subsequent to the date it was so delivered or mailed.

**TO COUNTY:**

Margaret Keliher, Dallas County Judge  
Dallas County Administration Building, 2<sup>nd</sup> Floor  
411 Elm Street, Suite 250  
Dallas, Texas 75202

**TO BEARINGPOINT:**

BearingPoint, Inc.  
Attention: Helena Tantillo  
301 Congress Ave. 13<sup>th</sup> Floor  
Austin, Texas 78701

**WITH A COPY TO:**

Cynthia Figueroa Calhoun, Dallas County Clerk  
Dallas County Records Building, 2<sup>nd</sup> Floor  
509 Main Street, Suite 200  
Dallas, Texas 75202

**WITH A COPY TO:**

BearingPoint, Inc.  
Attn: Group Counsel, Public Services  
1676 International Drive  
McLean, VA 22102

**XXXIII. SERVICE CREDITS**

County expects Contractor to meet or exceed the service levels described in Exhibit C. In the event that Contractor fails to meet any such service levels in a given month, County shall be entitled to receive a service penalty in the amount set forth for that service level in Exhibit C. ("Service Penalty"). Similarly, if Contractor meets or exceeds service levels in a given month, Contractor shall be entitled to a service incentive in the amount set forth for that service level in Exhibit C. ("Service Incentive"). Contractor may set off any Service Penalties due with any Service Incentives it has received to date as set forth in the SLA. If more than one service level is impacted by an incident or event, County may collect only the highest value Service Penalty for that incident. Service Penalties shall be County's sole and exclusive remedy for any failure to meet service levels by Contractor.

**XXXIV. STANDARD PROVISIONS****A. GOVERNING LAW & VENUE**

This Agreement and all matters pertinent thereto shall be construed and enforced in accordance with Title 5 of the Texas Civil Practice & Remedies Code, and all applicable municipal, county, State of Texas and federal laws. Contractor expressly agrees that no provision of this Agreement is any way intended to constitute a waiver by the County of any immunities from suit or from liability that the County may have by operation of law. Nothing herein is intended to benefit any third-party beneficiaries to this Agreement.

The exclusive venue for any legal action between the parties arising from this Agreement shall lie in Dallas County, Texas.

**B. COMPLIANCE WITH CODES AND ORDINANCES / PERMITS**

The Contractor understands that under Texas law, the County Clerk's Office has an obligation regarding disposition, retention, and duplication of documents and records. Contractor warrants

that it will, and will require any of its subcontractors, to make themselves aware and to comply with these legal requirements.

The Contractor shall obtain from the appropriate City, County, or State of Texas the necessary permit(s), if any, required by the ordinances of the City, County, or State for the performance of the work.

#### **C. ENTIRE AGREEMENT**

This Agreement, including all exhibits, and addendum, constitutes the entire agreement between the parties hereto and may not be modified except by an instrument in writing executed by the parties hereto.

#### **D. COUNTERPARTS, NUMBER/GENDER AND HEADINGS.**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Agreement shall be held and construed to include any other gender any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

#### **E. BINDING EFFECT**

This Agreement and the respective rights and obligations of the parties shall inure to the benefit of and be binding upon the successors and assigns of the parties, as well as the parties themselves.

#### **F. SEVERABILITY**

If any provision of this Agreement shall be held invalid, void or unenforceable, the remaining provisions shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

#### **G. NOTICE OF ASSIGNMENT OR CHANGE IN CONTROL OF BEARINGPOINTASSIGNMENT**

In the event of a sale, transfer or assignment of all or substantially all of the assets of Contractor, Contractor shall provide County with written notice of such sale, transfer or assignment within thirty (30) days in accordance with Section XXXII (Notice). Notwithstanding anything contained herein to the contrary, County shall have the right, but not the obligation, to immediately terminate this Agreement without cause in the event of sale, transfer or assignment.

Contractor shall not assign or transfer its rights under this Agreement, in whole or in part, or permit any other person or entity, exclusive of its contractors and subcontractors to use the rights granted herein or sublet all or any part of the contractual obligations without prior written consent of County, which County is under no obligation to grant.

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

#### **H. AMENDMENTS AND CHANGES IN THE LAW**

No modification, amendment, innovation, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the parties hereto. Any alteration, addition or deletion to the terms of this Agreement which are required by changes in federal or State law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law, provided however that any changes to the Deliverables, equipment, Licensed Software, Third Party Software or Documentation required by law, aside from changes due to statutory fees increases or decreases, will be subject to change control.

#### **I. FISCAL FUNDING CLAUSE**

Notwithstanding any provisions contained herein, the obligations of the County under this Agreement are expressly contingent upon the availability of funding for each item and obligation contained herein for the term of the Agreement and any extensions thereto. Contractor shall have no right of action against County in the event County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Agreement or failure to budget or authorize funding for this Agreement during the current or future fiscal years. Any and all equipment will be removed from the respective County department/facilities without penalty to County. In the event that County is unable to fulfill its obligations under this Agreement as a result of lack of sufficient funding, or if funds become unavailable, County, at its sole discretion, may provide funds from a separate source or may terminate this Agreement by written notice to contract at the earliest possible time prior to the end of its fiscal year. County agrees to use its best efforts to budget and authorize funding for this Agreement in future years and County represents that funding for this Agreement for the remainder of this year is budgeted and authorized. County shall notify Contractor prior to the commencement of each fiscal year whether funding is budgeted and authorized for this Agreement.

#### **J. INDEPENDENT CONTRACTOR**

Contractor is an independent contractor and not an agent, servant, joint enterprise or employee of the County. Contractor represents that it has, or will secure at its own expense, all personnel and Contractors required in performing the services herein. Such personnel and Contractors shall not be employees of or have any contractual relationship with the County.

#### **K. COLLUSION / CONFLICT OF INTEREST**

No official or employee of the County shall have any financial interest, direct or indirect, in any contract with the County or be financially interested, directly or indirectly, in the sale to the County of any land, materials, supplies or services, except on behalf of the County as an official or employee. Any violation of this section, with knowledge, express or implied, of the person or corporation contracting with the County shall render the contract involved voidable by the Commissioners Court of Dallas County. It is the responsibility of the contractor during all phases of the contract process to notify the County in writing of any potential conflict of interest. Notwithstanding the foregoing, mere ownership of stock in Contractor by an official or employee shall not violate this provision.

#### **L. SIGNATORY WARRANTY**

The person or persons signing and executing this Agreement on behalf of the Party, or representing themselves as signing and executing this Agreement on behalf of the Party, do hereby warrant and guarantee that he, she or they have been duly authorized by the Party to

execute this Agreement on behalf of the Party and to validly and legally bind the Party to all terms, performances and provisions herein set forth.

#### M. PUBLICITY

All media releases, public announcements and other disclosures by Contractor relating to this Agreement or the subject matter hereof, including promotional or marketing materials, but excluding announcements intended solely for internal distribution, intended solely to meet legal or regulatory requirements, or consisting solely of lists of current customers, shall be coordinated with and approved by the Dallas County Clerk prior to release. No license or right, either directly or by implication, is granted to Contractor to use County's name or any of County's trade names, trademarks, service marks, slogans, logos or designs for any advertising, promotional or other purpose without the prior, written permission of County (acting through the County Commissioners Court).

#### N. SURVIVAL

Sections XXI and XXII, and any other sections designated as surviving termination or expiration, shall survive termination or expiration of this agreement.

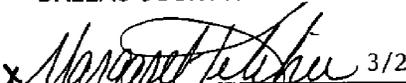
#### O. ACCEPTANCES

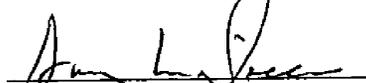
By their signatures below, the duly authorized representatives of County and Contractor accept the terms of this Agreement in full.

EXECUTED this eighth day of April, 2005.

DALLAS COUNTY:

BEARINGPOINT, INC.:

 3/29/05  
BY: Margaret Kelher  
Dallas County Judge

  
BY:  , Inc.

RECOMMENDED:

  
BY: Cynthia Figueroa Calhoun  
Dallas County Clerk

APPROVED AS TO FORM\*:

  
BY: Bob Schell,  
Chief, Dallas County District Attorney's Office, Civil Division

\*By law, the Dallas County District Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our

client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).