

## SOFTWARE SUPPORT AGREEMENT

**THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Rockley Interests, Inc. d/b/a DA Mid South, (hereinafter "Contractor"), authorized to conduct business in the State of Texas.**

WITNESSETH

WHEREAS, County desires to retain Contractor to provide software support services for the Diamond II access control system (hereinafter "Services"); and

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

WHEREAS, County has determined that this Agreement is for professional services and therefore is exempt from competitive bidding under Chapter 2254 of the Government Code.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

## AGREEMENT

## Article 1. Scope of Services

Contractor shall render Services to County as defined in the Scope of Services (attached hereto as Exhibit A).

## Article 2. Personnel

2.1 Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the Project shall, upon request of County, immediately be removed from association with the Project.

### **Article 3. Compensation and Payment**

3.1 The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is four thousand dollars and no/100 (\$4,000). In no case shall the amount paid under this Agreement exceed the Maximum Compensation without an approved change order.

3.2 Contractor shall submit to County invoices detailing the amounts due for services performed during the previous month. County shall pay such invoices within thirty (30) days of receipt, provided however, that the approval or payment of the invoice shall not be considered to be conclusive evidence of performance by Contractor to the point indicated by such invoice or of receipt or acceptance by County of the services covered by such invoice.

3.3 All performance of the Scope of Services including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

#### **Article 4. Term**

The term of this Agreement shall be for one year from the date of execution by the last party. The Agreement may be extended for additional one year terms by written agreement of the parties.

#### **Article 5. Modifications**

Any modifications to this Agreement must be in writing and must be signed by both parties.

#### **Article 6. Termination**

##### **6.1 Termination for Convenience**

6.1.1 County may terminate this Agreement at any time upon thirty (30) days written notice.

##### **6.2 Termination for Default**

6.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

6.2.1.1 If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

6.2.1.2 If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

6.2.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 6.1 above.

6.3 Upon termination of this Agreement, County shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in Section 3 above.

6.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

#### **Article 7. Inspection of Books and Records**

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

#### **Article 8. Insurance**

8.1 Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

8.1.1 Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

8.1.2 Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

8.1.3 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

8.1.4 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

8.1.5 Professional Liability insurance with limits not less than \$1,000,000.

8.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies (except Workers Compensation) written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

8.3 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

#### **Article 9. Indemnity**

**CONTRACTOR SHALL SAVE HARMLESS COUNTY FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.**

#### **Article 10. Confidential and Proprietary Information**

10.1 Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is furnished by County to others without restrictions similar to those imposed by this Agreement; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (d) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

10.2 Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or

use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

10.3 Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

10.4 Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

#### **Article 11. Independent Contractor**

11.1 In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Contractor or, where permitted, of its subcontractors.

11.2 Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

#### **Article 12. Contract Administration**

12.1 All written notices, demands, and other papers or documents to be delivered to County under this Agreement shall be delivered to the Fort Bend County Sheriff's Office, \_\_\_\_\_, Attention: \_\_\_\_\_, or at such other place or places as it may from time to time designate by written notice delivered to Contractor. For purposes of notice under this Agreement, a copy of any notice or communication hereunder shall also be forwarded to the following address: Fort Bend County, 301 Jackson Street, Suite 719, Richmond, Texas 77469, Attention: County Judge.

12.2 All written notices, demands, and other papers or documents to be delivered to Contractor under this Agreement shall be delivered to Rockley Interests, Inc. d/b/a DA Mid South, or such other place or places as Contractor may designate by written notice delivered to County.

**Article 13. Compliance with Laws**

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**Article 14. Assignment**

Neither party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party.

**Article 15. Applicable Law**

This Agreement shall be construed under and in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

**Article 16. Successors and Assigns**

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

**Article 17. Publicity**

Contractor shall not make news releases, publicize or issue advertising pertaining to this Agreement without first obtaining the written approval of County.

**Article 18. Conflict**

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the \_\_\_\_ day of \_\_\_\_\_, 2010.

FORT BEND COUNTY  
COUNTY

  
Robert E. Hebert, County Judge

5-25-10  
Date

ROCKLEY INTERESTS, INC. d/b/a  
DA MID SOUTH

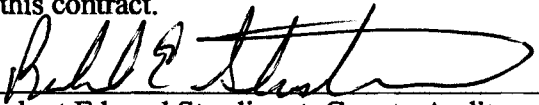
 CEO  
Authorized Representative

May 11, 2010  
Date

PS/Contracts/Final/DA Mid South- Software Support Agreement.

### AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$2500.<sup>00</sup> to accomplish and pay the obligation of Fort Bend County under this contract.

  
Robert Edward Sturdivant, County Auditor



# EXHIBIT A



10418 Rockley Road  
Houston, Texas 77099  
Off: (281) 833-0090  
Fax: (281) 833-7878

## **PROPOSAL**

To: Fort Bend County Sheriff's Department  
Attention: Sergeant Eric Stankus  
Project: Software Support Agreement  
Date: February 23, 2010

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### **SCOPE OF WORK**

DA Mid South will provide a software support agreement for the Diamond II access control system as manufactured by General Electric Security for a one year period of time. This agreement enables us to provide to the County all software patches, enhancements and upgrades to the Diamond II system. This is a software ONLY agreement and does NOT include any labor. The labor will be on a time and material basis. The agreement also enables DA Mid South to get telephone support through GE Security should this become necessary. This support is available Monday through Friday from 8 am to 5 pm Eastern time excluding traditional holidays. We have provided an alternate to have a DA Mid South Technician come to the site down load all patches and enhancements and spot check the system software for your consideration. At this time our records indicate you have licenses for 160 readers and 5 workstations which is reflected in the pricing of this quotation.

### **HARDWARE FURNISHED**

There is NO hardware in this agreement

### **NOTES AND CLARIFICATIONS**

1. Pricing does NOT include taxes.
2. All work will be performed during normal working hours (8 am to 5 pm), Monday through Friday, excluding traditional holidays.
3. Additions: Each 32 reader group \$140.00. Each additional workstation \$210.00.

### **Limited Warranty**

DA Mid South (DA) warrants its products and installation to be free from all defects in materials and workmanship for the period of one year. DA shall, at its option, repair or replace any product found defective without charge for parts or labor.

The liability of DA under this warranty shall be limited to, at DA's sole discretion: the cost of parts and labor provided by DA to repair defects in materials and/or workmanship of the defective product; or to the exchange of the defective product for a replacement product; or to the granting of credit limited to the original cost of the defective product, and such repair, exchange or credit shall be the sole remedy available from DA, and, without limiting the foregoing in any way. DA is not responsible, in contract, tort or strict product liability, for any other losses, costs, expenses, inconveniences, or damages, whether direct, indirect, special, secondary, incidental or consequential, arising from ownership or use of the system, or from defects in workmanship or materials, including any liability for fundamental breach of contract.

This warranty applies only to those components installed and serviced by DA during the warranty period. When installed by DA, this warranty includes the cost of the parts or labor to remove or transport the defective product, or to reinstall the repaired or replacement product. Service charges for products that are not defective are not covered by this warranty.

DA shall not be liable to honor warranty terms if this product has been used in any application other than that for which it was intended, or if it has been subjected to misuse, accident, fire, Act of God, or modification by others.

Items that are believed to be defective must be reported to DA, with a specific description of the nature of the problem, along with the name and phone number of a contact person. Return freight charges following repair of items under warranty shall be paid by DA for shipment by

standard ground carrier. In the event that repairs are found to be non-warranty, return freight costs shall be paid by the contact person at the return address. When required, expedited shipping shall be at the customer's expense.

DA accepts warranty service requests Monday through Friday from 8:00 a.m. to 4:30 p.m. Standard warranty service requests are typically handled through a 24 hour response policy. Additional charges apply when priority service response is required, either outside of normal hours or as a result of emergency circumstances, unless pre-negotiated service contract conditions exist.

Customers are responsible to determine who is authorized to make requests for after-hours service. Calls received after hours and on weekends are handled by an on-call technician who initially attempts to resolve the issue via phone. If a field visit is required, a service technician will be dispatched to the customer site. Normally serviced parts are kept in our warehouse. Major components can typically be obtained through our vendor partnerships within the manufactures standard lead times.

This warranty is in lieu of all other warranties, express or implied, which the Governing Law (being the law of the State of Texas) allows parties to contractually exclude, including, without limitation, warranties of merchantability, fitness for a particular purpose, durability or description of the product, its non-infringement of any relevant patents or trademarks, and its compliance with or non-violation of any applicable environmental, health or safety legislation; the term of any other warranty not hereby contractually excluded is limited such that it shall not extend beyond the date designated as substantial completion, to the extent that such limitation is allowed by the Governing Law.

DA Mid South shall not be held liable for installed alarm devices in reference to initiated false alarms due to locations of devices, issues that may cause the initiation of alarms beyond our control, or otherwise.

### **TERMS AND CONDITIONS**

Payment: All payments shall be invoiced each month, Net 30 days on estimated percentage of completion and materials received, unless otherwise stated. All payments made by credit card shall require an additional 3%, before tax, on the invoiced total.

This proposal is based on an agreement through a standard AIA Contract.

The prices and terms on this quotation are not subject to verbal changes or other agreements, unless approved in writing by the Corporate Office of the Seller. All quotations and agreements are contingent upon strikes, accidents, fires, availability of materials and all other causes beyond our control. All work to be completed in a workmanlike manner according to standard practices. Any alterations or deviations from above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. Our workers are fully covered by Workmen's Compensation insurance.

### **PRICE**

**Two Thousand Five Hundred Dollars and 00/100 (\$2,500.00)**

**ADD Pricing for On Site Technician** Please check the appropriate box if one of these services is desired

- ☐ For one visit per year on site to allow our Technician to install patches, enhancements or upgrades our pricing will be an additional: **Three Hundred Eighty Dollars and 00/100 (\$380.00)**
- ☐ Semi-annual visits to the site our price will be: **Seven Hundred Thirty Seven Dollars and 20/100 (\$737.20)**
- ☐ Quarterly visits to the site our price will be: **One Thousand Two Hundred Ninety Two Dollars and 00/00 (\$1,292.00)**

Authorized Signature: \_\_\_\_\_

*Note: This proposal may be withdrawn if not accepted within 30 days.*

**\* Prices quoted do not include applicable sales tax.**

### **ACCEPTANCE**

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

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

Printed Signature: \_\_\_\_\_

Proposal is based on the equipment listed above, and uninterrupted installation availability, client delays may incur additional mobilization charges. Tax is not included. Please allow 4-6 weeks for equipment delivery, staging and scheduling. Terms: Payment for equipment on delivery, balance due on completion, progressive payments.