



# Travis County Commissioners Court Agenda Request

**Meeting Date:** August 21, 2012

**Prepared By/Phone Number:** George Monnat/854-9778

**Elected/Appointed Official/Dept. Head:** Cyd Grimes

**Commissioners Court Sponsor:** Judge Biscoe

## Agenda Language:

Approve services agreement for software product demonstration, to the producer, COPsync, Inc. and authorize the Purchasing Agent to sign the agreement.

### ➤ **Purchasing Recommendation and Comments:**

The Sheriff's Office has requested to demo this product for testing. The COPsync product allows all agency users of their system (anywhere in the US) to see other agencies' users on a display map and to communicate with those other users (i.e. chat/text messaging); effectively allowing users of the systems to see if other agencies' users have interacted with the same people.

### ➤ **Contract-Related Information:**

|                  |   |
|------------------|---|
| Award Amount:    | No charge   |
| Contract Type:   | Trial Agreement                                       |
| Contract Period: | Three months, with option for three additional months |

### ➤ **Solicitation-Related Information:** Not Applicable

### ➤ **Funding Information:**

- Purchase Requisition in S.A.P.: Not Applicable
- Funding Account(s):
- Comments:

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, [Cheryl.Aker@co.travis.tx.us](mailto:Cheryl.Aker@co.travis.tx.us) by Tuesdays at 5:00 p.m. for the next week's meeting.

**Term / Demonstration Period:** three (3) months, plus an additional three (3) months if requested by Travis County

1. **Invoicing & Payment.** There is no charge for use of the Service during the stated demonstration period as indicated on the face of this Services Agreement. COPsync, Inc. acknowledges and agrees that Travis County does not, and will not, have any obligation to purchase the Service or to use the Software upon expiration of the stated demonstration period or earlier termination of this Services Agreement.
2. **Term.** This Services Agreement shall be for the period stated on the face of the Services Agreement unless sooner terminated as provided herein. Either party may cancel or terminate this Services Agreement for any reason before the expiration of the contract term indicated on the face of this Services Agreement by providing fifteen (15) days' written notice to the other party.
3. **Installation.** There are no anticipated installation services during the stated demonstration period as indicated on the face of this Services Agreement. Travis County will not be liable for payment of any installation services during the stated demonstration period.
4. **Taxes.** If Travis County elects to purchase the Service following the demonstration period, upon presentation of a Travis County-approved invoice by COPsync, Customer agrees to pay any tariffs, duties or taxes imposed or levied by any government or governmental agency, including without limitation, federal, state and local sales, imposed use, value-added and personal property taxes (other than franchise and income taxes imposed on COPsync's net income).
5. **Title.** Title to the Service and Software is reserved to COPsync.
6. **Interface.** The parties may, but shall have no obligation to, enter into a separate integration agreement, on terms mutually agreed upon by the parties, if the COPsync™ database is to be integrated with Customer's existing record, court, jail management or computer aided dispatch (CAD) software systems to permit the exchange of data between these systems and the COPsync database.
7. **SALES AND USE TAX:** The products and services provided under this Services Agreement are tax-exempt from Sales and Use Tax per Title 34, Part 1, Chapter 3, Rule 3.322, Exempt Organizations.
8. **Number of Users:** COPsync agrees to provide the total number of user licenses, at no charge, for use of the COPsync™ service and software as indicated on the face of this Services Agreement during the demonstration period.

| COPsync, Inc. |       | Customer                                      |       |
|---------------|-------|---|-------|
| Signature:    |       | Signature*:                                   |       |
| Print Name:   |       | Print Name*: <b>Cvd Grimes</b>                |       |
| Title:        | Date: | Title*: <b>Travis County Purchasing Agent</b> | Date: |

\*The person signing represents they are an authorized signatory.

# Terms and Conditions

These Terms and Conditions describe the terms and conditions under which COPsync, Inc. (“COPsync” or “we”) provides a subscription to use its computer software (“Software”) and its law enforcement data sharing and electronic forms service (“Service”) to you (“Subscriber” or “you”) and your authorized users.

1. Subscription. We grant you and your authorized users a temporary nonexclusive subscription to use the executable form of the Software and related documentation files in connection with your subscription to and use of the Service. The fees for your use of the Software and the Service are specified in the Services Agreement to which these Terms and Conditions are attached.

2. Term. The initial term (the “Initial Term”) of the Services Agreement shall be as stated in the Services Agreement.

3.1 Law Enforcement Use Only. You may use the Service and the Software solely for your own benefit in your operations as a law enforcement agency. The Service and the Software may be accessed only by law enforcement officers, administrators and authorized support staff, in each case that are registered with us and for law enforcement purposes only. All other access is unauthorized and shall constitute a violation of these Terms and Conditions.

3.2 Restrictions. You may not (1) copy or duplicate any part of the Service or Software; (2) allow any unauthorized person or third party to use the Service or Software or any of the data or confidential information accessible through use of the Service or Software or transfer, publish, distribute, sell or sublicense the Service or Software or any portion thereof; or (3) allow more than one individual to share a unique identification/registration number to access the Service or Software; (4) use the Service or Software in any fashion that knowingly infringes any of our copyrights, intellectual property rights, or proprietary or property rights; (5) use the Service or Software to develop your own law enforcement product or service (either electronic, print, or a combination, now existing or developed in the future); (6) sell, rent, license, distribute, transfer, or disclose the Software or Service or its contents, (7) copy, reproduce, manufacture, reverse engineer, disassemble, or reverse compile the software

comprising the Service or Software, or disclose or distribute the design, structure, or operation of the Service or Software or part thereof to any person, corporation or other entity; (8) use any robot, bot, automated user, spider, site search/retrieval application, or other program or device to retrieve or index any portion of the Service or Software source code or content or collect information, or for any purpose; or (9) remove or obscure any of our copyright, patent, or other intellectual property notices.

4.1 Title; Confidentiality. Title, ownership rights, and intellectual property rights in and to the Software and Service shall remain with us. The Software and Service are protected by the copyright laws of the United States and international copyright treaties. To our knowledge, your use of the Software and Service will not infringe any patent, copyrights, trade secrets, licenses or other proprietary or intellectual property rights of any third party. We agree that you will not be liable for any infringement of those rights and that any rights granted to you will apply for the duration of this Agreement. We agree to and shall indemnify Travis County, its officers, agents and employees from all claims, losses, damages, causes of action and liability of every kind including expenses of litigation, court costs and attorney fees for damages to any person or property arising in connection with any alleged or actual infringement of existing copyrights, patents, trade secrets, licenses and other proprietary or intellectual property rights applicable to materials used in this Agreement. Notwithstanding anything to the contrary in this Agreement,

4.2 Grant-Back License. You grant us a , revocable, worldwide, non-exclusive, and transferable (as permitted in Section 8) license to (a) allow users of the Service to access and view “background data” and “foreground” data in connection with their use of the Service; and (b) use publicly-available data, whether background or foreground, and “de-identified” data, whether background or foreground, for research and academic purposes and for any other lawful purpose, including licensing or other transfers for value to unaffiliated third parties. “Background data” is any of your data, including publicly-available data, that is uploaded to our data bases. “Foreground data” is any data, including publicly-available data, arising in connection with

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the use of the Software and Service by you and your users and that is captured in our data bases. We claim no ownership rights in the background data or the foreground data. “De-identified” data is data that does not contain any information that could reasonably serve to identify any natural person or entity. The provisions of this Section shall survive the expiration or termination of the Services Agreement.

5. Warranty Provisions. We warrant that the Service and the Software will perform substantially as set forth in our published documentation. As our sole liability and your sole remedy for any breach of the foregoing warranty, we shall use commercially reasonable efforts to cause the Service and the Software to perform substantially in accordance with the published documentation. If we are unable to do so, you may terminate the Services Agreement upon 5 days written notice to us and we shall refund any pre-paid fees paid by you that relate to the period following the effective date of the termination. To the maximum extent permitted by applicable law, we expressly disclaim all warranties with respect to your use of the Software and Service. Other than the warranty of title and the warranty provided in the first sentence of this section, the Software and the Services are provided “as is,” “as available” without warranties of any kind, either express or implied including, but not limited to, implied warranties of merchantability, fitness for a particular purpose or non-infringement (subject to section 4.1) or non-interference This limited warranty gives you specific legal rights. You may have others, which vary from state and jurisdiction. Some states and jurisdictions do not allow limitations with respect to implied warranties, so the above limitation may not apply.

6. Limitation of Liability. To the maximum extent permitted by applicable law, neither you, on the one hand, nor we nor any of our contractors, suppliers, and other parties who may be associated with providing the Software or Service (a “Disclaiming Party”), on the other hand, will be liable to the other or any third party for any indirect, incidental, special, punitive, exemplary, or consequential damages of any kind arising under this Agreement or otherwise in connection with your use, or a Disclaiming Party’s provision, of the Software of Service. Our aggregate liability to you arising under this Agreement or otherwise in connection with your

use, or a Disclaiming Party’s provision, of the Service or Software shall not exceed, for all causes of action that arose in a calendar year, the amounts you actually paid to us under this Agreement for such calendar year, unless otherwise specifically agreed in writing between the parties. Our limits of liability apply regardless of the type of claim brought, including those for negligence. Some states and jurisdictions do not allow the exclusion or limitation of liability, so the above limitation may not apply to you.

7. Termination. We may terminate this Agreement upon written notice to you if you breach any of the terms hereof or other agreement between you and us. Upon termination, you agree to (i) discontinue use of Software and Service; (ii) remove the Software and Service from any servers upon which they have been installed; and (iii) destroy or return to us the Software and Service and any archived copies of the Software and Service, except as may be necessary for you to transfer data to yourself or a new software/service provider. You shall also have “read only” access to the data stored in our data bases relating to the Service for a period of 30 days after termination. Within 90 business days after termination, we shall provide you a copy of the foreground data stored in our data bases in XML format stored on CR ROM library.

9. General. This Agreement represents the complete agreement between the parties concerning this subscription and service arrangement and supersedes all prior agreements and representations between us. The Services Agreement may only be amended by mutual written agreement. WE EXPRESSLY ACKNOWLEDGE THAT NO OFFICER, AGENT, EMPLOYEE OR REPRESENTATIVE OF TRAVIS COUNTY HAS ANY AUTHORITY TO AMEND THE TERMS OF THIS AGREEMENT UNLESS EXPRESSLY GRANTED THAT AUTHORITY BY THE TRAVIS COUNTY COMMISSIONERS COURT. If any provision of these Terms and Conditions is held to be void and unenforceable, it will not affect the validity of the balance of these Terms and Conditions, which shall remain valid and enforceable according to its terms. When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person

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appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in §154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality. We shall have the right to assign our rights and obligations hereunder to (a) any controlled subsidiary of ours, (b) any joint venture in which we are a participant, (c) any entity which is the survivor in a merger of COPsync with or into such other entity, or (d) any acquirer of all or substantially all of our assets. The Services Agreement shall be governed by the laws of the State of Texas (without regard to the conflicts of law provisions thereof) and applicable U.S. federal law, and all obligations under this Agreement are performable in Travis County, Texas. Venue for any dispute arising out of this Agreement will lie in the appropriate court of Travis County, Texas.



JAMES N. SYLVESTER  
Chief Deputy

## GREG HAMILTON

TRAVIS COUNTY SHERIFF

P.O. Box 1748  
Austin, Texas 78767  
(512) 854-9770  
[www.tcsheriff.org](http://www.tcsheriff.org)

PHYLLIS CLAIR  
Major - Law Enforcement

DARREN LONG  
Major - Corrections

MARK SAWA  
Major - Administration & Support

August 9, 2012

Ms. Cyd Grimes, C.P.M. CPPO  
Travis County Purchasing Agent

Greetings,

I ask that your office approve the **COPsync** Evaluation Services Agreement, which will complete the process required to allow TCSO to accept delivery of software for the purpose testing and evaluating their product.

We anticipate the demonstration period to last for a minimum of 3 months with a possible extension of another 3 months.

This agreement does not, and is not intended to obligate the county to commit to any purchase after the demo period without following what is our normal procurement process.

Feel free to contact me if there are further questions regarding this. Thank you for your assistance.

Sincerely,

Phyllis J. Clair  
Major, Law Enforcement Bureau  
854-9759



*Safety, Integrity, Tradition of Service*