AN ORDINANCE 2013 - 12 - 05 - 0863

AUTHORIZING A CONTRACT FOR THE COLLECTION OF DELINQUENT PROPERTY TAXES WITH THE LAW FIRM OF LINEBARGER GOGGAN BLAIR & SAMPSON, LLP FOR AN INITIAL FIVE YEAR TERM BEGINNING JANUARY 1, 2014 AND ENDING DECEMBER 31, 2018, WITH ONE (1) FIVE YEAR RENEWAL TERM AT THE CITY'S OPTION UPON CITY COUNCIL APPROVAL.

* * * * *

WHEREAS, a Request For Proposals ("RFP") seeking proposals to provide delinquent tax collection services to the City was issued by City Staff on September 1, 2013; and

WHEREAS, on October 2, 2013, one proposal was received in response to the RFP; and

WHEREAS, an evaluation team comprised of various members of City Staff has evaluated the Proposal received and has recommended that the Proposal of the law firm of Linebarger Goggan Blair & Sampson, LLP ("Respondent") be accepted, and that the City enter into a Delinquent Tax Collection Services Contract with the Respondent for an initial five year term, with one (1) five year renewal term at the City's option, upon subsequent approval by the City Council; and

WHEREAS, the City Council, upon consideration of and deliberation on such recommendation, desires to accept City Staff's recommendation; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of the Delinquent Tax Collection Services Contract with the Respondent for an initial five year term, with one (1) five year renewal term at the City's option, upon subsequent approval by the City Council ("Contract"), are hereby approved. Under the Contract, the law firm of Escamilla & Poneck, LLP (30%) and the companies of Laser Printers & Mailing Services (0.5%) and Today's Office/Universal Pen & Print (0.5%) shall participate as subcontractors.

The City Manager, or her designee, or the Director of Finance, or his designee, are each hereby authorized to enter into and execute the Contract, under terms and conditions substantially in accordance with those set forth in **Attachment I** to this Ordinance.

SECTION 2. The terms and conditions of **(a)** a Computer System License and Maintenance Agreement attached hereto as **Attachment II** to this Ordinance, and **(b)** a Service Level Agreement attached hereto as **Attachment III** to this Ordinance are each hereby approved. These documents are related to the City's right to use certain software owned by Linebarger Goggan Blair & Sampson, LLP in accordance with the Contract and those documents.

The City Manager, or her designee, or the Director of Finance, or his designee, are each hereby authorized to accept and/or execute the documents described above, under terms and conditions substantially in accordance with those set forth in **Attachment II** and **Attachment III** to this Ordinance, with such revisions prior to acceptance and/or execution as are approved by the Office of the City Attorney.

SECTION 3. No fiscal language is required in connection with the adoption of this Ordinance.
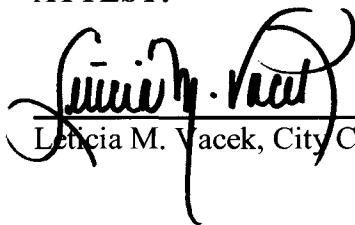
SECTION 4. This Ordinance is effective immediately, upon passage by eight (8) affirmative votes; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

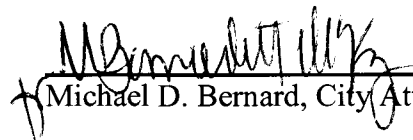*PASSED and APPROVED* this 5th day of December, 2013.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Michael D. Bernard, City Attorney

Agenda Item:	34 (in consent vote: 7, 8, 9, 10, 11, 12A, 12B, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 31, 32, 34, 36, 37, 38, 39, 40, 41, 42, 43A, 43B, 43C, 43D)
Date:	12/05/2013
Time:	10:02:38 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a contract for the collection of delinquent property taxes with the law firms of Linebarger Goggan Blair & Sampson, LLP and Escamilla & Poneck, LLP for an initial five year term beginning January 1, 2014 and ending December 31, 2018, with an optional five year renewal term. [Ben Gorzell, Jr, Chief Financial Officer; Troy Elliott, Director of Finance.]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x			x	
Joe Krier	District 9		x				
Carlton Soules	District 10		x				

ATTACHMENT I

CONTRACT FOR THE COLLECTION OF DELINQUENT TAXES

THE STATE OF TEXAS   §
                            §

COUNTY OF BEXAR   §

THIS CONTRACT ("CONTRACT") is made and entered into by and between the **CITY OF SAN ANTONIO**, acting by and through its City Manager or her designee pursuant to action of its City Council in Ordinance No. 2013-12-05-____ (hereinafter called "CITY"), and **LINEBARGER GOGGAN BLAIR & SAMPSON, LLP**, Attorneys at Law (hereinafter called "CONTRACTOR"). CITY and CONTRACTOR are sometimes hereinafter referred to as the "Parties". The Parties hereto acknowledge that this CONTRACT creates an attorney client relationship.

ARTICLE I.
ACCEPTANCE OF PROPOSAL

CITY hereby accepts the proposal of CONTRACTOR to provide delinquent ad valorem tax collection services on its behalf, said proposal ("Proposal") dated October 1, 2013 submitted to CITY in response to the City's Request For Proposals for providing such services, and CITY does hereby employ CONTRACTOR to enforce by suit or otherwise the collection of all delinquent ad valorem taxes, penalty, and interest on behalf of CITY and all authorities for whom CITY collects taxes or for whom its has authority to collect delinquent taxes or to enforce the collection of delinquent taxes within and owing to CITY and all units for which CITY collects taxes.

ARTICLE II.
TAXES SUBJCT TO THIS AGREEMENT AND
ACTIONS BY CITY AND CONTRACTOR

CITY agrees to retain and does hereby retain CONTRACTOR to enforce by suit or otherwise the collection of all delinquent taxes, penalty, and interest, on behalf of CITY. Taxes owed to **CITY** shall become subject to this CONTRACT on the following dates, whichever occurs first:

    (1)   On February 1 of the year in which the taxes become delinquent if a previously filed tax suit is then pending against the property subject to the tax;

(2)   On the date any lawsuit is filed with respect to the recovery of the tax if the tax is delinquent and is required to be included in the suit pursuant to TEX. TAX CODE § 33.42(a);

(3)   On the date of filing any application for tax warrant where recovery of the tax or estimated tax is sought and where the filing of an application for tax warrant by CONTRACTOR is at the request of the Bexar County Tax Assessor-Collector acting on behalf of CITY;

(4)   On the date of filing any claim in bankruptcy where recovery of the tax is sought; or

(5)   On July 1 of the year in which the taxes become delinquent.

CONTRACTOR shall notify CITY in appropriate written, electronic, or other format of any errors, double assessments, or other discrepancies coming under observation of or to the attention of CONTRACTOR during the progress of the work, and will take reasonable steps to correct or cure same where legal action is necessary to accomplish such corrections. Likewise, upon notice from CITY of defects in judgments, sales, or other legal proceedings, or defects in the data or operation of CONTRACTOR, reasonable action to correct or cure same shall be taken by CONTRACTOR, or CITY shall be entitled to make or accomplish such corrections at the expense of CONTRACTOR.

CONTRACTOR will intervene on behalf of CITY in all suits for taxes hereafter filed by any other taxing unit on property located or situated within the geographical limits of CITY.

CONTRACTOR agrees to diligently pursue post-judgment collections. CONTRACTOR will make all reasonable efforts to assist CITY in tracking and accounting payments and collections on accounts referred for collection. CONTRACTOR shall also provide related collection and legal services on behalf of CITY as set out herein.

CITY agrees to furnish through its designee certified tax statements and tax information to CONTRACTOR on all property within CITY'S taxing jurisdiction. CONTRACTOR will furnish forms for said statements on request and will assume responsibility for having penalty and interest computed on statements before such statements are mailed to property owners. In the event of a dispute as to any calculation, the determination of CITY shall be final.

CONTRACTOR agrees to file suit on and reduce to judgment and sale any property located within CITY'S geographical limits against which a tax lien would prevail, provided CITY will furnish the tax roll data and information as to the name, identity, and location of the necessary parties and the legal description of the property to be sold. It is further provided that arranging for, acquiring, and updating title and ownership information shall be the responsibility of CONTRACTOR. CONTRACTOR agrees to sue for recovery of the costs as court costs as provided by the Texas Property Tax Code. TEX. TAX CODE ANN. § 33.48 (Vernon 1992). Suit disposition reports shall be provided by CONTRACTOR on a periodic basis as required by CITY.

The obligations of **CONTRACTOR** will extend to the collection of delinquent *ad valorem* taxes, property based code compliance lien receivables, and *ad valorem* taxes not then delinquent that are involved in Bankruptcy or Eminent Domain proceedings.

CITY agrees to fully cooperate with CONTRACTOR in all aspects of the performance of this CONTRACT by CONTRACTOR. CITY agrees to take no action which may inhibit CONTRACTOR'S ability to meet its obligations under this CONTRACT.

ARTICLE III.
REPORTS AND INFORMATION TO CITY

CONTRACTOR shall submit to CITY, on a quarterly basis, reports and information in such form and with such content as are hereafter mutually agreed upon and specified in writing to CONTRACTOR by CITY'S Director of Finance ("Director"). All such reports and information, and the form and content thereof, specified by the Director shall be reasonably obtainable from CONTRACTOR'S databases and reasonably related to CONTRACTOR'S obligations under the CONTRACT. CONTRACTOR shall submit all such reports and information, in the form and with the content specified by the Director, so long as the requisite information is reasonably obtainable from CONTRACTOR'S databases and reasonably related to CONTRACTOR'S obligations under this CONTRACT. All such reports and information shall be in a mutually agreed upon electronic format. All such reports and information shall be submitted to and received by CITY not later than the last day of the month next succeeding the end of the preceding quarter. The first such reports and information shall be due on April 30, 2014, for the first quarter of 2014.

ARTCILE IV.
TAXPAYER ASSISTANCE PROGRAM

CONTRACTOR will establish and maintain a taxpayer assistance program to inform taxpayers of their rights and obligations, to assist in resolving problems related to tax liability, and to administer a taxpayer assistance program. Specifically, CONTRACTOR shall:

1. Comply with the guidelines set by CITY'S designee for the collection of ad valorem taxes for handling installment payment plans;

2. Provide sufficient personnel to provide taxpayer assistance;

3. Maintain an ombudsperson program to assist delinquent taxpayers, provided the City Manager or her designee shall have the right of approval of the person selected to serve as ombudsman;

4. Follow criteria set by CITY'S designee for the collection of ad valorem taxes for designating and administering hardship cases. and

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5. Honor, maintain, and administer all existing installment payment accounts according to the tenor thereof, upon being furnished the necessary documents and information from CITY.

Any taxpayer who or which has been designated as a hardship case will be allowed to pay taxes on an installment payment plan. In addition in hardship cases, no foreclosure action shall be taken which will result in any homeowner living in the home being dispossessed of the home as long as the taxpayer is in compliance with an installment payment plan with the CITY'S designee for the collection of ad valorem taxes.

ARTCILE V.
TERM

The initial term of this CONTRACT shall be for five (5) years, commencing on January 1, 2014 and ending on December 31, 2018. City shall have the option, exercisable at any time while this CONTRACT is in effect, to renew and extend this CONTRACT on its identical terms for one (1) additional five (5) year term, upon approval of CITY'S City Council as evidenced by the adoption of an Ordinance.

ARTICLE VI.
COMPENSATION TO CONTRACTOR

It is understood that City taxes become delinquent as of February 1 of each year. After February 1, CITY will continue to attempt to collect the delinquent taxes utilizing CITY'S designee. CITY agrees, pursuant to Section 33.07 of the Texas Property Tax Code the ("Tax Code"), to impose and/or maintain in force each year a penalty of 15% of the tax, penalty and interest on any account remaining delinquent on July 1 of the year in which it becomes delinquent. For all taxes that still remain delinquent in the month of May, CITY shall, pursuant to Section 33.07 of the Tax Code, cause to be delivered a notice of delinquency and of the penalty to the property owner at least 30 days and not more than 60 days before July 1. Should any of the delinquent taxes continue unpaid as of July 1, then the collection efforts of CONTRACTOR shall commence, and the 15% fee as set out below applies to collections of delinquent taxes made after that date.

For all taxes with an extended delinquency date which goes delinquent on or after June 1 of the year in which it goes delinquent, City agrees, pursuant to Section 33.08 of the Tax Code, to impose a 15% collection penalty.

Tax lawsuits filed by CONTRACTOR for delinquent taxes and resolved by July 1 must include current year delinquent taxes wherein CONTRACTOR shall be entitled to the recovery of attorney fees as provided under Section 33.48 of the Tax Code.

CITY agrees to pay to CONTRACTOR as compensation for services rendered hereunder fifteen percent (15%) of the amount of all delinquent taxes, penalty, and interest actually

collected and paid to CITY during the term of this CONTRACT as and when collected, including 15% of any taxes, penalty and interest collected by CONTRACTOR in a bankruptcy action ("Compensation"). The parties hereto also recognize that CONTRACTOR is providing extensive legal representation in cases to collect ad valorem taxes that may involve a Federal Agency. The Parties further recognize that the Federal Agencies are, in many cases, claiming a federal exemption to payment of penalties and attorney's fees. CONTRACTOR will be entitled to a fee equal to 15% of collections on accounts involving the Federal Agencies. All Compensation above provided for shall become the property of CONTRACTOR at the time payment of taxes, penalty, and interest is made. CITY shall cause such Compensation to be paid over to CONTRACTOR in accordance with CITY'S agreement with Bexar County regarding collection of CITY'S *ad valorem* property taxes. It is understood and agreed, however, that:

1. Except as otherwise set out herein, Compensation shall be payable on any tax balance only where either the penalty provided by Sections 33.07 or 33.08 of the Tax Code or the attorney's fees provided by Section 33.48 of the Tax Code are lawfully due or collectible. Notwithstanding the above, Compensation will be due on any taxes, penalty or interest collected by CONTRACTOR from the Federal Agencies related accounts **only in the event that** the Tax Code Sections 33.07 or 33.08 penalty or Tax Code Section 33.48 attorney's fees are collected by CONTRACTOR.

ARTICLE VII.
CONTRACTOR'S GUARANTEE TO CITY

CONTRACTOR guarantees that commencing with the Tax Year 2013 delinquencies that are turned over to CONTRACTOR on July 1, 2014, and continuing with each successive Tax Year during the term of this CONTRACT, collections of the adjusted tax levy for that Tax Year will be at **NINETY-EIGHT AND ONE-HALF PERCENT (98.5%)** or higher, within twelve months from the date the current delinquency is turned over to CONTRACTOR for collection. For purposes of this CONTRACT, adjusted tax levy is the current tax levy as of October 1 of the year preceding the year in which those taxes are turned over to CONTRACTOR, together with all supplements and supplemental billings, less cancellations and plus net adjustments as of the date of the calculation, except that supplements to the tax roll after April 1 shall not be included in the calculation. The adjusted tax levy shall exclude exempt property, bankruptcies, accounts prohibited by law from collection, double assessments, payment arrangements, hardship cases, accounts subject to age deferral and/or exemption, disability deferral and/or exemption, Federal Agencies related accounts, and accounts which are not subject to collection due to CITY'S policy or by virtue of acts of God. Payments made in month twelve (12) from the date of turnover but not posted until the following month shall be deemed paid in month twelve (12) for purposes of calculation of CONTRACTOR'S performance. CITY agrees that, in the event of a successful roll back election or officially declared natural disaster or catastrophic accidental loss of computer capability, physical facilities, or employees of either party, no guarantee shall be in effect for the year or years in which such event occurs. This guarantee also assumes that (i) the base levy remains consistent; (ii) that the current tax collection rate (as of June 30 of each year) will remain at a level substantially equal to 95%; (iii) CITY'S economy stays substantially unchanged in comparison to its condition as of the date this

CONTRACT is executed; and (iv) CONTRACTOR is given a full twelve (12) month period to implement all elements of its workplan including, but not limited to taxpayer communications, research, and litigation. At the end of twelve (12) months from the time the delinquent roll is transferred to CONTRACTOR, the difference by which the amount collected (determined in accordance with the foregoing) falls short of the guaranteed amount (determined in accordance with the foregoing) shall be paid by CONTRACTOR to CITY, **up to $100,000.00**. Such payment shall be made by CONTRACTOR to CITY not later than thirty (30) days after determination of the shortfall. No portion of any such payment shall be derived from the compensation paid to CONTRACTOR by CITY pursuant to the provisions of Section 33.07 or Section 33.48 of the Texas Property Tax Code. The guarantee provisions will apply to every tax roll year referred to the CONTRACTOR under the terms of this CONTRACT, provided CONTRACTOR has a full 12 month collection period to meet the guarantee as stated herein.

ARTICLE VIII.
CONTRACTOR'S OPERATIONS AFTER EXPIRATION

If the initial term of this CONTRACT expires without renewal, CONTRACTOR shall **(i)** have through June 30, 2019, to implement all elements of its workplan including, but not limited to taxpayer communications, research, and litigation; **(ii)** have an additional six months after June 30, 2019, to reduce to judgment all suits filed prior to June 30, 2019; **(iii)** at its option, have the right to handle to conclusion all suits in which trial court judgments are obtained during the period of this CONTRACT and which are appealed by any party; and **(iv)** be entitled to the payment provided for in this CONTRACT for all sums collected by CONTRACTOR pursuant to any of the actions described above.

If this CONTRACT is renewed for its renewal term, CONTRACTOR shall **(i)** have through June 30, 2024, to implement all elements of its workplan including, but not limited to taxpayer communications, research, and litigation; **(ii)** have an additional six months after June 30, 2024, to reduce to judgment all suits filed prior to June 30, 2024; **(iii)** at its option, have the right to handle to conclusion all suits in which trial court judgments are obtained during the period of this CONTRACT and which are appealed by any party; and **(iv)** be entitled to the payment provided for in this CONTRACT for all sums collected by CONTRACTOR pursuant to any of the actions described above.

ARTICLE IX.
INSURANCE

Prior to the commencement of any work under this CONTRACT, CONTRACTOR shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to CITY'S Finance Department, which shall be clearly labeled **"Collection of Delinquent Property Taxes"** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative

to CITY. CITY shall have no duty to pay or perform under this CONTRACT until such certificate and endorsements have been received and approved by CITY'S Finance Department. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.

CITY reserves the right to review the insurance requirements of this Article during the effective period of this CONTRACT and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY'S Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this CONTRACT. In no instance will CITY allow modification whereupon CITY may incur increased risk.

CONTRACTOR'S financial integrity is of interest to CITY; therefore, subject to CONTRACTOR'S right to maintain reasonable deductibles in such amounts as are approved by CITY, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at CONTRACTOR'S sole expense, insurance coverage written on an occurrence basis, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory Limits
2. Employers' Liability	$500,000/$500,000/$500,000

3. Broad form Commercial General Liability Insurance to include coverage for the following:
   a. Premises/Operations
   b. Independent Contractors
   c. Products/Completed Operations
   d. Personal Injury
   e. Contractual Liability
   f. Damage to property rented by you
	For Bodily Injury and Property Damage of $1,000,000 per occurrence;
	$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
	
	f. $100,000

4. Business Automobile Liability
   a. Owned/leased vehicles
   b. Non-owned vehicles
   c. Hired Vehicles
	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence

5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. Commercial Crime/ Fidelity Bond	$1,000,000 per occurrence

CONTRACTOR agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of CONTRACTOR herein, and provide a certificate of insurance and endorsement that names CONTRACTOR and CITY as additional insureds. CONTRACTOR shall provide CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by CITY'S Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by CITY'S Risk Manager, which shall become a part of the CONTRACT for all purposes.

As they apply to the limits required by CITY, CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). CONTRACTOR shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided below within 10 days of the requested change. CONTRACTOR shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Finance Department
P.O. Box 839975
San Antonio, Texas 78283-3975

CONTRACTOR agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

Name CITY, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the workers' compensation and professional liability policies;

Provide for an endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy;

Workers' compensation and employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of CITY; and

Provide advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, CONTRACTOR shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONTRACTOR'S performance

should there be a lapse in coverage at any time during this CONTRACT. Failure to provide and to maintain the required insurance shall constitute a material breach of this CONTRACT.

In addition to any other remedies CITY may have upon CONTRACTOR'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order CONTRACTOR to stop work hereunder, and/or withhold any payment(s) which become due to CONTRACTOR hereunder until CONTRACTOR demonstrates compliance with the requirements hereof.

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'S or its subcontractors' performance of the work covered under this CONTRACT.

It is agreed that CONTRACTOR'S insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by CITY for liability arising out of operations under this CONTRACT.

It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this CONTRACT and that no claim or action by or on behalf of CITY shall be limited to insurance coverage provided. CONTRACTOR and any subcontractors are responsible for all damage to their own equipment and/or property.

ARTICLE X.
INDEMNIFICATION

CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY

AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY 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. **CONTRACTOR** shall advise CITY in writing within 24 hours of any claim or demand against CITY or **CONTRACTOR** known to **CONTRACTOR** related to or arising out of **CONTRACTOR'S** activities under this Contract and shall see to the investigation and defense of such claim or demand at **CONTRACTOR'S** cost. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving **CONTRACTOR** of any of its obligations under this paragraph.

Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by **CONTRACTOR** in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. **CONTRACTOR** shall retain CITY approved defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this CONTRACT. If **CONTRACTOR** fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and **CONTRACTOR** shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of **CONTRACTOR**, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for **CONTRACTOR** or any subcontractor under worker's compensation or other employee benefit acts.

On any account where the City Attorney has requested in writing that collection efforts be initiated or pursued to conclusion, and where taxes, penalty, or interest become uncollectible by virtue of the negligent act or omission of CONTRACTOR, such taxes, penalty, or interest may be set off against fees or compensation next payable hereunder to CONTRACTOR; however, this provision shall not limit the remedy or recovery of City for any claim based on professional error or omission to the amounts payable as compensation or fees hereunder.

ARTICLE XI.

ADDITIONAL SERVICES – IN-HOUSE COLLECTION PROGRAMS

During each year of the term of this CONTRACT, CONTRACTOR shall reimburse CITY in an amount equal to the **lesser** of **(i)** CITY'S actual costs incurred in connection with its in-house collection programs, or **(ii)** $76,000.00. CITY shall submit an invoice to CONTRACTOR not later than the fifteenth day following the end of each calendar quarter

during the term of this CONTRACT that itemizes the in-house collection expenses incurred by CITY during the previous calendar quarter. No portion of the reimbursement shall be derived from the compensation paid to CITY by CONTRACTOR pursuant to the provisions of Section 33.07 or Section 33.48 of the Texas Property Tax Code.

ARTICLE XII.
ADDITIONAL SERVICES – PARKING FINES COLLECTION SYSTEM

CONTRACTOR shall, not more than 90 days after its receipt of a written request from the Director to do so, implement a program under which CONTRACTOR collects delinquent parking fees/fines on behalf of CITY. As a condition precedent to the written notice from the Director described above, CITY shall have taken all actions necessary to add a collection fee in the amount of 30% to all amounts due to CITY on unpaid parking fines. After delivery of the written notice described above, CITY shall timely provide all information reasonably requested by CONTRACTOR to enable CONTRACTOR to establish and commence this program.

Upon commencement of the program described above, CONTRACTOR shall be entitled as compensation for its efforts in collecting unpaid parking fines on behalf of CITY the sum of 30% of all amounts collected by CONTRACTOR. All compensation above provided for shall become the property of CONTRACTOR at the time payment of parking fees/fines is made, and shall be paid over monthly within thirty days following CITY'S receipt of an invoice from CONTRACTOR that itemizes the amount due to CONTRACTOR.

ARTICLE XIII.
ADDITIONAL SERVICES – CODE COMPLIANCE VIOLATIONS

CONTRACTOR shall **(i)** at its sole expense print and mail not less than one (1) demand letter annually to the owner(s) of record of each property on which sums are owing for costs related to code compliance violations; and **(ii)** in each delinquent tax lawsuit involving property on which sums are owing and delinquent for costs related to code compliance violations, seek recovery of such costs as part of such lawsuit. At all such times as CITY utilizes information in the System (as defined in Article XV. ACT Software Collection System) in connection with maintaining its code compliance violations records, CONTRACTOR shall be entitled to the recovery of attorney fees as allowed by law when seeking recovery of unpaid code compliance violations in a delinquent tax lawsuit.

ARTICLE XIV.
ADDITIONAL SERVICES – SKIP TRACING

CONTRACTOR shall provide consulting services regarding its skip tracing knowledge and expertise to CITY upon request of CITY.

ARTICLE XV.
ACT SOFTWARE COLLECTION SYSTEM

LINEBARGER, GOGGAN, BLAIR & SAMPSON, LLP will provide CITY, at LINEBARGER, GOGGAN, BLAIR & SAMPSON, LLP'S sole expense, a secure web based access to LINEBARGER, GOGGAN, BLAIR & SAMPSON, LLP'S ACT Software System (the "System") for select CITY personnel agreed upon by CITY and CONTRACTOR. The System access will consist of the initial software necessary to install and initiate the System and all software updates routinely made by CONTRACTOR. Software updates will be provided to CITY by LINEBARGER, GOGGAN, BLAIR & SAMPSON, LLP at no expense to CITY. LINEBARGER, GOGGAN, BLAIR & SAMPSON, LLP shall also provide CITY all licenses, sub-licenses, service level agreements, or other documents necessary to allow CITY to fully, completely and legally access the System. The License Agreement and the Service Level Agreement are set forth in Exhibits I and II, respectively, and are incorporated herein for all purposes. The software licenses are being made available to CITY by LINEBARGER, GOGGAN, BLAIR & SAMPSON, LLP at no cost as long as this CONTRACT is in force. The System will assist CITY in managing, accounting for and disbursing CITY funds related to *ad valorem* real property taxes assessed, imposed and collected in Tax Increment Financing (TIF) and Tax Increment Reinvestment Zone (TIRZ) districts, and research and reporting of property payment information. Additional services related to Hotel/Motel occupancy tax, and property based Code Enforcement Liens may be requested by CITY at CITY'S request for contingent additional services under Article XVI of this CONTRACT. Except as to TIF and TIRZ taxes, features of the ACT System relating to the management and collection of ad valorem property taxes are specifically excluded from this CONTRACT.

ARTICLE XVI.
CONTINGENT ADDITIONAL SERVICES

CONTRACTOR and CITY agree that from time to time, it may be to their mutual benefit to include additional services that are related to the collection process within the services to be provided by CONTRACTOR under this CONTRACT. These additional services are hereafter referred to as "Contingent Additional Services". Contingent Additional Services include one or more of administrative, accounting, electronic tracking, collection, and litigation functions in connection with any program, project, enterprise or operation conducted by CITY which involve(s) the imposition and/or collection of a fee, expense, charge, fine, or tax by CITY. Contingent Additional Services shall include, but not be limited to: a) alarm permit fees; b) code compliance violation fees not related to properties on which delinquent taxes are owing; c) health care premiums for retirees/past employees; d) health department fees; and e) solid waste fees.

CITY may initiate a Request For A Contingent Additional Service (Request") by forwarding a written Request, executed by the Director or his designee, to CONTRACTOR at its address provided herein. Within the Request, the Director or his designee shall state the scope of the Contingent Additional Service to be provided by CONTRACTOR and the date on which CONTRACTOR shall commence the provision of the Contingent Additional Service.

Within ten (10) business days after its receipt of the Request, CONTRACTOR shall provide to CITY in writing, at its address provided herein, CONTRACTOR'S proposed revisions and/or additions to the scope of the Contingent Additional Service, and/or proposed revision to the commencement date for the Contingent Additional Service. CONTRACTOR shall include in this communication to CITY its proposed compensation for performing the Contingent Additional Service under this CONTRACT. The proposed compensation shall be stated as a fee to be paid by CITY to CONTRACTOR, **or** as a percentage of the total amount collected by CONTRACTOR as a result of its efforts to be retained by CONTRACTOR.

CITY and CONTRACTOR shall agree upon the scope, commencement date, and compensation to CONTRACTOR for the Contingent Additional Service to be performed under the CONTRACT, and they shall be set forth in an Addendum to this CONTRACT. The Director or his designee may execute each Addendum that complies with all of the foregoing provisions on behalf of CITY without further City Council approval. CONTRACTOR shall commence the provision of the Contingent Additional Service on the commencement date specified in the Addendum.

A Contingent Additional Service for which CONTRACTOR shall be compensated in the form of a fee to be paid by CITY is subject to appropriation of funds in CITY'S Budget for the Budget Year during which the Contingent Additional Service will be provided. If funds are not appropriated in CITY'S Budget for that Budget Year, CITY shall have the right to terminate the Contingent Additional Service effective on the last day prior to the commencement of that Budget Year. In such event, CITY shall give CONTRACTOR written notice of such termination not less than ten (10) days prior to the commencement of that Budget Year.

ARTICLE XVII.
MEETINGS BETWEEN CITY AND CONTRACTOR

CONTRACTOR shall arrange for meetings not less than quarterly between CONTRACTOR'S applicable staff and CITY'S representatives for the purpose of discussing: **(a)** current operations and procedures under this CONTRACT; **(b)** possible Contingent Additional Services to be activated and implemented by CONTRACTOR as services provided under this CONTRACT as provided in Article XVI of this CONTRACT ; and **(c)** any and all other subjects pertinent to any aspect(s) of this CONTRACT.

ARTICLE XVIII.
AUDITS

CONTRACTOR shall provide access to CITY, or its designated representatives, including but not limited to auditors (external or internal) employed by CITY from time to time, and shall facilitate their reasonable review of data stored by CONTRACTOR in various forms, so as to enable an accurate review and statement of CONTRACTOR'S financial condition.

ARTICLE XIX
RECORDS

CONTRACTOR shall produce to CITY such records or copies thereof pertaining to CONTRACTOR'S collection of CITY'S delinquent taxes and other receivables under this CONTRACT as are requested in writing by CITY. Such records or copies thereof shall be produced within a reasonable time after CONTRACTOR'S receipt of the written request from CITY.

Prior to destruction of any of CONTRACTOR'S records pertaining to its services rendered to CITY under this CONTRACT, CONTRACTOR shall give CITY thirty (30) days written notice of such destruction, specifying the records to be destroyed. CITY shall have thirty (30) days after receipt of the written notice from CONTRACTOR to specify in writing to CONTRACTOR the records CITY desires to obtain. Such records or copies thereof shall be produced within a reasonable time after CONTRACTOR'S receipt of the written notice from CITY. When the records requested by CITY have been produced by CONTRACTOR, CONTRATOR may proceed with the destruction of the remaining records specified by CONTRACTOR to be destroyed. If no written notice from CITY is received by CONTGRACTOR within the time specified above, CONTRACTOR may proceed with the destruction of the records specified to be destroyed.

This Article shall survive the termination of this CONTRACT.

ARTICLE XX.
CONSULTANT'S ACCESS TO CITY'S DATABASES

CONTRACTOR and CITY acknowledge that CITY has heretofore granted access to certain of CITY'S electronic databases to certain named employees of CONTRACTOR ("Authorized Users"). As of the date of this CONTRACT, the Authorized Users to whom such access has been granted are as follows:

Name	Position
Yvette Balderas	Litigation Assistant
Maddie Gatlin	Litigation Assistant

CONTRACTOR shall immediately, but not later than 10 calendar days, notify CITY'S Director in writing at the address set forth in Article XXVII. Notices of this CONTRACT in the event the names on the Authorized Users list change, whether by addition, deletion or level of access . In addition, CONTRACTOR will ensure that prior to accessing any CITY electronic database, an added Authorized User completes, submits and has CITY approval of all required CITY forms related to the Authorized User's access to certain of CITY'S electronic databases.

CONTRACTOR represents and warrants to CITY that it will restrict Authorized User access to the listed CITY electronic databases identified in this CONTRACT as well as any access level each Authorized User holds.

In accessing and using CITY electronic databases, CONTRACTOR shall use commercially reasonable security measures, including measures to protect: (a) the confidentiality of user identification and passwords and (b) data accessed through CITY electronic databases from unauthorized access or damage, including damage by computer viruses. CONTRACTOR also agrees to comply with CITY'S security measures of which CITY notifies CONTRACTOR. CONTRACTOR will notify CITY immediately if any breach of the security procedures is suspected or has occurred.

CONTRACTOR further represents and warrants to CITY that all information obtained from an electronic database of CITY as the result of Authorized User access to that database will be used only for the intended purpose of assisting CONTRACTOR in the performance of its obligations under this CONTRACT. CONTRACTOR specifically agrees that the use by an Authorized User of any such information for any other purpose shall be subject to all of the Indemnification provisions and Penalty provisions of Article X of this CONTRACT.

CONTRACTOR further specifically agrees that in the event an Authorized User or any other representative of CONTRACTOR obtains any unauthorized information outside the scope of their access level in any CITY electronic database shall also be subject to all of the Indemnification and Penalty provisions of Articles X of this CONTRACT.

ARTICLE XXI.
TERMINATION

For purposes of this CONTRACT, "termination" of this CONTRACT shall mean termination by expiration of the CONTRACT term as stated in Article V. Term, or earlier termination pursuant to any of the provisions hereof.

Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article XXVII. Notices, CITY may terminate this CONTRACT as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

The sale, transfer, pledge, conveyance or assignment of this CONTRACT without prior approval, as provided in Article XXIV. Assignment of Interest In Contract.

Defaults With Opportunity for Cure. Should CONTRACTOR default in the performance of this CONTRACT in a manner stated below, same shall be considered an event of default. CITY shall deliver written notice of said default specifying such matter(s) in default. CONTRACTOR shall have 60 calendar days after receipt of the written notice, in accordance with Article XXVII. Notices, to cure such default. If CONTRACTOR fails to cure the default within such sixty day cure period, CITY shall have the right, without further notice, to terminate this CONTRACT in whole or in part as CITY deems appropriate, and to contract with another contractor to complete the work required in this CONTRACT. CITY shall also have the right to offset the cost of said new CONTRACT with a new contractor against CONTRACTOR'S future

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or unpaid invoice(s), subject to the duty on the part of CITY to mitigate its losses to the extent required by law.

Events of default with opportunity for Cure are:

1. Failure to comply with the terms and conditions stated in Article VII. Contractor's Guarantee to City;
2. Failure to comply with the terms and conditions stated in Article XIV. SBEDA;
3. Bankruptcy or selling substantially all of company's assets;
4. Failing to perform or failing to comply with any covenant herein required; and
5. Performing unsatisfactorily

Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

In the event of the enactment into law of legislation amending Section 33.07 of the Texas Property Tax Code to allow CITY to charge and retain the 15% penalty for delinquent tax collection without employing delinquent tax attorneys, CITY will have the option to act to terminate this CONTRACT within one year after the effective date of the legislation by the giving of a minimum of sixty (60) days' written notice to CONTRACTOR.

If CITY terminates this CONTRACT, either for cause or by exercise of its option in the event of enactment of the above mentioned legislation, CONTRACTOR shall have an additional six months from the date of said termination to reduce to judgment all suits filed prior to the effective date of termination, and provided further, CONTRACTOR at CONTRACTOR'S option shall handle to conclusion all suits in which trial court judgments are obtained prior to termination and which are appealed by any party.

Regardless of how this CONTRACT is terminated, CONTRACTOR shall effect an orderly transfer to CITY or to such person(s) or firm(s) as CITY may designate, at no additional cost to CITY, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by CONTRACTOR, or provided to CONTRACTOR, hereunder, regardless of storage medium, if so requested by CITY, or shall otherwise be retained by CONTRACTOR in accordance with Article XXIX. Records.

Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this CONTRACT, CONTRACTOR shall submit to CITY its claims, in detail, for the monies owed by CITY for services performed under this CONTRACT through the effective date of termination. Failure by CONTRACTOR to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of CITY and constitute a **Waiver** by

CONTRACTOR of any and all right or claims to collect moneys that CONTRACT may rightfully be otherwise entitled to for services performed pursuant to this CONTTACT.

Termination not sole remedy. In no event shall CITY'S action of terminating this CONTRACT, whether for cause or otherwise, be deemed an election of CITYS remedies, nor shall such termination limit, in any way, at law or at equity, CITY'S right to seek damages from or otherwise pursue CONTRACTOR for any default hereunder or other action.

ARTICLE XXII.
SBEDA PROVISIONS

The Small Business Economic Development Advocacy ("SBEDA") provisions set forth in Exhibit III to this CONTRACT are hereby incorporated into this CONTRACT and made a part of it for all purposes. The Subcontractor/Supplier Utilization Plan set forth in Exhibit IV to this CONTRACT as submitted by CONTRACTOR and approved by CITY is hereby incorporated into this CONTRACT and made a part of it for all purposes. The provisions of Exhibit III and Exhibit IV shall apply to this CONTRACT. CONTRACTOR shall comply with all of these provisions throughout the entire term of this CONTRACT. Failure to comply with any of these provisions shall constitute an event of default under Article XX. Termination of this CONTRACT, for which CONTRACTOR shall be entitled to notice and an opportunity to cure.

ARTICLE XXIII.
CONFLICT OF INTEREST

CONTRACTOR will not represent any person, entity or organization in delinquent taxation litigation against CITY or take any action adverse to its duty to collect CITY'S delinquent taxes. In the event that CITY should determine that a conflict exists, CITY shall notify CONTRACTOR who shall forthwith resolve such conflict. Failure to resolve such conflict in a manner consistent with the Texas Code of Professional Responsibility shall constitute cause for termination of this contract. CITY acknowledges and consents to the representation by CONTRACTOR of other taxing entities that may be owed taxes or other claims and be secured by the same property as the CITY'S claim.

No partner or associate in the law firm of LINEBARGER GOGGAN BLAIR & SAMPSON, LLP or the law firm of ESCAMILLA & PONECK LLP shall ever become a purchaser at a sale of a property had to satisfy delinquent taxes owed to CITY. Each law firm will maintain in force its firm policy prohibiting any partner, attorney, or employee of the law firm or any member of their immediate family from becoming a purchaser at a sale of a property had to satisfy delinquent taxes owed to any taxing authority represented by the law firm.

CONTRACTOR shall take all reasonable steps to accomplish broad, effective public notice of tax sales, when held, and will on request provide written listings at its office address for the cost or reproduction, and provide such notices two weeks in advance of sale to the City Public Information Office for inclusion on the cable access channel.

ARTICLE XXIV.
ASSIGNMENT OF INTEREST IN CONTRACT

CONTRACTOR shall not subcontract or assign any portion of its performance under this CONTRACT, or dispose of all or substantially all of its assets, without the prior written consent of the Director, or his designee. Failure of CONTRACTOR to obtain such written consent to the assignment of any portion or performance under this CONTRACT shall be an event of default, and CITY, at its sole discretion, may immediately terminate this CONTRACT.

ARTICLE XXV.
COMPLIANCE

While in the performance of all rights, duties and obligations hereunder, CONTRACTOR agrees to comply with all applicable Federal, State and Local laws, rules and regulations.

CONTRACTOR acknowledges that it is informed that the City of San Antonio City Charter prohibits any contract between CITY and any local public official, such as a CITY officer or employee, and that the prohibition extends to an officer and employee of CITY agencies such as CITY-owned utilities and CITY boards or commissions. As such, CONTRACTOR certifies, and this CONTRACT is made in reliance thereon, that neither it, its individual officers, employees or agents, nor any person having a substantial interest, as defined by Texas law, in this CONTRACT is an officer or employee of CITY, or, to the best of CONTRACTORS knowledge, any of its agencies.

CONTRACTOR has tendered to CITY a Disclosure Statement in compliance with CITY'S Ethics Ordinance.

ARTICLE XXVI.
SUCCESSORS AND ASSIGNS

This CONTRACT shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, successors and their assigns, except as otherwise expressly provided for herein.

ARTICLE XXVII.
NOTICES

Unless otherwise specifically provided for in this CONTRACT, any notice required or permitted to be given under this CONTRACT shall be sufficient if given in writing, sent certified mail, return receipt requested, postage prepaid, to CITY or DEPOSITORY at the addresses set forth below or to any other address of which written notice of change is given:

CITY	**CONTRACTOR**
CITY OF SAN ANTONIO	LINEBARGER GOGGAN BLAIR
	& SAMPSON, LLP
Troy Elliott, CPA	Clifton F. Douglass III
Director of Finance	Managing Partner
Department of Finance	711 Navarro, Suite 300
P.O. Box 839975	San Antonio, Texas 78205
San Antonio, Texas 78283-3975	

ARTICLE XXVIII.
CAPTIONS

The captions contained in this CONTRACT are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Contract.

ARTICLE XXIX.
LEGAL AUTHORITY

The person signing on behalf of CONTRACTOR represents, warrants and certifies full legal authority to execute this CONTRACT on behalf of CONTRACTOR and has authority to bind CONTRACTOR to all the terms, conditions, covenants, obligations and provisions contained herein.

ARTICLE XXX.
VENUE

Venue of any suit brought in connection with this CONTRACT shall be in Bexar County, Texas.

ARTICLE XXI.
GOVERNING LAW

All actions, claims, or demands brought against CITY shall be brought in accordance with and governed by this CONTRACT, applicable Texas law and the City of San Antonio City Charter.

ARTICLE XXII.
SEVERABILITY

If any clause or provision of this CONTRACT is, for any reason, held to be invalid, illegal or unenforceable, in any respect, such holding shall not affect the validity of the remaining clauses or provisions of this CONTRACT.

ARTICLE XXIII.
ENTIRE AGREEMENT

This CONTRACT, together with its authorizing Ordinance and Exhibit(s), constitute the final and entire agreement between the Parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this CONTRACT shall be deemed to exist or to bind the Parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by both Parties.

EXHIBITS:

I.   SBEDA Provisions
II.   Subcontractor/Supplier Utilization Plan
III.   Computer System License And Maintenance Agreement
IV.   Service Level Agreement

EXECUTED and AGREED TO this the _____ day of December, 2013.

CITY: **CONTRACTOR:**
CITY OF SAN ANTONIO   LINEBARGER GOGGAN BLAIR
                                                       & SAMPSON, LLP

BY: _____   BY: _____
     Troy Elliott, CPA   Clifton F. Douglass III
     Director of Finance   Managing Partner
                                                      San Antonio

Approved as to form:

_____
Robert Nordhaus
Assistant City Attorney

ATTACHMENT II

EXHIBIT III

Computer System License and Maintenance Agreement

This Computer System License and Maintenance Agreement (the "License Agreement") is incorporated by reference into the Contract between Linebarger Goggan Blair & Sampson LLP ("Firm") and City of San Antonio("City") (each a **"Party"** and together, the **"Parties"**). By execution of the Contract, the Firm and the City agree to the terms of this License Agreement.

THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT BEGIN ON THE FOLLOWING PAGE. THIS LICENSE AGREEMENT MAY CONTAIN SEVERAL ATTACHED SCHEDULES, THE PAGES OF WHICH MAY NOT BE NUMBERED.

TABLE OF SCHEDULES

Schedule 1	Service Level Agreement

TERMS AND CONDITIONS

1. <u>Services.</u>

 1.1. <u>City's Rights to Use the Services.</u> Firm grants City a limited non-exclusive, non-transferable, worldwide right and license to access and use the Services for the duration of the Term (as defined herein) solely for the purposes of (i) TIF/TIRZ Zone accounting; (ii) property based code enforcement lien management and collection, and (iii) hotel/motel occupancy tax collection. The "**Services**" means the services provided by Firm that are described in <u>Schedule 1</u> attached hereto and incorporated herein.

 1.2. <u>Service Levels.</u> In providing the Services, Firm shall use commercially reasonable efforts to comply in all material respects with any service levels set forth in <u>Schedule 1</u> ("**Service Level Agreement**"). Firm shall not be responsible for failing to meet a Service Level to the extent the failure is caused by City, a third party or a force or cause beyond Firm's reasonable control.

 1.3. <u>Rights of Firm.</u> Firm shall be free to provide Services for others on an unrestricted basis. Firm may subcontract any portion of the Services so long as it provides the City with reasonable written notice, including, but not limited to, using third party server hosting services.

2. <u>City Restrictions; Proprietary and other Rights.</u>

 2.1. <u>Restrictions.</u> City shall not, and shall not permit any third party to: (i) sublicense, resell, lease, transfer or assign to any third party the Services or any associated software owned by Firm ("**Firm Software**") or associated software owned by a third party ("**Third Party Software**"); (ii) duplicate, modify or make derivative works of any Firm Software or Third Party Software; or (iii) reverse engineer, decompile, disassemble, or translate any Firm Software or Third Party Software. City has no rights to the source code of the Firm Software or Third Party Software. City may not access the Services other than as expressly provided by Firm pursuant to this License Agreement. Access to the Services shall be limited by City to employees, contractors, consultants, representative or agents of City that are authorized by City to access and use the Services on City's behalf ("**Authorized Users**"). City shall be solely responsible for any activities that occur under its account with Firm, including the activities of its Authorized Users.

 2.2. <u>Data Rights.</u> City grants Firm a royalty-free, non-exclusive, non-transferable, worldwide right and license to access and use in any media the data, information, trademarks and content of City ("**City Data**") to the extent Firm needs the City Data to provide the Services, to configure the format and other technical or display requirements of the Services, and to manipulate and display the City Data for processing transactions on behalf of City. The Services may be designed to collect transaction, connection and/or performance information for use by Firm ("**Transaction Information**"). All City Data and Transaction Information: (i) is and shall remain the sole and exclusive property of City; (ii) shall not be used by Firm for any purpose other than the performance of its obligations and exercise of its rights under this

License Agreement; and (iii) shall remain subject to all present and future legal requirements, including but not limited to the Texas Public Information Act.

2.3. Privacy Policy. City agrees that Firm and its affiliates may use any information City provides to Firm, including but not limited to, the City Data and Transaction Information for the purposes of this License Agreement and in a manner consistent with Firm's then-current Privacy Policy as set forth at www.acttax.com which may be changed by Firm with reasonable notice. City agrees, however, that Firm is not responsible for any information City provides to third parties, and that the privacy policies, if any, of such third parties will govern the use and disclosure of such information.

2.4. Acceptable Use. City shall comply, and shall cause its Authorized Users to comply, with the then-current Acceptable Use Policy located at www.acttax.com, as it may be modified from time to time, at Firm's sole discretion with reasonable notice ("**Use Policy**"). Firm shall notify City in writing of any Use Policy violation by City and City shall cure the violation within one business day of receipt of written notice of the violation. If the violation is by an Authorized User and the violation is not cured within this timeframe, City shall terminate that user's access to the Service. If City fails to terminate the access of any Authorized User that continues to violate the Use Policy, Firm shall have the right to terminate this License Agreement upon reasonable written notice to City. City shall comply with all written policies related to the Services that are published or reasonably communicated by Firm and all reasonable written directives provided by Firm with respect to use of the Services that are reasonably designed by Firm to ensure efficient operation of the Services.

2.5. Proprietary Rights of Firm. The Services, the Firm Software, the Third Party Software and any trade secrets, know-how, methodologies and processes, copyrights, trademarks, patents, trade secrets, and any other proprietary and intellectual property rights associated with or inherent in the Services, the Firm Software or the Third Party Software are and shall remain the sole and exclusive property of Firm and its third party licensors and shall not be used by City for any purpose other than the performance of its obligations and exercise of its rights under this License Agreement.

3. Relationship Management. Firm and City shall each designate a representative (a "**Relationship Manager**") for this License Agreement. Each Party shall have the right to change its Relationship Manager or designate an alternate by providing written notice to the other Party.

4. Fees. City will pay no fees for the Services.

5. Confidentiality.

5.1. Non-Disclosure Obligations. Except as is specifically required or permitted by this License Agreement, neither Party shall, without the express prior written consent of the other Party, redistribute, market, publish, disclose or divulge to any other person or entity, or use or modify for use, directly or indirectly in any way for any person or entity: (i) any of the other Party's Confidential Information during the Term and for so long as such information constitutes Confidential Information (before or after the end of the Term); and (ii) any of the other Party's Trade Secrets at any time during which such information shall constitute a Trade

Secret (before or after the end of the Term). The Parties agree that, during the Term and thereafter, each Party will hold Confidential Information and Trade Secrets in a fiduciary capacity for the benefit of the other Party and shall not (a) directly or indirectly use, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose or cause to be disclosed, or otherwise transfer any Confidential Information or Trade Secrets of the other Party to any third party, or (b) utilize Confidential Information or Trade Secrets for any purpose, except as expressly contemplated by this License Agreement or authorized in writing by the other Party. Each Party will limit the disclosure of the other Party's Confidential Information and Trade Secrets to employees, contractors or agents with a need-to-know, shall notify its employees, contractors and agents of their confidentiality obligations with respect to Confidential Information and Trade Secrets and shall require its respective employees, contractors and agents to comply with these obligations. Each Party shall be liable for any breach by any employee, contractor or agent of the confidentiality obligations contained herein.

5.2. Trade Secrets. For purposes of this License Agreement the following terms shall have the following meanings: "**Trade Secrets**" shall mean information (including, but not limited to, confidential business information, technical or non-technical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans, lists of actual or potential cutomers or suppliers) that: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The Parties stipulate that the Services and the Firm Software and the Third Party Software and all intellectual property rights associated with those items shall constitute Trade Secrets of Firm and its licensors.

5.3. Confidential Information. "**Confidential Information**" shall mean, with respect to a Party, all valuable, proprietary and confidential information belonging to or pertaining to the Party that does not constitute a Trade Secret of the Party and that is not generally known by or available to the Party's competitors but is generally known only to the Party and those of its employees, contractors, clients or agents to whom such information must be confided for internal business purposes. Confidential Information does not include information that: (a) was in the possession of, or was rightfully known by, the recipient thereof without an obligation to maintain its confidentiality prior to receipt from disclosing Party; (b) is or becomes generally known to the public without violation of this License Agreement; or (c) is obtained by the recipient in good faith from a third Party having the right to disclose it without an obligation of confidentiality.

5.4. Required Disclosure. Notwithstanding the foregoing, either Party may disclose Confidential Information or Trade Secrets of the other Party in judicial or other government proceedings to the extent that the Party is legally compelled to do so, provided that the Party has notified the other Party in writing at least ten (10) days prior to disclosure and shall have used its best efforts to obtain, and shall have afforded the other Party a reasonable opportunity to obtain, an appropriate protective or similar order providing for the confidential treatment of the Confidential Information or Trade Secrets required to be disclosed.

5.5. Injunctive Relief. Each Party acknowledges that any unauthorized disclosure or use of the other Party's Trade Secrets or Confidential Information would be likely to injure the other Party irreparably. Each Party acknowledges that its misuse or unauthorized disclosure of the other Party's Confidential Information or Trade Secrets shall entitle the other Party to injunctive or other equitable relief.

6. Representations and Warranties.

6.1. Firm Representations and Warranties. Firm represents and warrants to City that: (i) it will provide the Services in a manner consistent with reasonably applicable general industry standards; (ii) in providing the Services, it shall comply with all applicable Federal, state and local laws and regulations ("Laws") and shall obtain all required permits and licenses; and (iii) will update the Firm Software and the Service as necessary to comply with changes mandated by legislative changes to the State of Texas Property Tax Code and administrative directives issued by the Property Tax Division of the Comptroller's Office for the State of Texas.

6.2. City Representations and Warranties. City represents and warrants to Firm that: (i) the City Data does not and shall not infringe on or violate any third party's intellectual property or other proprietary rights; (ii) City owns the City Data or otherwise has the right to place the City Data on the Firm's infrastructure in connection with the Services and to view and access the City Data through the Services; (iii) no further approval, authorization or consent of any governmental or regulatory authority is required to be obtained by it in order for it to enter into and perform its obligations under this License Agreement; and (iv) in connection with its use of the Services, it shall comply with all Laws and shall obtain all applicable permits and licenses.

6.3. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS LICENSE AGREEMENT, FIRM MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR ANY WARRANTY OF NON-INFRINGEMENT. FIRM DOES NOT WARRANT THAT: (a) THE SERVICES AND ANY RELATED SOFTWARE WILL OPERATE UNINTERRUPTED; (b) SERVICE OR SOFTWARE ERRORS CAN BE CORRECTED; OR (c) THE APPLICATIONS CONTAINED IN THE SERVICES OR SOFTWARE ARE DESIGNED TO MEET ALL OF CITY'S BUSINESS REQUIREMENTS.

6.4. Internet Delays. THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. FIRM IS NOT RESPONSIBLE FOR, AND CITY RELEASES FIRM FROM, ANY DELAYS, DELIVERY FAILURES OR DAMAGES RESULTING FROM SUCH PROBLEMS.

7. Indemnification.

7.1. Firm Indemnity. Subject to Section 8, Firm shall indemnify and hold harmless City and any affiliated entities and their respective officers, directors, partners, employees,

shareholders and agents against any damages awarded against the City by a court of competent jurisdiction in connection with a final judgment or ruling that the City's use of, or access to, the Services infringes a United States patent, copyright or trademark of the third party that is registered as of the date Firm provides City with the Services, provided, that: (a) City gives Firm prompt notification in writing of any such infringement claim specifying in reasonable detail the nature and all material aspects of the claim and reasonable assistance, at Firm's expense, in the defense of such infringement claim; and (b) Firm has the sole authority to defend or settle such infringement claim.

7.2. Indemnification Limitations. Firm shall have no obligation for any infringement claim arising out of or relating to: (a) use of the Services other than in accordance with the terms of this License Agreement; (b) any Third-Party Software associated with the Services; or (c) use of the Services in combination with any other hardware, software or other materials where absent such combination, the Services would not be the subject of the infringement claim.

7.3. Effect of Infringement Claim. If an infringement claim is established, (a) Firm may require City to discontinue use of the Services within a reasonable time and City shall comply with such requirement; and (b) Firm will, at its sole option, either (i) procure for City the right to use and exercise its rights with respect to the Services as provided in this License Agreement; or (ii) replace the Services with other non-infringing services or modify the Services to make it not infringing while retaining substantially similar functionality.

7.4. Exclusive Remedy. THE PROVISIONS OF THIS SECTION STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF FIRM AND ITS LICENSORS TO CITY, AND IS CITY'S SOLE REMEDY WITH RESPECT TO, ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD-PARTY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT.

8. Limitation of Liability. EXCEPT FOR DAMAGES RESULTING FROM BREACHES OF SECTION 5, FIRM SHALL NOT BE LIABLE TO CITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS OR LOSS OF REVENUE, OR COMPUTER FAILURE. FIRM SHALL NOT BE LIABLE TO CITY FOR; (I) LOST DATA; OR (II) FAILURE TO REALIZE EXPECTED SAVINGS RESULTING FROM THE USE OF THE SERVICES, EVEN IF FIRM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES. IN ANY CASE, FIRM'S ENTIRE AGGREGATE LIABILITY UNDER ANY PROVISION OF THIS LICENSE AGREEMENT SHALL BE LIMITED TO THE FEES ACTUALLY PAID BY CITY UNDER THE LICENSE AGREEMENT DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTHS. NOTWITHSTANDING ANYTHING IN THIS LICENSE AGREEMENT TO THE CONTRARY, THIS SECTION SETS FORTH CITY'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY.

9. Injunctive Relief. A material breach of Sections 2.1, 2.4 or 2.5 by City would irreparably harm Firm and, accordingly, City agrees that in the event of such a breach Firm shall be entitled to apply to a court of appropriate jurisdiction for injunctive relief, specific performance and/or,

as the case may be, other interim measures, without the posting of any bond, to prevent or stop harm, including, but not limited to, harm relating to, trademarks, copyrights, patent rights, know-how, trade secrets or other intellectual property rights. These rights to injunctive relief are in addition to those rights specified in Section 5.5.

10. Term and Termination.

10.1. Term. The "**Term**" of this License Agreement shall be the same as the term of the Contract between the City and the Firm and this License Agreement shall run concurrently with such Contract.

10.2 Termination by City. City may terminate this License Agreement at any time with sixty (60) days written notice. Upon the expiration or termination of the Contract, the license granted herein shall continue in effect and City may continue to use the Services, as described in Schedule 1 attached, (together with any upgrades, modifications or subsequent versions) for up to one (1) year by paying a monthly licensing and maintenance fee to the Firm of $1,800.00, during which time the Firm shall implement changes into the Services to meet state mandated requirements as contained in the Tax Code. Should the City opt not to make such a payment, the Firm's shall terminate the license if City fails to make any payment within sixty (60) days after notice by the Firm that City has not made the payment and that the Firm intends to cancel the license.

10.3 Termination by the Firm. The Firm may terminate its duty to support the Services under the terms of this License Agreement and the Contract only if: (1) The Firm has terminated the support of the Services for itself and all other persons, (2) the Firm has provided City with two (2) years notice of such termination, and (3) the Firm has provided the source code for the underlying software to City, which shall then, at no cost to City, have full ownership of the Services for all purposes without any restriction or obligation provided for elsewhere in this License Agreement, and City shall have such ownership in whole or in part and the right to grant licenses to use the Services to any person. City shall have the sole responsibility of any System update or support thereafter.

10.4 Survival. Termination or expiration of the Term does not terminate other provisions of this License Agreement that by their terms do not expire on termination or expiration of the Term.

11. Miscellaneous.

11.1. Independent Contractors. Nothing in this License Agreement or in the course of dealing between Firm and City shall be deemed to create between Firm and City (including their respective directors, officers, employees and agents) a partnership, joint venture, association, employment relationship or any other relationship other than an independent contractor relationship.

11.2. Use of City Name. Firm shall have the right to identify City as a Client of Firm as part of Firm's marketing efforts, including City lists and naming City in press releases.

11.3. Audit Rights. Firm shall have the right during customary business hours, upon reasonable written notice and at Firm's expense, to examine City's books and records and use of the Services in order to audit City's compliance with this License Agreement, solely as it relates to the Services and the use of the System by the Firm.

11.4. Waiver; Non-Waiver; Amendment. Failure by either Party to enforce any of the provisions of this License Agreement or any rights with respect to it or the failure to exercise any option provided under this License Agreement shall in no way be considered to be a waiver of that provision, right or option, or in any way affect the validity of this License Agreement. No waiver of any rights under this License Agreement, nor any modification or amendment of this License Agreement, shall be effective or enforceable, unless it is in writing and signed by each Party.

11.5. Force Majeure. Neither Party to this License Agreement, other than for payments due and payable, will be liable to the other for any failure or delay in performance under this License Agreement due to circumstances beyond its reasonable control including, without limitation, Acts of God, labor disruption, strikes, lockouts, riots, acts of war, terrorist threat, epidemics, communication line failures, power failures or government action.

11.6. Governing Law. This License Agreement shall be governed by the laws of the State of Texas without giving effect to any choice of law principles. The Parties hereby acknowledge and agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this License Agreement.

11.7. Assignment. Except as provided in this License Agreement, City may not assign or transfer any of its rights, duties or obligations under this License Agreement (whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise) without the prior written consent of Firm and any assignment not in compliance with this Section shall be deemed void. Firm may assign or transfer its rights, duties or obligations under this License Agreement by giving the City reasonable prior written notice.

11.8. Notice. All notices or other communications under this License Agreement shall be given in accordance with the notice provisions of the Contract.

11.9. Severability. If any provision of this License Agreement is held invalid or unenforceable, the provision shall be deemed modified only to the extent necessary to render it valid or eliminated from this License Agreement, as the situation may require, and this License Agreement shall be enforced and construed as if the provision had been included in this License Agreement as modified in scope or applicability or not been included, as the case may be.

11.10. No Third Party Beneficiaries. This License Agreement inures to the benefit of Firm and City only and no third party shall enjoy the benefits of this License Agreement or shall have any rights under it except as is expressly provided in this License Agreement.

11.11. Headings. The headings preceding the text of the paragraphs of this License Agreement have been inserted solely for convenience of reference and neither constitute a part of this License Agreement nor affect its meaning, interpretation or effect.

11.12. <u>Export Controls</u>. City agrees to comply fully with all relevant export laws and regulations of the United States including but not limited to the U.S. Export Administration Regulations (collectively, "**U.S. Export Controls**").

ATTACHMENT   III

Schedule 2 - Service Level Agreement

1. INTRODUCTION

1.1. Purpose and Objectives

This Service Level Agreement (the "Agreement", "SLA") is incorporated into the Contract between Linebarger Goggan Blair & Sampson, LLP (the "Firm") and City of San Antonio ("COSA").

The purpose of the Service Level Agreement is to identify current and projected levels and qualifications of support staff, hardware and software components, systems support service levels including the roles, responsibilities and response times between Appraisal and Collection Technologies LLC and the City of San Antonio for change management, version control, security, problem source identification and resolution, break/fix, back-up/recovery and disaster recovery, help-desk, user training, system enhancements and development, system configuration and operations and system operations and upgrades.

Pursuant to the terms of the Contract, there is no charge to City of San Antonio for any portion of the ACT System. Furthermore, pursuant to the terms of the Contract, the services to be provided by the ACT System only include the following Systems:
1. TIF/TIRZ Zone Accounting System;
2. Hotel/Motel Occupancy Tax System;
3. Property Based Code Enforcement Lien System

1.2. Definitions

"ACT" means Appraisal and Collection Technologies LLC, a wholly owned entity of Linebarger Goggan Blair & Sampson, LLP. All references to ACT herein include ACT personnel, onsite at COSA or off-site, and ACT management.

"ACT System" or "System" means the Appraisal and Collection Technologies Tax Collection System, developed by ACT for use by a current tax office (software and hardware) including all upgrades and modifications. The ACT System Service Components are listed in Section L.

"ACT System Source Code" means the programs and database objects that make up the ACT System.

"ACTPROD" means that particular portion of the ACT System where the COSA live data resides and is manipulated.

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"Assistant Director" means the resource responsible for the relationship between all clients and ACT.

"BCAD" means the Bexar County Appraisal District.

"Client Manager" means the ACT resource responsible for managing the relationship between the COSA and ACT.

"Client Preferences" means those settings within the ACT System which can be managed by COSA and serve to alter the ACT System's behavior.

"Change Control Procedures" means the process to be followed when software or hardware changes are required to the ACT System.

"COSA " means the City of San Antonio .

"Data Fix" means the insertion or correction of data directly in the Primary System via specialized tools. A Data Fix bypasses all ACT System controls, audits, and edits.

"DBA" means Data Base Administrator.

"Entitlements" means security settings within the ACT System that serve to enable a user to perform specific operations.

"Global Code Preferences" means those settings which are configurable within the ACT System, but are intended to be managed by ACT and not COSA.

"Hardware" means any and all hardware installed to operate the System.

"Help Desk Services" mean the specified support services provided by ACT to COSA to facilitate understanding in operating and executing the delivered Services.

"Metrics" means the numeric criteria against which performance under this Agreement are to be measured.

"Normal Business Hours" means 7:00 AM to 9:00 PM Monday through Friday CST, except published COSA holidays.

"Object Fix" means computer code changes designed to create or alter the ACT System functionality.

"PRC" means the internal ACT Problem, Request and Control system utilized to manage the software development life cycle. All Software Problems and Software Change Requests are entered into this system for resolution control.

"Primary System" means the area of the ACT System where COSA live data is stored and manipulated.

"Problem Escalation" means the procedure for alerting and notifying increasingly senior members of ACT of the non-resolution of problems.

"Problem Management" means the procedures for providing support and problem resolution services to COSA.

"Problem Priority" means the method used to define the urgency of a reported issue or change.

"Services" mean the work that ACT performs for COSA.

"Service Availability" means the times and periods that ACT will make their Services available to COSA.

"Service Component" means a divisible and identifiable part of the overall Services to be delivered.

"Service review meetings" mean regular meetings that are held between ACT and COSA specifically to discuss issues arising from the delivery of the Services including the performance of the Service delivery.

"Software Change Request" means new system design to support business requirements not currently supported by ACT System functionality.

"Software Problem" means existing ACT System functionality not working as it was originally intended to function as documented in the ACT User Manual.

"Standby System" means the copy of ACTPROD that is replicated at the ACT Disaster Recovery Site.

"System Availability" means the ability of COSA to process transactions and access data.

"Test System" means an environment where user testing can occur without impact to the Primary System. The main component of the Test System is ACTEVAL.

"ACT User Manual" means a set of instructions designed to teach persons to use the ACT System and as used herein refers to those instructions embedded within the ACT System contained help functionality.

2. SCOPE OF WORK

2.1. Services

Services to be delivered under this Schedule are set forth in Section A.

2.2. Services Availability

The availability, operational reliability, and response times of the Services to be delivered and disaster recovery procedures are set forth in Section B.

2.3. Changes to Services

Change Control Procedures are described in Section C.

3. PERFORMANCE, TRACKING AND REPORTING

3.1. Key Personnel Changes

ACT will notify COSA at least three (3) days in advance of changes to any ACT Dedicated Resources that could potentially affect the delivery of Services to COSA.

3.2. Services Delivery Monitoring

The methodology to be used to monitor Services Availability is set forth in Section D.

3.3. Services Level Reporting

The content and schedule of Services Level reports are set forth in Section E.

3.4. Services Review Meetings

Services review meetings to discuss such items as Services performance levels, Software Problems, proposed Software Change Requests and administrative issues will be held on an as-needed basis with ACT at COSA. Unless otherwise directed by COSA, these meetings shall occur no less frequently than quarterly when there are open work orders; otherwise at least annually.

4. PROBLEM MANAGEMENT

4.1. Help Desk Services

Section F provides information on ACT's Help Desk Services and support procedures.

4.2. Problem Escalation & Priority Resolution

Section G details the Problem Escalation procedure. Section H details Software Problem definitions and resolution time frames. Section J contains a sample of ACT's Software Problem resolution request form.

4.3. Data Backup & Retention

Section I details ACT's System backup and retention policy for COSA data.

4.4. Contact Information

Section K offers contact information on ACT personnel.

4.5. ACT System Service Components

Section L itemizes the ACT System Service Components.

5. COSA DUTIES AND RESPONSIBILITIES

5.1. COSA will ensure that ACT has timely access to appropriate COSA personnel to support delivery of the Services.
5.2.
COSA will ensure that ACT has timely access to any areas where ACT equipment (including peripheral hardware or connections) is housed to ensure agreed upon levels of service.

6. SECTIONS

Section A   Services

Section B   Services Availability

Section C   Change Control Procedure

Section D   Services Monitoring and Performance Measurement

Section E   Service Level Reporting

Section F   Support and Help Desk Services

Section G   Problem Escalation

7.   SECTION A SERVICES

Section A provides a detailed list of the Services that are to be delivered to COSA. Also identified are COSA responsibilities to receive these Services.

COSA owns and shall maintain exclusive control of all of its records stored in the ACT System including data imported from external sources. ACT has no rights to COSA data but may gain access by complying with established Open Record Request procedures directed to the COSA Public Information Officer.

COSA will provide access to necessary resources and information in a timely manner to support ACT in delivering these Services.

7.1.   ACT Responsibilities

ACT shall provide technical and analytical support for processing and reporting performed in any ACT System Service Component installed at COSA during the term of the Contract.

Services include:
a)   Appraisal District data synchronization
b)   TIF / TIRZ zone processing and reporting
c)   Property Based Code Enforcement Lien Processing
d)   Hotel/Motel Occupancy Tax

7.2.   ACT Supplied Hardware and Third Party Software

a)   ACT will be responsible for maintaining all Oracle components including product upgrades.

b)   ACT will manage, acquire and administer all licenses and maintenance agreements related to the Oracle software toolset and ACT related hardware.

c)   ACT will maintain the current level of hardware infrastructure and backup equipment to minimize downtime to COSA.

d)   ACT will maintain hardware infrastructure for that hardware provided by ACT and the internet connection between the hardware and the ACT facilities.   COSA will be responsible for the maintenance of all other hardware owned by COSA and peripheral devices used by the ACT System throughout COSA operations. The management and maintenance of the COSA network and servers will be the responsibility of COSA.

COSA will provide and maintain a suitable environment to install and operate the ACT System.

7.3.   ACT Help Desk

ACT shall maintain and manage a Help Desk to support users at COSA. Hours of operation will reflect current and future COSA hours of operation.

7.4. System Modifications

The Firm agrees to provide all System modifications requested by COSA, including upgrades and expansions necessary to accommodate demands on the ACT System at a mutually agreed upon fee for such work to be performed by ACT. No work shall be performed by the Firm prior to approval by COSA of the proposed changes. COSA will make any request for System modifications in writing with sufficient specificity to identify the exact change being requested and the reason the change is necessary or desirable.

As requested by COSA, ACT shall work with COSA to implement other ACT System Service Components offered by ACT not currently installed at COSA.

ACT will maintain core development of application fixes and enhancements to the ACT System Service Components.

Reports used across clients developed within the ACT System will remain the responsibility of ACT.

COSA will develop and maintain user requested reports using an ad hoc reporting tool provided and licensed by ACT. ACT will be available to aid in this effort as needed. However, joint COSA and ACT report development using an ad hoc reporting tool will be mutually agreed upon in advance by both parties.

ACT System Object Fix(es) will be moved into the Test System weekly on Mondays throughout the year. Migrations of COSA approved ACT System Object Fix(es) to the Primary System will occur after Normal Business Hours on Thursdays throughout the year. These weekly Object Fix migrations will occur during the year.

Emergency migration of ACT System Object Fix(es) to the Primary System will occur occasionally throughout the year and will be scheduled by mutual agreement of COSA and ACT.

7.5. System Configuration Management

ACT shall manage Global Code Preferences used throughout the ACT System.

ACT will provide support to aid COSA in performing business requirements analysis and assisting in the specifications documentation of Software Change Requests.

ACT shall manage on-line system change request documentation. COSA approved requested updates shall be provided to ACT in writing (See Section J). While ACT cannot guarantee incorporation of all requested changes into the ACT System, each written request will be addressed in writing within a timely manner. (See Section H for response time.)

7.6. Security Administration

ACT shall add and maintain any COSA required security roles based on specifications supplied by COSA for the ACT System.

COSA shall setup and maintain User IDs for the ACT System. COSA, or ACT upon direction from COSA, shall assign users to roles.

COSA shall assign Entitlements to users for the ACT System.

7.7. Training

ACT shall provide continuing product training as requested by COSA. ACT System training will be performed at COSA. To ensure effective training, coordination of dates and class size will be agreed upon in advance by ACT and COSA. COSA will provide facilities and required equipment to support training.

Unless otherwise agreed between the parties, third party vendor training for COSA is the responsibility of COSA.

8. SECTION B SERVICES AVAILABILITY

Section B provides a list of the times and periods when the ACT System will be available to COSA.

Access to the ACT System should be available at all times except when essential maintenance to hardware or software is required. If it becomes necessary to interrupt service during Normal Business Hours, prior notification to and approval from COSA is required unless the situation is critical in nature and could cause more damage if not handled immediately. As much as possible, interruptions will be scheduled to minimize any impact on users.

8.1. System Availability

ACT commits to 99% ACT System Availability during Normal Business Hours. Upon request, ACT shall provide monthly reports summarizing System Availability and downtime using ACT provided system utilities. ACT will notify COSA of any unscheduled outage and resolve the issue as quickly as possible.

8.2. Scheduled System Downtime

Scheduled downtime will be conducted outside Normal Business Hours.

Scheduled downtime will occur on a weekly basis on Mondays from 5:00 AM – 5:30 AM CST. This scheduled downtime is required to conduct a weekly cold backup.

8.3. Unplanned System Downtime

Upon identification or notification by COSA of an unscheduled event that reduces System Availability, ACT shall begin problem source identification and troubleshooting the problem within a 15-minute timeframe. ACT shall use all means at its disposal to keep COSA updated as to the status of the problem and the estimated time of the return of System Availability.

8.4. Back-Up Procedures

Backup procedures are performed as defined in Section I.

8.5. Disaster Recovery / Hardware Failure

Physical Redundancy: COSA's Primary System is replicated at the ACT Disaster Recovery Site (Standby System).

A fail-over to the Standby System will be initiated and managed by ACT. ACT will work to re-route COSA to the Standby System. COSA will provide technical assistance as needed.

8.6. Disaster Types

Level 1 Disasters are defined as having low data impact, possibly high operations impact, but no continuity issues. These disasters do not put data that is on the database at risk. Level 1 disasters include:

Failure of the Router: ACT will troubleshoot and if it is determined that a new router is

necessary, one of ACT's backup routers will be dispatched with an appropriately trained technician to install the new equipment.

Level 2 Disasters are defined as having medium to high data impact, possibly high operations impact, and potential continuity issues. ACT will focus to minimize data loss. Level 2 disasters include:

Failure of the main COSA Oracle database server or failure of the database storage server: Should a total failure of the database or storage server occur, the un-posted Data Guard logs would be posted to the Standby System that would become the Primary System. COSA would begin to receive Services immediately from the Standby System.

Failure of an application server. There are multiple application server instances that facilitate COSA access to the Primary System. If one instance fails, the user would be required to restart the application which would redirect the user to the other application server instance.

Level 3 Disasters are defined as having high data impact, high operations impact and business continuity issues. Level 3 Disasters include: Major damage/loss of building and infrastructure, chemical or biological incident that makes the building inhospitable to employees, and a meteorological event that makes access to the building impossible for employees.
Disaster Recovery Plan Document

9. SECTION C CHANGE CONTROL PROCEDURES

Section C provides information on the change control procedures to be followed for Software Problem or COSA requested change to the ACT System.

9.1. Software Design Change Requests

COSA Software Change Requests shall be delivered to ACT in writing for consideration. (See Section J)

COSA shall provide a written specification identifying details of the requested change and reason for the change. COSA shall make itself available to discuss the requested change.

ACT shall evaluate the Software Change Request and perform a cost benefit impact analysis considering the COSA requirements as well as the impact on other ACT clients. ACT may share Software Change Request information with other clients.

If impact analysis yields a potential conflict with other clients, ACT will work with COSA (and all clients) to resolve in a mutually beneficial manner.

After COSA and ACT approve a Software Change Request, a target availability date will be

scheduled that is agreed upon by parties and takes into consideration development and internal test timeframes.

After ACT develops and internally tests an Object Fix as necessary to meet the objectives of the Software Change Request. ACT will migrate the Object Fix(es) to the Test System on a weekly basis, unless a COSA emergency requires sooner attention. In this environment, COSA will have the opportunity to test the Object Fix.

If an Object Fix involves a COSA specific object, for example, a tax statement, testing is limited to COSA.

COSA has the right to test any Object Fix and provide written test results to ACT in three (3) business days.

If COSA identifies a Software Problem, ACT will remediate the Object Fix and re-test before re-migrating it to the Test System.

If Software Change Request functionality or Software Problem(s) are identified during testing that were not in the original request scope, a new Software Change Request will be required and a new schedule of development will need to be discussed and agreed upon.

The ACT System warranty shall extend to all additions and modifications to the ACT System by ACT unless the modification has been requested by COSA and ACT has advised against the modification because of associated risks in so doing.

9.2. Software Problems

COSA shall provide ACT detailed information when reporting a Software Problem. Examples of relevant information include the date and time the problem occurred, a detailed description of the issue in terms of impact on business processing, the process that was being performed within the ACT System when the error occurred, system error message received and the user ID operating the system. This information will be captured using the PRC form or a document template of similar nature which must be approved by COSA. (See Section J.)

Software Problems will be assigned a priority and resolved within the timeframe outlined in Section H.

Once ACT develops and internally tests the Object Fix to a Software Problem, ACT will migrate the Object Fix to the Test System. This migration will occur weekly on Monday nights outside Normal Business Hours.

Within three (3) days COSA shall verify that the Object Fix is operating as needed. Unless ACT is notified by COSA of an unacceptable result, ACT shall migrate the Object Fix to the Primary System on Thursday nights after Normal Business Hours, following COSA's three day review period.

If continued Software Problem(s) are identified with a particular Object Fix, ACT will correct

and re-test before migrating the Object Fix back to the Primary System.

9.3. COSA Testing Timeframe

Time is of the essence in resolving Software Problems. COSA will test an Object Fix in the Test System according to the COSA test plan in accordance to the timeframes listed below:

Software Problem: three (3) working business days (generally Tuesday through Thursday).

Software Change Request: three (3) working business days, unless otherwise agreed upon by COSA and ACT (generally Tuesday through Thursday).

ACT shall migrate Object Fix(es) to the Test System weekly. Exceptions to this practice would occur if an COSA generated high priority Object Fix is ready for COSA review.

10. SECTION D SERVICE MONITORING AND PERFORMANCE MEASUREMENT

Section D provides detailed information on the monitoring of Services delivered to COSA and the Metrics and other means to be applied to measure the performance of the Services delivered.

10.1. Performance Monitoring

ACT shall have tools in place to be used to analyze performance issues.

COSA users who experience ACT System performance issues shall report such issues to COSA and ACT. ACT shall investigate reported performance issues. If the problem is identified as an ACT issue, performance tuning results and targets will be reviewed and approved and Object Fix(es) made as necessary.

If, after ACT investigation, ACT believes the underlying cause of the issue originates with COSA, the issue shall be turned over to COSA for further review or jointly reviewed by ACT and COSA.

Parties will review any non-compliance with performance expectations.

10.2. Software Problems

ACT commits to deliver within the specified timeframes. Section H outlines the delivery timeframe for Software Problem resolution. Processes covered under each Problem Priority level are outlined in Section H of this Agreement.

COSA will provide appropriate and timely turnaround to support ACT problem resolution efforts and timeframes listed in Section H.

10.3. Software Enhancements

ACT commits to deliver within the agreed upon target dates associated with Software Change Requests.

10.4. Hardware Failure

Timeframes for recovery in the event of hardware failures are specified in Section B.

10.5. Remote Access to System

ACT cannot guarantee performance or response times on network links for which ACT has no control. As such, ACT does not guarantee response time performance Metrics for remote users, i.e. those defined as users accessing the System outside the COSA network. (COSA Branches are considered inside the COSA network.)

11.   SECTION E   SERVICE LEVEL REPORTING

Section E provides information on the service level reporting provided by ACT.

11.1. Reporting

Within five (5) days of the close of the previous month, ACT shall provide COSA a summary listing of all open work orders (PRCs) including Software Problems, Software Change Requests and performance or hardware issues.

The report shall identify:
1.   PRC identification number
2.   PRC reported date
3.   Original and current problem target completion date
4.   Problem description
5.   Current PRC status
6.   Completion date

11.2. PRC System

ACT and COSA shall use ACT'S PRC system to manage and report Software Problems, Software Change Requests and Data Fix(es). PRC reports shall be updated and enhanced periodically by agreement of the parties.

11.3. Other Reports

ACT and COSA shall agree to other reporting requirements as needed.

12. SECTION F SUPPORT & HELP DESK SERVICES

Section F provides information on the Support & Help Desk Services available from ACT.

12.1. ACT Resources

ACT will support COSA with the ACT Resources. Specialized ACT Resources will be made available as necessary to maintain the Services.

12.2. Problem Reporting

COSA shall communicate ACT System issues pursuant to internal COSA procedures. At the option of COSA, these issues will be presented to ACT via a work order. The work order will contain the problem description, who reported the issue and contact information, resolution priority, requested target date and backup documentation. ACT will review the work order for completeness and assess the target date for feasibility. Once this process is complete, the unit of work will be assigned a PRC identification number, discussed in ACT's daily operational meeting, and sourced to an ACT resource for further review.

If a Data Fix is requested, COSA shall submit a work order to ACT with a proactive request for the Data Fix or if this is not the case, and a Data Fix is deemed necessary, ACT must have written approval from COSA before a Data Fix will be made to the Primary System.

For smaller (fewer than 10 minutes), non-critical type requests, such as cancelling a scheduled production job, COSA may submit an oral request to ACT. This type of request does not require backup documentation, a work order, or a PRC.

Critical priority items (i.e. AAA as defined in Section H) that affect System Availability or cause processing delays shall be directly communicated (verbally) by COSA to ACT. A PRC will be generated by ACT to track the issue.

12.3. Service Delivery

ACT Resources provide Services to COSA in a multitude of ways including answering application questions and assisting with production processing/production support. ACT also provides full life cycle development, i.e., gathering business requirements, designing, developing and testing Software Problem and Software Change Request related Object Fix(es).

ACT will be available outside Normal Business Hours to perform emergency production support services. Contact information for ACT will be provided to COSA.

13. SECTION G PROBLEM ESCALATION

Section G provides information on the Problem Escalation procedure to be applied to the Services.

13.1. Notification

ACT shall be notified of all Software Problems, no matter the level of priority via submission of a work order to ACT, necessary to log in and track all issues for prompt resolution

13.2. Status Reporting and Escalation

ACT shall contact COSA on a regular basis (at minimum every four (4) hours) during periods when System Availability is reduced to provide information related to the actions being taken to resolve the issue as timely as possible. In the event that an incident is not being resolved within the agreed timeframes; escalation procedures are outlined below.

ACT's Problem Escalation process assigns timeframes to contact varying levels within ACT based on the severity of the problem and the amount of time the issue remains unresolved.

The Position levels 2, 3 and 4 configuration of timeframes outlined below shall apply when ACT exceeds the expected delivery timeframe (See Section H).

Resolution timeframes below are measured in hours and business days.

Problem Level	Position 1 (ACT support / Help Desk)	Position 2 (Client Manager)	Position 3 (ACT Assistant Director)	Position 4 (Chief Executive Officer)
Priority AAA	15 minutes	1 hour	4 hours	1 day
Priority AA	1 hour	2 days	3 days	4 days
Priority A	4 hours	5 days	10 days	20 days
Priority B / Enhancements	8 hours	5 days	15 days	30 days

For example, ACT shall resolve a AAA (commonly known as "triple A") development/hardware issue within 15 minutes of the occurrence or missed deadline. If the item remains unresolved, the Client Manager shall be contacted. If, after one additional hour, the item remains unresolved or open, the Assistant Director of ACT shall be contacted and they must resolve the issue within four (4) hours. If the item still remains open, ACT's Chief Executive Officer shall be contacted for final resolution within one day.

14. SECTION H PROBLEM PRIORITY RESOLUTION MATRIX

Section H provides information on the Problem Description and Issue Resolution to be applied to the Services.

14.1. Default Resolution

For a Software Problem identified as critical that cannot be cured within the specified time frame below, ACT shall revert to the last known working production version of that code.

14.2. Standard Resolution

COSA may elect to revert to the last known production version of working code depending on critical business needs including, but not limited to, end of tax or fiscal year, month end close, and billing periods. ACT shall then:

1) Revert to the last known working production version of that code within four (4) hours of notice, if the problem did not exist in a prior version; or
2) Require the full 72 hours for development cycle to complete, if the Software Problem exists in all versions.

Resolution timeframes below are measured in hours and business days unless otherwise noted.

Priority	Resolution Timeframe (or as noted above)	Business Process Scope / Impact	Resolution Timeframe Calculation
Priority AAA Critical – Hardware	48 hours	a) Hardware/database/NetApp failure. -A work-around does not exist. -Process delays are not acceptable.	**Start Time:** Within 15 minutes of notification to ACT on-site Support/Help Desk. **End Time:** Introduction of fix to the production environment.
Priority AAA Critical -	72 hours	a) Posting of payments. b) Generating receipts. c) Generation of bills. d) Disbursement of funds.	**Start Time:** Within 1 hour of notification to ACT on-site Support/Help Desk. **End Time:** Introduction of fix to the test bed environment.

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Software		-A work-around does not exist. -Process delays are not acceptable.	
Priority AA High	10 days	a) Generation of refunds. b) Processing of BCAD data. c) Posting of transfers & returned items. d) Monthly closeout. -A work-around may be available, but it is time intensive, or no work-around exists. -Process delays likely.	**Start Time:** Within 3 days of notification to ACT on-site Support/Help Desk. **End Time:** Introduction of problem to the test bed environment.
Priority A Medium	30 days	a) Cosmetic change to external reports or documents. b) Other items not listed above will be jointly defined by the COSA and ACT. -A feasible work-around is available to be performed on a limited basis. -Minimal process delays when work-arounds are in place.	**Start Time:** Case by case basis - dependent on complexity of issue. **End Time:** Introduction of problem to the test bed environment.
Priority B Low	60 days	a) Cosmetic change to reports or documents. b) Other items not listed above will be jointly defined by COSA Management and ACT Group. -A feasible work-around is available.	**Start Time:** Case by case basis - dependent on complexity of issue. **End Time:** Introduction of fix to the test bed environment.

		-No process delays.	
Enhancements	Case by Case Basis	-COSA and ACT will mutually agree upon enhancement priority and delivery dates.	**Start Time:** Case by case basis - dependent on complexity of change request. **End Time:** Introduction of change to the test bed environment.

15. SECTION I SYSTEM BACKUP

All data shall be kept on the Primary System and shall be available on-line. When backup copies are made, they serve as a snapshot of the entire database. Each additional backup contains the previous history in addition to any changes to data since the prior backup. This procedure is in compliance with the State Comptroller's "Retention Section For Records Common to All Local Governments", Part 5: Electronic Data Processing Records. Should the Comptroller's requirements change, record retention schedule will be modified to remain in compliance with the State Comptroller's guidelines.

The schedule outlined below may be modified upon agreement between the parties.

15.1. Daily backups

Server: Oracle DB Storage Server (Primary System)
Type: Full backup
Schedule: Monday: 5:00 am (cold backup snapshot)
      Tuesday – Saturday: 5:00 a.m. (hot backup snapshot)
      Monday – Saturday: 9:00 p.m. (snapshot backup to tape)
Contents: Production Environment for TCS, Tax Ledge, SIT and Hotel:
      All Data, Archive Logs, and Bin Directories (programs and
        software on database server)
Media: Disk & Tape (copying snapshots to tape media)
Retention: 30 days

Server: Oracle DB Server; Oracle APP Servers
Type   Full & Incremental Backup
Schedule: Full Backup – Friday – 9:00 p.m.
      Incremental Backup – Monday – Thursday – 9:00 p.m.
Contents: Operating System, Program files, Scripts, etc.

Media: Disk
Retention: 30 days

15.2. Monthly Backups

Server: Oracle DB Storage Server (Primary System)
Type: Full Backup
Schedule: Morning of the first business day of the new month prior to COSA
            business hours. Monthly backups shall occur at 1:00 am. Should
            this conflict with another backup scheduled for that day, the
            monthly backup shall begin after the first backup is complete.
Contents: 1) Production Environment for TCS, Tax Ledge, SIT and Hotel on
                Oracle DB Storage Server
            2) SPOOL (USR2SPOOL) & IMAGES (USER2HCTAX) volumes
                on Oracle DB Storage Server
Media: Tape
Retention: 12 months

15.3. Standby System

Server: Oracle DB Storage Server
Type: Full Backup
Schedule   Monday: Weekly 1:00 a.m. (cold backup snapshot)
Contents: COSA Production Environment data for TCS, Tax Ledge, SIT and
            Hotel
Media: Disk
Retention: 30 days

16. SECTION J PROBLEM REPORT AND CORRECTION FORM

Section J contains ACT's standard form to report problems and request fixes.

TITLE:			PRC#:	
Functional Area:			Date:	
Originated By:				
Contact Number:		Email:		
Reports/Screens/Notices Affected:				
Priority:	☐ Critical	☐ High	☐ Nice to Have	
When Required:	Development Start:		Test Date:	
Report/screens/technical description attached?	☐ Yes	☐ No		
Path to Screen/report:				
Brief Description of Requested Change				
Risk Factors to be Considered:				
Resource Name:		Estimated Hours:		
Approvals				
ACT	Date	Client - Location	Date	

17. SECTION K ACT PRODUCTION SUPPORT CONTACT INFORMATION

ACT shall provide COSA an updated list of ACT Resources with contact information. ACT shall provide COSA with contact information for the Assistant Director of ACT, the ACT Chief Executive Officer and the Firm's Capital Partner in charge of the COSA account.

18. SECTION L ACT SYSTEM SERVICE COMPONENTS

This section describes the Service Components of the ACT System.

18.1. Base Tax Collection System

- Billing
- Collections
- Records Maintenance
- Reports and Correspondences

18.2. TaxLedge System

- Refund Check Processing
- Disbursements
- Bank Reconciliation

18.3. Special Inventory Tax System

- Escrowing and Billing
- Collections
- Reports and Correspondences
- Integrated with Taxledge to Process Disbursements

18.4. Licensing and Permits System

- Permit Issuance and Renewal
- Receipt Issuance
- Billing & Collections
- Reports and Correspondences

- Integrated with Taxledge to Process Disbursements

18.5. Hotel Motel Occupancy Tax System

- Filings & Billing
- Collections
- Reports and Correspondences

18.6. Code Enforcement Lien System.

- Maintenance of Tax Records Database
- Pre-lien data collection and notices
- Lien Document Geneeration
- Lien Billing and Notices
- Lien Tracking and Customer Service
- Collections Processing and Reporting
- Reporting

18.7. Offline Remittance Capture System

- Local Payment Processing & Receipt Generation
- Data Import to ACT System Post Failure Resolution

18.8. Other Subsidiary Systems

- Customer Service
- Appraisal District
- Lockbox
- Mortgage Company
- Litigation and Enforcement
- Internet
- Appraisal District
- TIF / TIRZ Zone accounting

18.9. Oracle Discoverer

In addition to the ACT System, the Oracle Discoverer application, developed by Oracle Corporation, shall be utilized for user defined reporting purposes. Oracle Discoverer is an intuitive ad hoc query, reporting, analysis, and web-publishing

tool that allows business users at all levels access to information from databases. Discoverer's intuitive user interface guides the end user through the entire process of building and publishing sophisticated reports and graphs. Users can quickly and easily choose from multiple charting and layout options to rapidly create a visual representation of their query results.

Other third party tools may be used upon agreement of the parties.