

**CITY OF EL PASO, TEXAS**  
**AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Tax

**AGENDA DATE:** 11/29/2006

**CONTACT PERSON/PHONE:** Juan F. Sandoval - Ext. 4369

**DISTRICT(S) AFFECTED:** All Districts & County

**SUBJECT:**

**APPROVE** a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Approve a resolution authorizing the city manager to sign an agreement with Appraisal and Collection Technologies sole source provider of the "works" tax collection computer system.

**BACKGROUND / DISCUSSION:**

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

This agreement would allow us to upgrade the current collection system in order to prepare and send out property tax bills and collect and distribute revenue according to state law

**PRIOR COUNCIL ACTION:**

Has the Council previously considered this item or a closely related one?

Yes, in 1998 and 2003.

**AMOUNT AND SOURCE OF FUNDING:**

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

Award amount is \$120,000 per year beginning in October of 2006. Funds available in 06010022-502107 Data Processing Services

**BOARD / COMMISSION ACTION:**

Enter appropriate comments or

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_



**TAX OFFICE  
MEMORANDUM**

**TO:** Mayor & Council

**THRU:** Juan Sandoval, M.P.A., C.T.A, R.T.A.  
City Tax Assessor Collector

**DATE:** November 21, 2005

**SUBJECT:** Authorize City Manager to Sign an Agreement with Appraisal & Collections Technologies

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This contract would allow us to upgrade the current tax collections system we have in place for the billing and collections of property taxes. This year we billed \$676 million on behalf of 26 governments.

Not only are we getting a proven system, it has been installed and tested in other parts of the state, but the vendor will also maintain our website and prepare our annual tax bills. In addition future upgrades will be made available to us.

The negotiated fee of \$120,000.00 a year is very reasonable. This cost will be shared by the other taxing entities with the City's share being about \$8,400. a year.

I strongly, urge your approval.

/bv

cc: Joyce Wilson, City Manager  
William Studer, Deputy City, Deputy City Manager – Financial Services

**RESOLUTION**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

**THAT** the City Manager of the City of El Paso (the "**City**") be authorized to sign that certain Computer System License and Maintenance Agreement entered into by and between the City and Appraisal and Collection Technologies ("**ACT**") for the upgrade and maintenance of ACT's tax collection system, effective for all purposes as of the 1<sup>st</sup> day of January, 2006.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

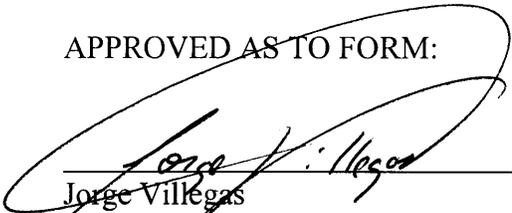
CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

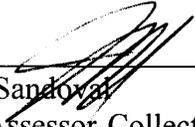
ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Jorge Villegas  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Juan Sandoval  
Tax Assessor-Collector

**STATE OF TEXAS            )       **COLLECTION TECHNOLOGIES****  
  )       **COMPUTER SYSTEM LICENSE AND**  
**COUNTY OF EL PASO        )       **MAINTENANCE AGREEMENT****

This Appraisal and Collection Technologies Computer System License and Maintenance Agreement (this “Agreement”) is entered into and effective as of the 1st day of January 2006, by and between Appraisal and Collection Technologies (the “Vendor”), the commercial software division of Linebarger, Goggan, Blair and Sampson, LLP, and the City of El Paso, a Texas Municipal Corporation (the “Customer”) effective as of the 1<sup>st</sup> day of January, 2006 (the “Effective Date”).

**RECITALS:**

**WHEREAS**, on August 3, 1998, the Customer purchased a software license agreement for the Vendor’s tax collection system (the “Current Software”);

**WHEREAS**, the Customer and the Vendor desire to upgrade the Current Software to the ACT 7.0 (define hereinafter); and

**WHEREAS**, the Customer desires that the Vendor provide support services for the ACT 7.0 as set forth in this Agreement.

**AGREEMENT:**

**NOW THEREFORE**, in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to the following:

1. That the Customer and the Vendor hereby agree to upgrade the Current Software to the ACT 7.0 (defined hereinafter).
2. That the Customer hereby retains and the Vendor hereby agrees to provide support services for the ACT 7.0 as set forth in this Agreement.
3. Definitions.

Certain Capitalized terms not otherwise defined herein shall have the following meanings:

- 3.1 “Hardware” means any and all hardware and communications equipment, including, but not limited to, that installed by the Vendor in the Customer’s Tax Office to operate the System (defined hereinafter) and any additional hardware subsequently agreed to by the parties.

- 3.2 "System" means an integrated data processing system including the programming configuration described in the user manual and sometimes referred to as "ACT 7.0", and all upgrades and modifications. The term also includes Hardware as defined herein. Basic system functionalities include billing, collections, records maintenance, ad-hoc reporting, PRCs turnaround, customer service, mortgage company, lockbox, taxledge, litigation and enforcement, offline remittance capture, internet, appraisal district and tax bill production, and all other necessary functionalities as described in the ACT 7.0 Help Facility.
- 3.3 "User Manual" means an instruction manual including an integrated help facility designed to teach persons with some knowledge of tax collection to use the System. A copy of this Manual will be provided to the Customer's Information Technology Department.
- 3.4 "Works" means the System, source code for the system, the application servers, the database servers and the licenses held by the Vendor, and the User Manual.

4. Grant and Acceptance of License.

The Vendor grants to Customer a non-exclusive, non-assignable license to use the Works, all subsequent versions, upgrades and modifications, and Customer accepts such license, subject to the terms and conditions of this Agreement. Use of the System shall include copying all or any part of the System from storage units or media into the Hardware connecting to the Vendor provided Application Servers and processing of data with the System, and modifying the System, and use of the User Manual shall consist of such reference to such Works as may be necessary in connection with such use of the system.

5. Term of License.

The license granted hereby shall commence on January 1, 2006 and shall continue for five (5) years unless sooner terminated as provided herein.

5.1 At the Customer's option this Agreement may be extended for a second five (5) year term ending on December 31, 2015.

6. Proprietary Rights and Limitations on License.

Customer acknowledges that the Works are the confidential and proprietary property and trade secrets of the Vendor or licensors of the Vendor. Accordingly, Customer agrees that the use and disclosure of the Works must be carefully and continuously controlled, subject to all present or future legal requirements, including but not limited to the Texas Public Information Act. Customer further understands and acknowledges that the Works are subject to the Copyright Laws of the United States.

- 6.1 Title. Title to the Works and each component part thereof shall not pass to Customer pursuant to this Agreement. Customer shall keep the Works and each component or part thereof free and clear of all claims, liens and other encumbrances, except only those of the Vendor. Any purported claim, lien or encumbrance, voluntary or involuntary, by Customer on the Works or any part thereof shall be void. All modifications or changes to the Works made by the Vendor are the sole property of the Vendor. Customer shall have no ownership interest in such modifications, whether or not such modifications are performed pursuant to this Agreement, except as hereinafter provided.
- 6.2 Use. The Works made the subject of this license are for the exclusive use by Customer and any successor officer or officers performing the authorized functions to which this license extends. This license only extends to the use of the Works in connection with the authorized functions of the City of El Paso Tax Assessor-Collector.
- 6.3 Other Restrictions. Customer agrees not to, without the prior written consent of the Vendor, (i) sell, lease, loan, license, sub-license, assign or transfer, for or without consideration, all or any part of the Works or its rights under this Agreement to any person or entity other than to any subsidiary, division or other affiliate of Customer or any other political subdivision under the supervision of the City of El Paso, in which case Customer shall not be released from any of its obligations hereunder and such permitted assignee shall execute in writing a document under which it assumes the obligations of Customer under and becomes bound by the terms and conditions of the Agreement; (ii) copy, reproduce or otherwise duplicate all or any part of the Works other than in connection with the use of the System by Customer as expressly permitted hereunder; or (iii) create or attempt to create, or permit others to create or attempt to create, by reverse engineering or otherwise, all or any part of the Source Code or, if the Source Code has been obtained by Customer hereunder, any program or set of programs performing substantially equivalent functions as those performed by the System. The Works shall be kept in a secure place under access and use restrictions not less stringent than those restrictions imposed upon Customer's most valuable and sensitive software and related materials.
- 6.4 Unauthorized Use. Customer agrees to notify the Vendor immediately of the possession, use or knowledge of any part of the Works by any person not authorized by this Agreement to have such possession, use or knowledge. Customer will promptly furnish the Vendor full details of such possession, use or knowledge, will assist the Vendor in preventing the recurrence of such possession, use or knowledge and will cooperate with the Vendor in any litigation against third parties deemed necessary by the Vendor to protect its proprietary rights in the Works.

Vendor warrants that it will not, without express written authorization from the Customer, export and distribute any data belonging to Customer.

- 6.5 Backup Files. Copies of all or any part of the System made by Customer in accordance with backup procedures shall not constitute copies thereof for the purposes of Section 6.4 above.
- 6.6 Inspection. To assist the Vendor in the protection of its proprietary rights in the Works, Customer shall permit representatives of the Vendor to inspect at all reasonable times any location at which the Works are being used or kept.
7. Vendor Provided Services:
- 7.1 Technical Support. The Vendor shall provide the Customer with on-site technical support and training for one year upon the transfer of the Customer's existing tax office system to ACT 7.0. Technical support will continue, as needed, by way of telephone, email, or by any other method deemed necessary by the parties in order to maintain efficient daily operating processes.
- 7.2 Website Maintenance. The Vendor will provide a URL to the City Webmaster, which when "linked" from the City of El Paso Internet Pages, will cause a browser to display the "City of El Paso Tax System Account Identification" page. The purpose for these pages is to allow an Internet user to locate a tax property based on owner name, street address, or account number. Once an account has been located, the Internet user will view details of the account showing the current year taxes for the account, payments, and amounts due. The Vendor will maintain the website information to the specification of the Tax Assessor-Collector and in accordance with the Property Tax Code. The Vendor will ensure that the website is compliant with Visa/Mastercard Merchant Rules and Regulations that allows taxpayers the capability of paying property taxes by credit card through the internet. No maintenance fee will be charged for this service. A reasonable convenience fee may be passed on to the user of this service.
- 7.3 Current Tax Statement Services. The Vendor will:
- 7.31 Load and balance the current year certified tax file from El Paso Central Appraisal District.
- 7.32 Compute the tax levy by assessing the property presented on the roll to determine a tax levy according to the State of Texas Property Tax Code and the partial exemption amounts and tax rates adopted by each taxing entity served by the City of El Paso.
- 7.33 Format and create a tax bill for each account on the roll in a form and style acceptable to the Tax Collector-Assessor and conforming with all the requirements of the State of Texas Property Tax Code.

- 7.34 Deliver or cause to be delivered a “print image tape” to the site where the actual printing will occur. Sample tax bills must be submitted to the Tax-Assessor-Collector for final review and approval before mailing occurs.
- 7.35 Print, Fold, Insert the statements into a #10 window envelope with enclosed #9 return envelope, the #10 envelope bearing the return address of the City of El Paso Tax Office and the #9 envelope bearing the remittance address of the lock box servicing the City of El Paso. Multiple accounts having the same payee name and address will be grouped together as necessary for purposes of mailing.
- 7.36 Deliver and cause to be accepted these tax statements to the postal service in a time period not to exceed seven (7) days from the date the last tax rate is adopted or the appraisal roll is balanced, whichever occurs later.
- 7.37 Postage for these bills will be paid by the Customer.

8. Services Costs.

8.1 Use Fee. Vendor will charge an annual Use Fee of One Hundred Twenty Thousand Dollars (\$120,000.00) commencing on January 1, 2006.

8.2 Payment Schedule:

Invoices will be provided to the Customer by Vendor for annual payments of said Software Support/Maintenance. Payments will be submitted to Vendor by Customer each October 15<sup>th</sup> for the term of this Agreement, commencing on October 2006.

8.3 Telecommunication and Data Transmission Lines; Internet. The Vendor shall not be responsible for the cost of local connections for telecommunication lines, data transmission lines, and internet services including but not limited to service charges, maintenance fees, equipment fees, or installation charges that are required for the Customer to use the System in the manner intended. The Vendor agrees to assist the Customer in acquiring these services and verifying their adequacy for the purpose intended, but the Vendor does not assume liability for the proper functioning of these services or for any loss to the Customer due to failure, degradation, or alteration of these services. The Vendor will pay for all non-local costs for telecommunication lines and data transmission lines including but not limited to service charges, maintenance fees, equipment fees, or installation charges that are required for the Customer to use the System in the manner intended. Non-local costs include any required communication costs between the System and off-site locations of the Vendor. The costs to connect the main tax office to the Vendor processing center are included in the above Use Fee.

9. Warranty and Disaster Recovery.

- 9.1 Warranty. The Vendor warrants that it has good title to the Works and the right to license its use to the Customer free of any proprietary rights, liens, or encumbrances of any other party. The Vendor further warrants that it will timely implement changes into the System to meet state mandated requirements as contained in the Property Tax Code as published by the Texas State Comptroller. The warranty shall extend to all modifications and additions to the Works by the Vendor unless the modification has been requested by the Customer and the Vendor has advised against the modification.

THIS WARRANTY SHALL NOT EXTEND TO ANY PORTION OF THE WORKS AFFECTED BY THE CUSTOMER MODIFIED OR ADDED PORTIONS OF THE WORKS.

- 9.2 Disaster Recovery. The Vendor shall furnish the Customer with a written description of a System disaster recovery plan. Such plan shall include procedures to insure System downtime is limited to less than forty-eight (48) hours. The Tax Assessor-Collector shall promptly approve or disapprove such plan; approval shall not be unreasonably withheld.

## 10. Termination.

- 10.1 Termination by Customer. The Customer may terminate this Agreement at any time with thirty (30) days written notice. Upon notice of termination, Vendor shall promptly export all data related to the Customer and publish such data in a manner easily processed by knowledgeable data processing professionals.
- 10.2 Termination by the Vendor. The Vendor may terminate its duty to support the Customer under the terms of this Agreement with one hundred eighty (180) days notice. Vendor shall promptly export all data related to the Customer and publish such data in a manner easily processed by knowledgeable data processing professionals.

## 11. Indemnification and Liability Insurance.

- 11.1 THE VENDOR SHALL INDEMNIFY AND HOLD THE CUSTOMER HARMLESS FROM ANY CLAIMS, LIABILITY, DAMAGES, SUITS, CAUSES OF ACTION, AND JUDGMENTS ARISING OUT OF OR CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE, MALPRACTICE OR WILLFUL MISCONDUCT OF THE VENDOR, OR ANY AUTHORIZED REPRESENTATIVE OF THE VENDOR WHO IS ACTING PURSUANT TO THIS AGREEMENT.

The Vendor shall carry professional liability insurance with minimum limits of One Million Dollars (\$1,000,000) per occurrence, and shall not permit such insurance to be canceled or lapse during the term of this Agreement. Upon

request, the Vendor shall provide an insurance certificate or other proof of insurance to the Customer.

12. General.

12.1 Notices. Any notice or other communication required or permitted to be given under this Agreement must be in writing and shall be duly served when deposited in the United States mail, postage pre-paid and addressed to the party to be notified, or by delivering the same in person to such party. Notices given by mail in the manner herein above described shall be deemed received three (3) days after the date mailed. For purposes of notice, the addresses of the parties shall be as follows:

12.11 to the Vendor for payments:

Appraisal and Collection Technologies  
P. O. Box 17428  
Austin, Texas 78760

12.12 to the Vendor for any other reason:

Mr. Jim Brod  
Director  
Appraisal and Collection Technologies  
911 Central Parkway North  
San Antonio, Texas 78232

12.13 to the Customer:

Mr. Juan Sandoval  
Tax Assessor Collector  
City of El Paso Tax Office  
Two Civic Center Plaza, First Floor  
El Paso, Texas 79901-1196

The Vendor or Customer may advise the other party by written notice any other contact person or contact address given in the manner herein above required.

12.2 Partial Invalidity. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable as applied to any person or any circumstance, the validity, illegality and enforceability of the remaining provisions hereof and of such provision as applied to other persons and in other circumstances shall not in any way be affected or impaired thereby.

12.3 Headings. The headings in this Agreement are intended only for convenience of reference and shall not in any way affect or be relied upon in the interpretation or construction of the terms of this Agreement.

- 12.4 Authority of Signatories. The individuals executing this Agreement on behalf of the Vendor and Customer do each hereby represent and warrant that they have been duly authorized by the Vendor or governing body to execute this Agreement on behalf of such principal.
- 12.5 Confidential Information. The Vendor and Customer each acknowledge that in the course of performing under this Agreement each may be exposed to confidential information of the other party. The Vendor and Customer agree to treat all such information as confidential and to take all reasonable precautions against disclosure of any such information to third parties during and after the term of this Agreement.
- 12.6 Joint Cooperation. The Vendor and Customer agree to cooperate in good faith and in a reasonable prudent business manner with each other in furtherance of the objectives of this Agreement and the performance of their respective obligations hereunder.
- 12.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of Texas.
- 12.8 Assignability; Binding Effect. Except as otherwise provided in this Agreement or the Contract, neither the rights nor the obligations of Customer or Vendor under this Agreement, nor any part thereof, may be assigned or otherwise transferred without the prior written consent of the Vendor or Customer, respectively. If said consent is given, the person or corporation to whom this Agreement is assigned shall execute and deliver to the non-assigning party hereto, an agreement in writing to be bound by all the assignor's obligations, liabilities, and undertakings under this Agreement. The assignee shall thereupon be deemed to be substituted for the assignor and the assignor shall stand released from all obligations under this Agreement except such as have already accrued. Subject to the foregoing, this Agreement, shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- 12.9 Entire Agreement and Amendment. This Agreement, along with the Contract, contains the entire agreement of the parties and supersedes all prior oral or written and all contemporaneous oral agreements between the parties concerning the subject matter thereof. This Agreement may be amended only by a writing signed by both parties hereto.
- 12.10 Indirect or Consequential Damages. Except as provided for in the Contract, neither the Vendor nor the Customer shall be liable to the other for special, indirect or consequential damages resulting from the breach of or arising out of this Agreement including, without limitation, loss of profit, business interruption, or inability to satisfy obligations to third parties.

*(Signature page to follow)*

STATE OF TEXAS            )  
                                      )  
COUNTY OF EL PASO        )     **COLLECTION TECHNOLOGIES  
COMPUTER SYSTEM LICENSE AND  
MAINTENANCE AGREEMENT**

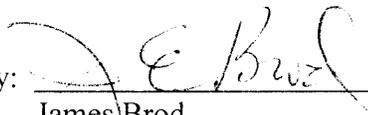
*(Signature Page)*

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Agreement effective as of the date first above written.

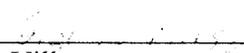
**CITY OF EL PASO**

By: \_\_\_\_\_  
Joyce A. Wilson  
City Manager

**APPRAISAL AND COLLECTION  
TECHNOLOGIES**

By:  \_\_\_\_\_  
James Brod  
Director

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Jorge Villegas  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Juan Sandoval  
Tax Assessor Collector