



Gila County, AZ
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BOARD OF SUPERVISORS

When recorded deliver to:

Marian Sheppard, Chief Deputy Clerk
Gila County Board of Supervisors
(12/04/07 #3)



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CAPTION HEADING:

Master Services Agreement
Between
Gila County
and
Colorado CustomWare, Inc.

DO NOT REMOVE

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Master Services Agreement

Gila County, AZ

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This Agreement, entered into as of this 5th day of December 2007, by and between The Board of Supervisors of GILA COUNTY, State of Arizona (hereinafter referred to as "COUNTY"), and Colorado CustomWare, Inc. doing business at 1109 Oak Park Drive, Suite 100, Fort Collins, CO 80525 (hereinafter referred to as "CONTRACTOR").

Functional Requirements Document (Exhibit B) within the projected time frame as set forth in Exhibit C Provider's Implementation Plan dated December 3, 2007, with the understanding that reasonable variations will be approved by the County's project Manager. The System is composed of the software, accompanying documentation, and services as set forth in Exhibit B, Exhibit C.

1. Identity of Parties

COLORADO CUSTOMWARE, INC., ("CONTRACTOR") is a Corporation duly and validly existing in good standing under the laws of the State of Colorado, and is duly qualified to own its properties and conduct its business.

GILA COUNTY ("COUNTY") is a government jurisdiction duly and validly organized and existing under the laws of the State of Arizona and is duly qualified to own its properties and perform municipal functions.

2. Structure of Agreement

This Agreement is awarded by COUNTY to CONTRACTOR, pursuant to its selection as the successful vendor to replace a COUNTY owned computerized system with a COMPUTER ASSISTED MASS APPRAISAL SYSTEM ("The System"). CONTRACTOR's response to the COUNTY's Request for Proposal, dated August 23, 2007, and the Price Proposal dated August 23, 2007, and all notices and specifications are incorporated herein by reference, and shall hereafter be referred to as "Response"(Exhibit C).

The parties are entering into this Agreement, which provides for the initial acquisition, installation, and maintenance support for one year of The System by CONTRACTOR. The one year maintenance will commence upon Final Acceptance of the System by the County. This will be known as "Phase One" of the Scope of Services. Once Phase One work is complete, the parties will commence with "Phase Two" of the Scope of Work, which will consist of continued annual maintenance support of The System by COLORADO CUSTOMWARE, INC., at the cost quoted by Contractor in Exhibit A, "CONTRACTOR'S Price Proposal", upon the County's annual written election.

3. Definitions

3.1. The System:

The subject matter of this Agreement is a COMPUTER ASSISTED MASS APPRAISAL SYSTEM ("The System") to be provided by CONTRACTOR. The System is a complete and fully operational CAMA information system that conforms exactly to all standards and requirements set forth in the

3.2. Standard Software:

"Standard Software" means executable applications or system software products, which are purchased in an "off-the-shelf" manner without modification to the source code of the application. "Standard Software" shall include products such as the non-proprietary operating systems, and any substitute or additional applications or operating systems consistent with meeting, or exceeding the functionality as stated in CONTRACTOR's Response, which may be acquired by COUNTY from CONTRACTOR. Standard Software may require extensive modification and configuration at levels other than the source code level prior to its use in business applications.

3.3. Custom Software:

"Custom Software" means application products, which are modified in a material way at the source code level prior to their normal use by the COUNTY.

3.4. Services:

"Services" means the labor performed by CONTRACTOR and any substitute or additional services, consistent with meeting, or exceeding the CONTRACTOR's representations as stated in CONTRACTOR's Response. COLORADO CUSTOMWARE, INC. shall be the Prime Contractor under this Agreement with respect to all services, software products and the application software set forth in Exhibit A. CONTRACTOR shall remain solely responsible for all performance under this Agreement with respect to all services as set forth in Exhibit A.

Contractor's address is:

Colorado CustomWare, Inc.
1109 Oak Park Drive, Suite 100
Fort Collins, CO 80525
Phone: (970) 223-6250
Toll free: (800) 806-7896
FAX: (970) 223-4204

3.5 Data Transfer File Formats

CONTRACTOR acknowledges that transfer of data to and from COUNTY's and Arizona Department of Revenue's, ("ADOR") data programs is fundamental to acceptable function of The System. The requirements of State statute, ADOR, and the EXHIBIT B will all be met.



4. Scope of Services

CONTRACTOR will provide The System within the projected time frame as set forth in Provider's Implementation Plan - Exhibit C, with the understanding that reasonable variations will be approved by the County's Project Administrator.

CONTRACTOR will provide all personnel and labor, Software, Documentation, Services, and Deliverables required to install and fully implement The System in exact accordance with the CONTRACTOR's agreement in EXHIBIT B at no additional cost to the County beyond the attached Price Proposal (Exhibit A).

It is the intent of the parties that The System will operate in compliance with Arizona statutes and Arizona Department of Revenue guidelines. Contractor shall provide, at no cost to County additional to the costs in Exhibit A, (the Price Proposal), any Labor, Software, Documentation, and Services additional to or different from those set forth in the Exhibit B that may be required to fulfill this intent.

CONTRACTOR will provide continued annual maintenance and support services at COUNTY's election using the costs provided in the Subsequent Years Pricing Proposal (Exhibit A).

4.1 Time is of the essence

CONTRACTOR acknowledges and agrees that time is of the essence with respect to its performance of this Contract and completion of the Project.

CONTRACTOR acknowledges and agrees that the County will incur costs for each day beyond the cutover date listed in exhibit C that The System is not operational. The parties acknowledge and agree that the amount of costs incurred by the County due to such delay will be extremely difficult to fund. The parties agree that One Hundred and Fifty Dollars (\$150) for each day constitutes a reasonable estimate of the costs the County will incur as a result of such a delay, which monies shall be deducted from the payments in paragraph 7. The COUNTY's retention of such liquidated costs shall not limit, alter, or affect any other legal remedy the County may have for breach of this Contract, and the County shall have the right to seek delay damages from Provider in addition to any liquidated damages incurred by Provider pursuant to this Section.

CONTRACTOR shall be entitled to a reasonable extension of the time of performance, the length of which shall be determined by the COUNTY and shall not be unreasonably withheld, for delays to its performance that are in no way the fault or

responsibility of CONTRACTOR, including delays caused by the COUNTY; provided, however, that no such extension shall be granted unless a written request, setting forth in reasonable detail the grounds therefore, is received by the COUNTY within ten (10) calendar days following the events giving rise to such alleged delay. CONTRACTOR's sole and exclusive remedy for costs or damages arising from any delay to its performance, whether or not caused by any act or omission of the COUNTY, shall be an extension of the time of performance; and in no event shall CONTRACTOR be entitled to payment or compensation of any kind from the COUNTY for any such costs or damages, including, without limitation, costs or damages related to or resulting from acceleration of the work, loss of productivity, field or home office overhead, or loss of profit, whether related to this Agreement or to any other work or contract, actual or potential, of CONTRACTOR..

In the event that either party is unable to perform any of its obligations under this Contract, or to enjoy any of its benefits, because of natural disaster, any act of God, war, civil disturbance, or court order, (hereinafter referred to as a "Force Majeure Event"), the party that has been so affected shall immediately give notice to the other party; and shall exercise every commercially reasonable effort to resume performance. CONTRACTOR shall not be in default if any event of default as provided herein is the result of a Force Majeure Event and its occurrence is without the fault or negligence of CONTRACTOR. The COUNTY shall not be liable to CONTRACTOR for any failure to perform any of its obligations under the Contract if such failure is the result of a Force Majeure Event.

4.2 Final Acceptance

CONTRACTOR shall notify the COUNTY in writing that all Phase One Work has been fully performed, and The System is ready for Final Acceptance Test(s). The System shall not be Finally Accepted unless and until all of the following conditions are satisfied:

The System and COUNTY programs function together as an integrated whole, with data transfer between The System, COUNTY programs and the ADOR program;

The System has the ability to successfully produce valuation notices; and

The System successfully completes a Reliability Period without failure or interruption for a period of thirty (30) consecutive calendar days, commencing on the day following the first successful production of valuation notices. In the



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event The System suffers any major failure or interruption prior to the expiration of such period, CONTRACTOR shall remedy the failure and the defects that caused the interruption, and a new thirty (30) consecutive calendar day Reliability Period (the "Second Reliability Period") shall begin on the day that Provider notifies the County that the remedy has been completed. A major failure or interruption shall be defined as an error that:

"Prevents critical business process from functioning or data corruption.

Is legislative related or deadline oriented.

Is a key component failure and there is no workaround.

(Failures or errors that are related to data corruption caused by the County will not trigger this clause or cause a delay in acceptance testing.) In the event the Software does not successfully complete the Second Reliability Period without any Material Defect or Material Failure, the County may, at its sole discretion, proceed in accordance with Section 19 and exercise any remedy provided therein.

The first date the system becomes "operational and in use" will serve as the anniversary date for purposes of Maintenance and Support and is unrelated to acceptance testing.

4.3 Use or Payment Shall Not Constitute Acceptance; Project Schedule Not Waived

In no event shall the operation or use of any portion of The System by the COUNTY prior to Final Acceptance, whether for production, testing or other evaluation, revenue, or any other purpose, constitute Final Acceptance. In no event shall payment by the COUNTY constitute Acceptance of the work paid for, or in any way limit, alter, or waive any of the COUNTY'S rights or CONTRACTOR'S obligations. Nothing contained in this Article shall limit, alter, or excuse Provider's obligations to perform in accordance with the Project Schedule.

5. Certification of Funds / Budget and Fiscal Provisions

This Agreement is subject to the budget and fiscal provisions of the COUNTY.

This Agreement will terminate without penalty at the end of any fiscal year in which funds are not appropriated for the following fiscal year. If funds are appropriated by the COUNTY for payment under this Agreement for a portion of the following fiscal year, this Agreement will terminate without penalty at the end of the term for which those funds are appropriated. Termination will be handled in the manner specified in Section 19.1, "Termination by CONTRACTOR for Default".

This Section 5 serves to control any and all other provisions of the Agreement.

6. Term Of Agreement

The term of Agreement shall be through the performance term of the contract.

7. Compensation

Payment under this Agreement shall be as follows: 50% upon full execution of this agreement (\$47,122), 40% payable upon date of first use of the System by COUNTY (\$37,698 minus any amounts for liquidated damages as provided in section 4.1), and 10% (\$9,424) upon final acceptance of the system.

TOTAL Phase One payments: \$94,244

In consideration of the Phase One sum, CONTRACTOR agrees to provide the COUNTY all software, services, and any materials required for the installation and implementation of The System, and the first year of support and maintenance.

8. Accounting and Payment for CONTRACTOR Services

Each party's "Contract Administrators" under this Agreement shall be:

For the COUNTY:

Dale Horn, Gila County Assessor

For the CONTRACTOR:

Lori D. Schlotter

Each party may change its designated Contract Administrator by serving written notice of such change, that notice being signed by the current Contract Administrator or Contracting Officer, and delivering such notice to the other party.

Each party's "Contracting Officer" under this Agreement shall be the individual or official who executes this Agreement or that individual's or official's designee.

CONTRACTOR invoices are due and payable in full within thirty (30) days of receipt of invoice. The COUNTY shall notify the CONTRACTOR of any invoice disputes within fifteen (15) business days of receipt of invoice.

9. Defective Work, Third Party Claims

The COUNTY may, in its sole discretion, withhold a part of any payment on account of defective Software or other work furnished, if the defect(s) is/are not fully remedied within thirty (30) calendar days of the COUNTY'S written notice to CONTRACTOR of the defect(s), or such longer time as CONTRACTOR and the COUNTY may agree

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upon in writing. In the event a subcontractor or supplier to CONTRACTOR or other third party asserts a claim against CONTRACTOR and/or the COUNTY arising from the subject of this agreement, the COUNTY may, in its sole discretion, withhold any payment, in whole or in part, unless CONTRACTOR provides reasonable evidence that a legitimate dispute, relating to this project, exists between CONTRACTOR and the third party. CONTRACTOR shall reimburse the COUNTY for any payments the COUNTY is required to pay to the third party upon the COUNTY's written notice to CONTRACTOR of such payment. The obligations of any surety under any performance or labor and materialman's bond furnished under this agreement shall in no way be limited, altered, or excused by the COUNTY's failure to withhold monies from CONTRACTOR.

10. Warranty; Warranty Standards

CONTRACTOR warrants that for a period of Twelve (12) months following the County's Final Acceptance of The System all Software, Documentation, Services, and Deliverables furnished for the Project, whether by itself or by its Subcontractors and suppliers, shall be free from defects and errors in material, design, workmanship, and execution, and shall function together as an integrated system in conformance with the descriptions of functionality and performance, and all standards of performance that are set forth in this Contract and the manufacturer's (including, without limitation, Provider's, where applicable) most current published specifications for all Software, and Deliverables. If the last day of the Warranty Period falls on a Saturday, Sunday, national holiday, state holiday, or County holiday, the Warranty Period shall be deemed to be extended until midnight of the next business day. Viruses that are contained in the Software or any component thereof as delivered and installed (but not Viruses that are introduced subsequent to installation through no fault of Provider) shall be deemed to be defects and errors in material, design, workmanship, or execution under this Section.

10.1 Defects and Errors

During the Warranty Period, at no cost to the County, CONTRACTOR shall furnish all materials and services (including, without limitation, all diagnosis and analysis of problems and defects) necessary to address and begin corrective action on any defects and errors in the Software, Documentation, Services, and Deliverables furnished in accordance with the Warranty Standards within one business day following notice by the County, which notice may be by telephone, computer modem, or facsimile.

11. Cooperative Purchasing

CONTRACTOR shall make The System available to any other state or local government jurisdiction within the State of Arizona, under the same terms and conditions (with the exception of pricing, incentives and scheduling timelines) of this Agreement, for a period of twenty-four (24) months from the date of execution hereof.

12. Modifications

Either party may request modifications to this Agreement. Any agreed to modification which does not increase the total amount payable under the Agreement will become effective only when approved in writing by each party's designated Contract Administrator. Any modification, which does increase the total amount payable, must be agreed to in writing and fully executed as an amendment to this Agreement by the Contracting Officers with all the formalities of the original.

13. Assignment and Subcontracting

With the prior written consent of the COUNTY's Contract Administrator, which consent shall not be unreasonably withheld, the CONTRACTOR may assign this Agreement including the proceeds hereof, provided that such assignment shall not operate to relieve the CONTRACTOR of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to the COUNTY that may arise from any breach of the sections of this Agreement, its supplements, or warranties made herein including but not limited to, rights of set off. This Agreement or any portion thereof may not be excluded from any acquisition or assignment of CONTRACTOR in whole or in part, or any assets of CONTRACTOR related to the performance of this Agreement. Should any such acquisition or assignment take place, the COUNTY still retains the right to refuse assignment of this Agreement per provisions above.

With the prior written consent of the CONTRACTOR, which consent shall not be withheld unreasonably, the COUNTY may assign this Agreement to any public agency, commission, board, or the like, within the political boundaries of the State of Arizona, provided that such assignment shall not operate to relieve the COUNTY of any of its duties and obligations hereunder.

14. Independent Contractor

The CONTRACTOR's services shall be furnished by the CONTRACTOR as an "Independent Contractor", and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant. All payments made hereunder and all services performed shall be made and performed

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pursuant to this Agreement by the CONTRACTOR as an Independent Contractor.

The CONTRACTOR acknowledges that the CONTRACTOR is not entitled to any COUNTY benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to COUNTY employees.

CONTRACTOR will defend, indemnify and hold harmless the COUNTY, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, set-offs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

15. No Guarantee of Employment

The performance of all or part of this Agreement by the CONTRACTOR shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the CONTRACTOR or any employee of the CONTRACTOR or any Subcontractor or any employee of any Subcontractor by the COUNTY at the present time or in the future.

16. Taxes

The CONTRACTOR understands and acknowledges that the COUNTY will not withhold Federal or State income taxes. Where required by State or Federal law, the CONTRACTOR authorizes the COUNTY to make withholding for any taxes other than income taxes (i.e., Medicare). All compensation received by the CONTRACTOR will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the CONTRACTOR to make the necessary estimated tax payments throughout the year, if any, and the CONTRACTOR is solely responsible for any tax obligation arising from the CONTRACTOR's performance of this Agreement. The CONTRACTOR hereby agrees to indemnify the COUNTY against any demand to pay taxes arising from the CONTRACTOR's failure to pay taxes on compensation earned pursuant to this Agreement.

The COUNTY will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The CONTRACTOR must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the CONTRACTOR's gross or net income, or personal property to which the COUNTY does not hold title. The COUNTY is exempt from Federal Excise Tax.

17. Regulations and Requirements

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State

of Arizona, and political subdivisions of the State of Arizona. CONTRACTOR, its agents, employees or Subcontractors shall conform in all respects with physical, fire or other published security regulations while on the COUNTY's premises.

18. Right to Review

The CONTRACTOR agrees that an authorized representative of the COUNTY shall, until the expiration of three (3) years after contract termination and upon reasonable notice, have access to and the right to examine any pertinent books and records of the CONTRACTOR involving transaction(s) related to the performance of this Agreement.

19 Termination

19.1 Termination for Default

Any of the following occurrences shall constitute grounds for either party, at its option, to terminate the Agreement for default: if either party fails to perform any of the obligations of the Agreement; becomes insolvent; is declared bankrupt; commits any act of bankruptcy or insolvency; makes an assignment of this Agreement for the benefit of creditors; failure of CONTRACTOR to pay any of its subcontractors. Either party may, if the default has not been cured following a thirty (30) day written notice, terminate the Agreement, and at either party's option, obtain performance of the work elsewhere.

If a notice of termination for default has been issued and it is later determined for any reason that the notified party was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

If either party violates any material term or condition of this Agreement or fails to fulfill in a timely and proper manner its obligations under this Agreement, then the offending party will receive written notice of such failure or violation. The offending party shall correct the violation of failure within thirty (30) calendar days or as otherwise mutually agreed. If the failure or violation is not corrected the Agreement may be terminated immediately by written notice. The option to terminate shall be at the sole discretion of either party.

19.2 Termination for Public Convenience

This contract is subject to the cancellation provisions of A.R.S. § 38-511. The COUNTY may terminate this Agreement in whole or in part whenever the COUNTY determines, at its sole discretion that such termination is in the best interests of the COUNTY. Whenever the Agreement is terminated in accordance with this paragraph, the CONTRACTOR shall be entitled to

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payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the COUNTY at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the COUNTY.

20. Withholding Payment

In the event the COUNTY's Contract Administrator determines that the CONTRACTOR has failed to perform any obligation under this Agreement within the times set forth in this Agreement, providing the lack of performance has not been caused by COUNTY's failure to perform its duties and responsibilities under this Agreement, then the COUNTY may withhold payments from amounts otherwise due and payable to CONTRACTOR. To the extent that the disputed obligation does not impede the progress or completion of other obligations, the amount that can be withheld by COUNTY is limited to the amount specified for that obligation in the Payment Schedule specified in Exhibit C - Payment Schedule. Withholding under this clause shall not be deemed a breach entitling CONTRACTOR to terminate or seek damages, provided that the COUNTY promptly gives notice in writing to the CONTRACTOR of the nature of the default or failure to perform, and in no case more than 10 days after it determines to withhold amounts otherwise due. A determination of the COUNTY's Contract Administrator set forth in a notice to the CONTRACTOR of the action required and /or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the CONTRACTOR acts within the times and in strict accord with the provisions of the Disputes clause of this Agreement. The COUNTY may act in accordance with this clause, without prejudice to any other remedy.

21. Defense and Indemnity Agreement

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS GILA COUNTY, A BODY POLITIC AND CORPORATE OF THE STATE OF ARIZONA, IT'S BOARD MEMBERS, OFFICERS, EMPLOYEES, AGENTS AND OTHER OFFICIALS (HEREAFTER CALLED "COUNTY") FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS'

FEES, COURT COSTS, OR OTHER ALTERNATIVE DISPUTE RESOLUTION COSTS ARISING OUT OF, RESULTING FROM, OR OTHERWISE BUT FOR THE USE OF THE "COUNTY" PROPERTY FOR PROVIDING CONSULTING SERVICES TO GILA COUNTY, ARIZONA; PROVIDED THAT ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE, DEATH, OR PERSONAL INJURY, OR PROPERTY DAMAGE, INCLUDING THE LOSS OF USE OR DIMINUTION IN VALUE RESULTING THEREFROM; BUT ONLY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY THE ACTUAL OR ALLEGED NEGLIGENT ACTS, ERRORS, OR OMISSIONS OF CONTRACTOR, OR ANYONE FOR WHOSE ACTS CONTRACTOR MAY BE LIABLE. GILA COUNTY RESERVES THE RIGHT, BUT NOT THE OBLIGATION, TO PARTICIPATE IN DEFENSE WITHOUT RELIEVING CONTRACTOR OF ANY OBLIGATION HEREUNDER.

It is further provided that no liability will attach to the COUNTY by reason of entering into this Agreement, except as expressly provided herein.

22. Insurance

Unless otherwise approved by the County's Risk Manager in writing, prior to commencing work on the Provider shall, at its sole cost and expense, procure and maintain in full force and effect, covering the performance of the Services and Deliverables required under this Contract, the types and minimum limits of insurance specified below. All insurance shall be procured from reputable insurers authorized to do business as acceptable to the County. All insurance required herein, except the Professional Liability Insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall work be performed until the required evidence of insurance has been furnished. The insurance shall provide for at least thirty (30) days prior written notice to be given to the County in the event coverage is materially changed, cancelled or non-renewed. The County of Gila, its officers,

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employees and agents shall be named as additional insured's on the General Liability Insurance policy. An endorsement is required stating that the coverage afforded the County and its officers, employees and agents, as additional insured's, will be primary to any coverage available to them and that no act or omission of the County shall invalidate the coverage. Cancellation or non-renewal of any insurance policy required hereunder, in the absence of replacement of the policy in amounts that satisfy the contract, is a breach of this agreement.

subrogation or in the alternative, a waiver of transfer of rights of recovery against GILA COUNTY, its agents, representatives, officers, directors, officials and employees for any claims arising out of the Contractor's work or service.

COVERAGE AFFORDED - LIMITS OF LIABILITY

Workers' Compensation Statute

Commercial General Liability
\$1,000,000 each occurrence
\$2,000,000 aggregate

Automobile Liability Insurance
\$500,000 combined single limit
including: Non-owned, Leased
& Hired Vehicles

Professional Liability including
\$1,000,000
Errors & Omissions coverage

B. INSURANCE CONDITIONS

- 1. GENERAL CONDITIONS:** The Contractor agrees to, at its own expense, purchase and maintain at all times during the life of this contract the herein stipulated minimum insurance with companies duly licensed, possessing a minimum current A.M. Best, Inc. Rating of B++8, or approved unlicensed companies in the State of Arizona with policies and forms satisfactory to GILA COUNTY. All policies will contain an endorsement providing that written notice be given to the County at least ten (10) calendar days prior to termination, cancellation or reduction in coverage in any policy.
- 2. WAIVER OF SUBROGATION OR TRANSFER OF RIGHTS OF RECOVERY:** The policies required herein, except Workers' Compensation and Professional Liability, shall contain a waiver of

- 3. ADDITIONAL INSURED'S:** The insurance policies required by this Contract, except Workers' Compensation and Professional Liability, shall name GILA COUNTY, its agents, representatives, officers, directors, officials and employees as Additional Insured's with a CG 20 10 or similar endorsement. The Contractor agrees that the insurance required herein will be primary and that any insurance carried by the County will be excess and not contributing.

- 4. ENDORSEMENTS AND CERTIFICATE:** The following provisions are also required for the insurance(s), and evidence of such shall be satisfied by Certificate(s) and Endorsements. An insurance company authorized to transact business in the State of Arizona shall issue the Certificates. The Contractor shall, within ten (10) days after award of bid, furnish the County with Certificates of Insurance for the required insurance coverage. Endorsements for the Waiver of Transfer of Rights and Additional Insured's shall be provided as indicated above, unless contained within the basic policy(ies) and then confirmed by written statement signed by the insurance agent, broker and/or underwriter in a form acceptable to the County.

"GILA COUNTY, a body politic and corporate of the State of Arizona, its Board members, officers, employees, agents, and other officials" shall be listed as the certificate holder. If room does not permit, this verbiage can be entered into the description of operations. However, if the latter method is used, the certificate holder shall be listed only as GILA COUNTY, Globe, AZ 85501.



5. **PROFESSIONAL LIABILITY:** Professional liability insurance carried by the consultant must cover all elements of the project including professional services performed by subcontractors. If the consultant's professional liability insurance does not provided coverage for work performed by subcontractors, separate project insurance will be required to comply with the professional liability insurance requirement. The County may require a copy of the professional liability insurance policy to verify coverage.

23. Evidence of Insurance Coverage

Certificates of insurance evidencing the required coverage's must specifically reference the County contract number for which they are being submitted. The original certificate of insurance must be submitted to the County's Risk Manager at the following address:

Risk Management Division

Debra Williams, Risk Management Analyst
5515 S Apache Suite 400
Globe, Arizona 85501
928-402-8763

A copy of the certificate of insurance shall be submitted to the County's Project Manager at the address set forth in Section 17.16, *Notices*. Both submissions must be made at least ten (10) days before work is begun and at least ten (10) days before each Additional Term. The ten (10) day requirement for advance documentation of coverage may be waived in situations where such waiver will, in the sole judgment of the County's Risk Manager, benefit the County; but under no circumstances shall Provider actually begin work (or continue work, in the case of an Additional Term) without providing the required evidence of insurance. The endorsement adding the County as an additional insured must specifically reference the County contract number and be submitted to the County's Risk Manager at the above address. The County reserves the right to require Provider to furnish certified copies of the original policies of all insurance required under the Contract at any time upon (10) days written notice to Provider.

24. Self-Insurance

Provider may not self-insure any of the coverage's required under the Contract without the prior written approval of the County's Project Manager and the County's Risk Manager. In the event that Provider desires to self-insure any of the coverage's listed above, it shall submit to the County's Project Manager and the County's Risk Manager, prior to the commencement of Services and Deliverables hereunder, a certified copy of Provider's most recent audited financial statement, and such other evidence of its qualifications to act as a self-insurer (e.g., state approval) as may be requested by the County's Project Manager and/or the County's Risk Manager. In the event such approval, is granted, it is understood and agreed that the County, its officers, employees, and agents, shall be entitled to receive the same coverage's and benefits under Provider's self-insurance program that they would have received had the insurance requirements been satisfied by a reputable insurance carrier authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the County. If at the time of commencement of the Initial Term of the Contract, Provider self-insures its professional liability and/or workers' compensation and employers' liability coverage, Provider may, in lieu of the foregoing, furnish to the County a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit, or reduce the indemnifications made in the Contract by Provider to the County, or to limit Provider's liability under the Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by Provider hereunder.

25. Venue and Choice of Law

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Arizona in and for the COUNTY. CONTRACTOR specifically consents to personnel and subject jurisdiction of said court. This Agreement shall be governed by the laws of the State of Arizona.

26. Patent/Copyright Infringement

CONTRACTOR will defend and indemnify the COUNTY from any claimed action, cause or demand brought against the COUNTY, to the extent such action is based on the claim that products furnished hereunder by the CONTRACTOR infringes any U.S. patent or copyright. The CONTRACTOR will pay those costs and damages attributable to any such

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claims that are finally awarded against the COUNTY in any action. Such defense and payments are conditioned upon the following:

That CONTRACTOR shall be notified promptly in writing by COUNTY of any notice of such claim.

CONTRACTOR shall have the right, in the event such claim of infringement is made, at its option and expense, to obtain for the COUNTY the right to continue using the products, or replace or modify the products so that they become non-infringing provided no reduction in performance or loss results to the COUNTY. CONTRACTOR shall not have any liability if the alleged infringement is based upon the COUNTY's use or sale of CONTRACTOR-furnished products, in combinations with other products or devices not furnished by the CONTRACTOR, or modifications made by the COUNTY or by the CONTRACTOR to the COUNTY's specifications, if such combinations or modifications cause the products furnished by CONTRACTOR to become infringing.

27. Disputes

Time is of the essence in this Agreement. Differences between the CONTRACTOR and the COUNTY, arising under and by virtue of the Contract Documents shall be brought to the attention of the CONTRACTOR and the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. CONTRACTOR and the COUNTY will make best efforts to resolve any disputes in a timely manner.

28. Ownership of Items Produced

All writings, data, public records or other materials prepared by the CONTRACTOR and/or its consultants or Subcontractors, in connection with performance of this Agreement shall be the sole and absolute property of the COUNTY. This paragraph does not apply to application software offered or any documentation related to application software for sale, license or lease to other customers, nor to systems software.

29. Confidentiality

The CONTRACTOR, its employees, Subcontractors, and their employees shall maintain the confidentiality of all information provided by the COUNTY or acquired by the CONTRACTOR in performance of this Agreement, except upon the prior written consent of the COUNTY Legal Counsel or an order entered by a court after having acquired jurisdiction over the COUNTY. CONTRACTOR shall immediately give to the COUNTY notice of any judicial proceeding seeking disclosure of such information. CONTRACTOR shall indemnify and hold harmless the COUNTY, its officials, agents or employees from all loss or expense, including, but not limited to settlements,

judgments, set-offs, reasonable attorneys' fees and costs resulting from CONTRACTOR's breach of this provision.

This section does not impose any obligation on the CONTRACTOR if the information is: (i) publicly known at the time of disclosure; (ii) already known to the receiving party at the time it is furnished to the CONTRACTOR; (iii) furnished by the COUNTY to others without restrictions on its use or disclosure; or (iv) independently developed by the receiving party without use of the proprietary information.

30. Notice

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice will be given by CONTRACTOR to the COUNTY's Contract Administrator, with copy to the COUNTY's Purchasing Department at the addresses stated below. Notice to CONTRACTOR for all purposes under this Agreement will be given to CONTRACTOR's Contract Administrator at the address stated below. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid. All notices will be deemed to have been given upon mailing of the notice by certified mail return receipt requested to the respective party addressed as specified in this section. Either party may change the address, fax number, or the person to whom the notice is to be directed by forwarding to the other party a notice, which complies with this section.

COUNTY's Contract Administrator:
Dale Horn, Gila County Assessor

Address:
1400 E Ash Street
Globe, Arizona 85501

Telephone:
928-402-8710

FAX:
928-402-0408

COUNTY Purchasing Department:
Misti Williams

Address:
1400 E Ash Street
Globe, Arizona 85501

Telephone:
928-402-8745

FAX: 928-425-7056

CONTRACTOR'S Contract Administrator

Master Services Agreement

Lorri Marshall

Address:
1109 Oak Park Drive Suite 100
Fort Collins, CO 80525

Telephone:
(970) 212-4056

FAX:
(970) 223-4204

31. Waiver

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

32. Quiet Possession and Usage

The COUNTY upon paying the amounts due hereunder and performing all other covenants, terms and conditions on its part to be performed hereunder, may and will peacefully and quietly have, hold, possess, and benefit from The System for the term provided without suit, molestation or interruption.

With the execution of the Master Software License and Support Agreement, CONTRACTOR grants to COUNTY a perpetual non-exclusive license to use the CONTRACTOR's software delivered pursuant to this Agreement subject to compliance by COUNTY with all of its Agreements with CONTRACTOR, but regardless of COUNTY's exercise of its options to continue or renew the Master Software License and Support Agreement. CONTRACTOR or Subcontractor as applicable shall retain full and perpetual ownership rights to the software, with COUNTY having only those rights specifically provided in writing by the Master Software License and Support Agreement. COUNTY hereby acknowledges that the same or similar software may be sold, licensed or leased by CONTRACTOR to other users or agents.

The license of the software by CONTRACTOR to the COUNTY includes a clear license to the software with a perpetual non-exclusive right of the COUNTY to use the software in the COUNTY's jurisdiction.

CONTRACTOR hereby agrees to permit COUNTY to make copies of the software for backup purposes. COUNTY hereby agrees not to make copies for sale, distribution, or any purpose other than its own internal use. COUNTY may not sell, lease, transfer, assign, or license the software to a third party without prior written permission from CONTRACTOR.



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Gila County, AZ

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COUNTY agrees not to remove statements of copyrights, trade secrets, or proprietary rights which appear in the software or documentation. COUNTY also agrees to take such reasonable steps as required or requested by CONTRACTOR from time to time in order to protect CONTRACTOR's rights in the software.

33. Implementation Team

The personnel identified, as part of the COUNTY's/ CONTRACTOR's implementation team(s) may not be changed without the CONTRACTOR's/COUNTY's immediate notice in writing. The team members will be mutually agreed upon and listed as the first implementation task following the signing of this Agreement

34. Limitation of Liability

Except as provided in other sections of this agreement, the parties agree that neither the CONTRACTOR nor the COUNTY shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect or special damages except a claim or demand based on patent or copyright infringement, in which case liability shall be as set forth elsewhere in this Agreement. This section does not modify any sections regarding retainages or any other such conditions as are elsewhere agreed to herein between the parties.

Neither the CONTRACTOR nor the COUNTY shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either the CONTRACTOR or the COUNTY. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than COUNTY acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the CONTRACTOR, the COUNTY, or their respective Subcontractors.

If delays are caused by a Subcontractor without its fault or negligence, neither the CONTRACTOR nor the COUNTY shall be liable for damages for delays, unless the Equipment, Software, or Services to be furnished by their Subcontractors were obtainable on comparable terms from other sources in sufficient time to permit the CONTRACTOR or the COUNTY to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or physical damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Master Services Agreement



Gila County, AZ

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Except for claims of personal injury and breaches of confidentiality obligations contained in this Agreement, CONTRACTOR and COUNTY liability for all damages shall not exceed the total value of this Agreement.

35. Subpoena

In the event that a subpoena or other legal process commenced by a third party, in any way concerning the Equipment or Related Services provided pursuant to this Agreement is served upon CONTRACTOR or COUNTY, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. CONTRACTOR and COUNTY further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

36. Severability

If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

37. Survival

The provisions of Sections 5 through 35 shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

38. Exhibits

Attached hereto and made part hereof is the following:

Exhibit A CONTRACTOR's Price Proposal dated

Exhibit B. CONTRACTOR's Functional Requirements Document

Exhibit C. CONTRACTOR's Implementation Plan

39. Entire Agreement

This written Agreement, including the documents incorporated herein, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions, or understanding between the parties. In the event of any conflict requiring interpretation, the precedence of documents shall be:

- 1. Exhibits.

IN WITNESS WHEREOF, COUNTY and COLORADO CUSTOMWARE, INC. have executed this Agreement as of the date first above written.

COLORADO CUSTOMWARE, INC.

CORPORATE SEAL:

By: [Signature]
Title: President / CEO

President/Vice-President

Attest: [Signature]

Name: Lorri J. Marshall

Title: 1st Secretary

APPROVED:

By: [Signature]
Jose M. Sanchez
As Chairman of the GILA COUNTY Board of Supervisors and not Personally.

APPROVED AS TO FORM:

By: [Signature]

Gila County Attorney



PRICE PAGE

ENTITY NAME: Gila County, Arizona

SOFTWARE COSTS: \$ 85,705

Description	Cost Per Module	
CAMA for Real Property		Included above
CAMA for Personal Property		Included above
Assessment Administration		Included above
Other – FieldWare and GeoWare		Included above

INSTALLATION COSTS: \$ Included above

CONVERSION COSTS: \$ Included above

CUSTOMIZATION COSTS: \$ Included above

Description	Unit Cost	

TRAINING COSTS: \$ Included above

Description	# of Persons	Cost Per User
End User Training		Included above
Power User Training	2	Included above
Advanced Power User Training	2	Included above
Apex IV Windows Assessor Sketch Training		Included above

DOCUMENTATION COSTS: \$ Included above

Description	Cost Per Manual	

MISCELLANEOUS COSTS:

\$ Included above

Description		
Marshall & Swift Cost Tables		Included above

TOTAL ONE-TIME COSTS:

\$ Included above

REQUIRED THIRD-PARTY SOFTWARE COSTS:

\$ Included above
 Cost Per User

Description	# of Users	Cost Per User
Apex IV Windows Sketch	6	Included above
Oracle Database Standard Edition	17	Included above
Microsoft Access	2	Included above
SPSS Analysis Software	1	Included above

OPTIONAL THIRD-PARTY SOFTWARE COSTS:

\$ _____
 Cost Per User

Description	# of Users	Cost Per User

TOTAL THIRD PARTY SOFTWARE COSTS:

\$ Included above

TOTAL ANNUAL COSTS - (list support and other annual costs for all proposed items): \$ See attached schedule

Year Two Support (see attached schedule)		\$ 87,653
Year Three Support (see attached schedule)		\$ 89,601
Year Four – Year 10 Support (see attached schedule)		\$ 91,549 each year

RealWare Price Proposal For Assessor - Gila County

COMPONENTS	Initial Project Component Totals	Sub Totals
SOFTWARE: (all inclusive price based on \$2.20/Parcel 38,957 parcels) RealWare: CAMA, Administration, Personal Property FieldWare: Hand-held software for tablet PC GeoWare: GIS interconnectivity tool Database Hosting, Management, and Backup (High Speed Connection Required) Apex IV Windows Sketch: (6 users - includes maintenance) \$595 each Oracle Database: Standard Edition (17 named users) \$149 each Microsoft Access: 2 users @ \$399 per user. (Only personnel who will be writing ad-hoc queries will require a license.) SPSS Analysis Software: 1 user @ \$3480 per user	\$ 85,705	Included Included Included Included Included Included Included
SERVICES: Project Management Installation of RealWare Suite Gap Analysis	\$ -	Included Included Included
MIGRATION & CUSTOMIZATION: Conversion: Estimate 150 hours @ \$150 per hour Integration: Includes DOR format Flat Tax File (other integration extra) Apex Conversion (Optional at extra cost if format of sketch program is convertible) \$.17 per parcel Customization: Will include all Mohave contractual enhancements	\$ -	Included Included TBD None
TRAINING: CCI Software Training: End User Training Two 4-day sessions in Joint Location (Travel May Be Required) Power User Training One 2 1/2 day session - 2 @ \$1,095/student at CCI (travel not included) Advanced Power User Training One 2 1/2 day session - 2 @ \$1,095/student at CCI (travel not included) Apex IV Windows Assessor Sketch Training (1/2 day)	\$ -	Included Included Included Included
FIRST YEAR SUPPORT: Annual RealWare Software Support Annual Marshall & Swift Cost Tables: (Based on 38,000 improved parcels) Annual Apex Support (6 Users @ \$195 each) Oracle Support & Subscription Service (17 users @ \$66)	\$ -	Included Included Included
Total First Year Cost	\$ 85,705	

PAYMENT TERMS:	\$ 85,705	
Due at Contract Signing - 50%		\$ 42,853
Due at Software Installation - 40%		\$ 34,282
Due at Final Acceptance - 10%		\$ 8,571

Future Support Estimate For Assessor - Gila County

SECOND YEAR COSTS	Item Totals	Sub Totals
ANNUAL FEES: \$2.25 per parcel (Based on Current Parcel Count)	\$ 87,653	
Realware		Included
Web Portal		Included
FieldWare		Included
GeoWare		Included
Third Party Support:		
Apex		Included
Oracle		Included
Marshall & Swift		Included
Total Year 2 Estimate	\$ 87,653	

THIRD YEAR COSTS	Item Totals	Sub Totals
ANNUAL FEES: \$2.30 per parcel (Based on Current Parcel Count)	\$ 89,601	
Realware		Included
Web Portal		Included
FieldWare		Included
GeoWare		Included
Third Party Support:		
Apex		Included
Oracle		Included
Marshall & Swift		Included
Total Year 3 Estimate	\$ 89,601	

YEAR 4 to YEAR 10 COSTS	Item Totals	Sub Totals
ANNUAL FEES: \$2.35 per parcel (Based on Current Parcel Count)	\$ 91,549	
Realware		Included
Web Portal		Included
FieldWare		Included
GeoWare		Included
Third Party Support:		
Apex		Included
Oracle		Included
Marshall & Swift		Included
Total Year 4 to Year 10 Estimate	\$ 91,549	