

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
ACIONYX, INC.**

THIS AGREEMENT, entered into this _____ day of January, 2003, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and Acionyx, Inc., hereinafter called "Contractor";

WITNESSETH:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department or Agency thereof; and

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of tax information system programming.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. **Services to be performed by Contractor.** In consideration of the payments hereinafter set forth, Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A," attached hereto and incorporated by reference herein, for the County of San Mateo.
2. **Contract Term.** The term of this Agreement shall commence on the date the agreement is fully executed by both parties, and shall extend through 12/31/03, unless terminated earlier by the County.
3. **Payments.** In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A", County shall make payment to Contractor in the manner specified herein and in Exhibit "A." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this contract exceed \$191,000.00.
4. **Relationship of the Parties.** Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers or advantages of County employees.
5. **Hold Harmless.** Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind and

description, brought for, on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomever belonging; (C) any other loss or cost, including but not limited to, the concurrent active or passive negligence of County, its officers, agents, employees, or servants resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which the County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or will misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

6. **Non-Assignability.** Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of County, and any attempted assignment without such prior written consent in violation of this Section automatically shall terminate this Agreement.
7. **Termination of Agreement.** The County may, at any time after ten days from execution of Agreement, terminate this Agreement, in whole or in part, for the convenience of the County, by giving written notice specifying the effective date and scope of such termination. In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.
8. **Insurance.** The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by the County Manager, and Contractor shall use diligence to obtain such issuance and to obtain such approval. The Contractor shall furnish the County Manager with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County Manager of any pending change in the limits of liability or of any cancellation or modification of the policy.

(1) **Worker's Compensation and Employer's Liability Insurance.** If the Contractor has employees, the Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and it will comply with such provisions before commencing the performance of the work of this Agreement.

(2) **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractor's operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified by Risk Management.

9. **Compliance with laws; payment of Permits/Licenses.** In performing the services described in Exhibit A, Contractor will comply with all applicable federal and state laws and regulations, and county ordinances. Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, prior to commencement of said work/services or forfeit any right to compensation under this Agreement.

10. **Non-Discrimination.**

- A. *Section 504.* Contractor shall comply with §504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this contract (this paragraph needed only if services provided to members of the public).
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.

- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
- i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contractor between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

11. **Retention of Records.** Contractor shall maintain all required records for three years after the County makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

12. **Merger Clause.** This Agreement, including Exhibit "A" attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties. In the event of a conflict between the terms, conditions, or specifications set forth herein and those in Exhibit "A" attached hereto, the terms, conditions, or specifications set forth herein shall prevail.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

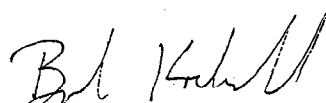
By: _____
President, Board of Supervisors

Date: _____

ATTEST:

Clerk of Said Board

Acionyx, Inc.



Signature

Date: 12/19/02

COUNTY OF SAN MATEO
AGREEMENT WITH INDEPENDENT CONTRACTOR

Agreement No.
Exhibit "A"

Agreement between the County of San Mateo and Acionyx, Inc. for the enhancement of tax bill inquiry and tax payment processing for all tax rolls.

Use Additional Sheets as Necessary

I. Description of Services to be Performed by the Contractor

<p>Contractor will provide an information technology architect /programmer with the following expertise:</p> <ul style="list-style-type: none"> • Object-oriented system design experience • Relational database knowledge and design experience • JDBC coding experience in an AS/400/ISeries environment • ODBC experience in an AS/400/ISeries environment • JAVA coding experience in a production environment • Software product development and deployment experience • ISeries WebSphere Development Tools Experience, including Visual Age JAVA
<ol style="list-style-type: none"> 1. Architect/Programmer will work with the Tax Collector/Treasurer's project team and the County's Information Systems Department (ISD) to develop, test and deploy the backend application for all Tax Payments processed by Official Payments Corporation. 2. Architect/Programmer will work with the County's Information Systems Department (ISD) to produce an Architecture Design Document and Plan detailing the application's interfaces and interactions with other systems within the context of the County Network. This would include any application deployment on the Internet as well as the County's intranet. 3. Architect/Programmer will guide and work with the Tax Collector/Treasurer's technical staff and appropriate ISD staff to create and implement a direct real time interface between the AS/400 tax databases and the Sonant IVR system such that the Sonant IVR system retrieves tax data directly from the Tax Collector's AS/400 database and not the ISD property database server. 4. After working with ISD to produce an Architecture Design Document and Plan, Architect/Programmer will work with and guide the Tax Collector/Treasurer's project team in the deployment of tax and other fiscal office business applications on the County intranet using WebSphere. 5. Tax Collector/Treasurer's project management will work with Contractor to ensure compatibility with County "look and feel." 6. Architect/Programmer will provide regular project status reports to the Tax Collector/Treasurer's Information Systems Manager and Project Manager. 7. Architect/Programmer will provide complete program and design documentation for all work products.
<p>Project Description</p> <ul style="list-style-type: none"> ✓ Review existing ISD tax bill search application design fundamentals, in particular Java classes, as part of the application design. Incorporate these elements where applicable. ✓ Design, code, test and implement Tax Bill search capabilities for all Tax Rolls. ✓ Design, code, test and implement a direct interface between the Sonant IVR and the AS/400 tax databases. ✓ Design, code, test and implement interfaces to Official Payments Corporation for all tax rolls. ✓ Design code and implement back end payment processing for all tax payments received through Official Payments Corporation. ✓ Using WebSphere Web Facing Tool, enhance selected tax and fiscal business applications to be deployed on the County intranet.
<p>Testing Phase</p>

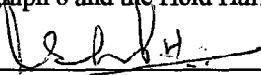
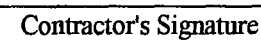
Revised 7/01

- ✓ Unit test all work performed.
 - ✓ Work with the Tax Collector/Treasurer's project team and ISD to system and stress test the applications.
 - ✓ Identify and correct all errors, design and coding deficiencies in the products developed.
- Implementation and Deployment Phase**
- ✓ Direct and participate in the deployment of all applications.
 - ✓ Work with the Tax Collector/Treasurer's project team to ensure that all work products meet established requirements.
 - ✓ Work with the Tax Collector/Treasurer's project team and ISD to ensure that all applications deployed are stable, accurate and meet expectations.


II. Amount and Method of Payment

Contractor will be paid at the hourly rate of \$95.00 per hour for Programmer/Architect services rendered. The total amount of the contract will not exceed \$191,000. Contractor will invoice every two weeks. Payment terms will be net 30.

Contractor agrees that the requirements of this Agreement pertaining to the protection of proprietary rights and confidentiality within paragraph 8 and the Hold Harmless provision within paragraph 7 shall survive termination of this Agreement.

 Contractor's Signature ACTIONYX, INC.	Jan 3, 2003 Date	 Contractor's Signature	 Date
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Contractor's Tax ID Number or Social Security Number: 77-0467389

 Purchasing Agent, County of San Mateo	 Date	 Department or Division Head	 Date	<u>15110-5858</u> Budget Unit
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COUNTY OF SAN MATEO

Equal Benefits Compliance Declaration Form

I Vendor Identification

Name of Contractor: Acionyx
Contact Person: Bob Kochenderfer
Address: 20195 Stevens Creek Blvd., Suite 268
Cupertino, CA 95014
Phone Number: 408-366-2905
Fax Number: 408-366-2909

II Employees

Does the Contractor have any employees? [X] Yes [] No

Does the Contractor provide benefits to spouses of employees? [X] Yes [] No

If the answer to one or both of the above is no, please skip to Section IV.

III Equal Benefits Compliance (Check one)

- [X] Yes, the Contractor complies by offering equal benefits, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.
[] Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.
[] No, the Contractor does not comply.
[] The Contractor is under a collective bargaining agreement which began on (date) and expires on (date).

IV Declaration

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this 19th day of December, 2002 at Redwood City

CA (State)
Signature: Bob Kochenderfer

(City)
Bob Kochenderfer
Name (Please Print)

V.P. of Business Development
Title

Contractor Tax Identification Number

ACORD CERTIFICATE OF LIABILITY INSURANCE

BLS UODC 12-13-2002

PRODUCER
 CYMRU INSURANCE SERVICES/SCIC
 556004 P:(866)467-8730 F:(877)905-0457
 P. O. BOX 33015
 SAN ANTONIO TX 78265

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
 ACIONYX INC
 20195 STEVENS CREEK BLVD #268
 CUPERTINO CA 95014

INSURER A: Hartford Casualty Ins Co
 INSURER B:
 INSURER C:
 INSURER D:
 INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	57 SBA LI1148	12/01/02	12/01/03	EACH OCCURRENCE \$2,000,000	
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Business Liab GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC				FIRE DAMAGE (Any one fire) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000	
A	AUTOMOBILE LIABILITY	57 SBA LI1148	12/01/02	12/01/03	COMBINED SINGLE LIMIT (Per accident) \$2,000,000	
	<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$	
	GARAGE LIABILITY				AUTO ONLY - SA ACCIDENT \$ OTHER THAN SA ACC AGG \$	
	EXCESS LIABILITY				<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$	EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - SA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$	
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Those usual to the Insured's Operations.

CERTIFICATE HOLDER

ADDITIONAL INSURED; INSURER LETTER:

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE (30 DAYS FOR NON-PAYMENT) TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

R. Q. S. [Signature]