



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

6

2. Council Meeting Date:

March 10, 2011

TO: MAYOR & COUNCIL

3. Date Prepared: March 1, 2011

THROUGH: CITY MANAGER

4. Requesting Department: Management Services

5. SUBJECT: Amend Agreement 18-1708 with Plante and Moran to add Exhibit E (Non-Disclosure Agreement).

6. RECOMMENDATION: Recommend amending Agreement 18-1708 with Plante and Moran to add Exhibit E (Non-Disclosure Agreement).

7. HISTORICAL BACKGROUND/DISCUSSION: In February 2011, Council awarded an agreement to Plante and Moran to provide project management and consulting services to assist the City in upgrading the Oracle eBusiness Suite.

8. EVALUATION PROCESS: Council approved the agreement for the purchase of the project management and consulting services for the Oracle upgrade project at the February 24, 2011 meeting. One exhibit is being added that relating to non-disclosure was not originally included in the agreement.

9. FINANCIAL IMPLICATIONS: There is no financial impact with the addition of Exhibit E.

10. PROPOSED MOTION: Move to amend Agreement 18-1708 with Plante and Moran to add Exhibit E (Non-Disclosure Agreement).

APPROVALS

11. Requesting Department

Dawn Lang

Dawn Lang, Assistant Management Services Director

12. Department Head

Dennis Strachota

Dennis Strachota

13. Procurement Officer

Carolee Stees

Carolee Stees, CPPB

14. Acting City Manager

Rich Dlugas

Rich Dlugas

**AMENDMENT NUMBER ONE
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN PLANTE & MORAN, PLLC AND
CITY OF CHANDLER
AGREEMENT NO: 18-1708**

This Amendment #ONE to Agreement No. 18-1708 between the City of Chandler ("CITY") and PLANTE & MORAN ("CONSULTANT for professional services, dated February 25, 2011, ("AGREEMENT") is entered into this _____ day of _____, 2011.

1. The AGREEMENT is amended to add a new Section 23 to read as follows: "CONSULTANT agrees to be bound by the terms of the Non-Disclosure Agreement attached hereto as Exhibit E."
2. A new Exhibit E is attached hereto which shall be a new Exhibit E to the AGREEMENT.
3. All other terms and conditions of the above referenced Agreement shall remain unchanged and in full force and effect. All terms and conditions in the original Agreement not specifically amended herein shall be incorporated by reference in its entirety and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names this _____ day of _____, 2011.

CITY OF CHANDLER:

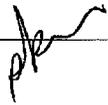
CONSULTANT:

By: _____
MAYOR

By: _____
Title: _____

APPROVED AS TO FORM:

ATTEST: (If corporation)

City Attorney 

Secretary

ATTEST:

City Clerk

WITNESS: (If individual or Partnership)

[SEAL]

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IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names this _____ day of _____, 2011.

CITY OF CHANDLER:

By: _____
MAYOR

CONSULTANT:

By: Ad. R. J.
Title: Partner

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

ATTEST: (If corporation)

Secretary

WITNESS: (If individual or Partnership)

[SEAL]

EXHIBIT E
NON-DISCLOSURE AND CONFIDENTIALITY TERMS

Non Disclosable Information

_____ agrees that _____ will not disclose directly or indirectly to or use for itself or the benefit of any third party any personal, financial or non-public information, or data acquired by virtue of its relationship with Chandler, without the prior written approval of Chandler, or its successor in interest. Non-public information shall include, without limitation, information that concerns the personal, financial or other non-public information of Chandler.

Non-disclosable information shall not include information which: (1) is, at the time of disclosure, or thereafter becomes available to the public from a source other than the receiving party; (2) was known to the receiving party as of the time of disclosure; (3) is independently developed by the receiving party; (4) is subsequently learned from a third party not under a confidentiality obligation to the disclosing party; or (5) is required to be disclosed pursuant to subpoena, court order, or government authority, whereupon receiving party shall promptly advise disclosing party prior to such disclosure, so that disclosing party may seek a protective order or other appropriate remedy.

Confidential Information

(a) _____ understands and agrees that Chandler is a public entity subject to the Arizona Public Records Law, A.R.S. §§ 39-121, *et.seq.* Chandler may, without violating the provisions of this Agreement, release any documents or other information related to this Agreement. If Confidential Information or Intellectual Property Rights are the subject of a Public Records Request, Chandler will provide _____ with ten days' notice to obtain a court order in Maricopa County Superior Court, Maricopa County, Arizona, enjoining Chandler from releasing requested information or Chandler will release any matter not subject to a court order barring disclosure. Any court action shall be brought at _____'s expense. Chandler shall not be responsible for any fees including attorney's fees, court costs or any other fees, expenses, or costs associated with the court proceeding.

(b) Intellectual Property Rights means all patents, patent rights, patent applications, copyrights, copyright registrations, trade secrets, trademarks and service marks and Confidential Information.

(c) Confidential Information means software, intellectual property, product development, marketing plans, business methods, non-public financial and personnel data shall be deemed Confidential Information.

Confidential Information does not include information that: (i) is or becomes known to the public without fault or breach of the receiving party; (ii) the disclosing party regularly discloses to third parties without restriction on disclosure; (iii) is rightfully in the receiving party's possession or the receiving party lawfully obtains from a third party without restriction on disclosure and

without breach of a non-disclosure obligation; (iv) is required to be disclosed in response to a request under Arizona's Public Records Law (A.R.S. §§ 39-121, *et seq.*), or to a subpoena or other judicial process, whereupon receiving party shall promptly advise disclosing party prior to such disclosure, so that disclosing party may seek a protective order or other appropriate remedy; or (v) information which is independently developed by the receiving party without reference to the disclosing party's Confidential Information.

_____ and Chandler agree to the terms of the Non-Disclosure and Confidentiality Terms set forth above and a violation of any of the terms set forth by either party of this Agreement shall be considered a breach of this Agreement and subject the breaching party to all available remedies at equity and at law including but not limited to termination, injunctive relief, or equitable relief or an action for specific performance. Each party shall defend and indemnify the other party from such party's violation of these confidentiality terms.

In addition to any other remedies, the disclosing party shall be entitled to seek equitable relief. Such obligations of confidentiality shall continue for five (5) years from the date of initial disclosure, provided that with respect to intellectual property, such obligations of confidentiality are perpetual and shall survive termination.

DISCLOSER

RECIPIENT

_____ Date

By: Ad. Ryz
Title: Partner

Mayor

City of Chandler

_____ RECIPIENT

Date
March 3, 2011

ATTEST:

ATTEST: If Corporation

_____ City Clerk

_____ Secretary

SEAL