



**PURCHASING ITEM  
FOR  
COUNCIL AGENDA**

**1. Agenda Item Number:**

**7**

**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 IT1-918-2922 with CedarCrestone to add Exhibit E (Non-Disclosure Agreement).

**6. RECOMMENDATION:** Recommend amending Agreement IT1-918-2922 with CedarCrestone to add Exhibit E (Non-Disclosure Agreement).

**7. HISTORICAL BACKGROUND/DISCUSSION:** In February 2011, Council awarded an agreement to CedarCrestone to provide integration 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 consulting services for the Oracle upgrade project at the February 24, 2011 meeting. One exhibit relating to non-disclosure is being added that 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 IT1-918-2922 with CedarCrestone to add Exhibit E (Non-Disclosure Agreement).

**APPROVALS**

**11. Requesting Department**

Dawn Lang, Assistant Management Services Director

**12. Department Head**

Dennis Strachota

**13. Procurement Officer**

Carolee Stees, CPPB

**14. Acting City Manager**

Rich Dlugas

**AMENDMENT NUMBER ONE  
TO PROFESSIONAL SERVICES AGREEMENT  
BETWEEN CEDARCRESTONE, INC. AND  
CITY OF CHANDLER  
AGREEMENT NO: IT1-918-2922**

This Amendment #ONE to Agreement No. IT1-918-2922 between the City of Chandler ("CITY") and CedarCrestone, Inc. ("CONSULTANT for professional services, dated February 28, 2011, ("AGREEMENT") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

1. The AGREEMENT is amended to add a new Section 19 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:

By: \_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

City Attorney \_\_\_\_\_

ATTEST: \_\_\_\_\_

City Clerk \_\_\_\_\_

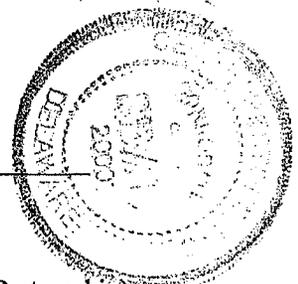
CONSULTANT:

By: *[Signature]* BRAN E. PERES

Title: *CFO*

ATTEST: (If corporation)

*[Signature]*  
ASST. Secretary  
MARLENE SMITH



WITNESS: (If individual or Partnership)

*N/A*  
[SEAL]

**EXHIBIT E**  
**NON-DISCLOSURE AND CONFIDENTIALITY TERMS**

Non Disclosable Information

CedarCrestone, Inc. agrees that it 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) CedarCrestone, Inc. 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 CedarCrestone 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 CedarCrestone'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.

CedarCrestone, Inc. 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

\_\_\_\_\_  
Date  
Mayor  
City of Chandler

ATTEST:

\_\_\_\_\_  
City Clerk  
SEAL

RECIPIENT

By: [Signature]  
Title: CFO / TREASURER  
BRIAN E. REES

RECIPIENT

ATTEST: If Corporation

[Signature]  
Asst. Secretary  
MARLENE SMITH

