



Chandler · Arizona
Where Values Make The Difference

PURCHASING ITEM
FOR
COUNCIL AGENDA

1. Agenda Item Number:

32

2. Council Meeting Date:

June 9, 2011

TO: MAYOR & COUNCIL

3. Date Prepared: May 25, 2011

THROUGH: CITY MANAGER

4. Requesting Department: City Manager

5. SUBJECT: Approval of a 3-year agreement for the purchase of support and maintenance for the Land Information System (LIS) from EI Technologies in an amount not to exceed \$61,940.

6. RECOMMENDATION: Recommend approval of a 3-year agreement for the purchase of support and maintenance for the LIS from EI Technologies in an amount not to exceed \$61,940.

7. HISTORICAL BACKGROUND/DISCUSSION: The City's Land Information System (LIS) is the City's database of record for parcels, addresses, streets and other land related data. It also contains City boundary information that pertains to the municipal boundary areas of city limits, county islands and changes to those boundaries through annexation are all managed through the LIS. All GIS applications and many other City enterprise systems, such as Accela, GBA and Utility Billing, are dependent upon the data in LIS. This application is vital to City operations and must be kept fully maintained and current. This maintenance and support provides resolution of technical support issues, software fixes, enhancements and system and application upgrades necessary to operate and keep this system current. The term of this agreement is July 1, 2011 through June 30, 2014.

8. EVALUATION PROCESS: In April 2006, Council awarded an agreement for Phase I of the LIS migration to EI Technologies. In August 2007, Council awarded an agreement for Phase II of the LIS migration process. Because of EI Technologies' qualifications, expertise and their particular knowledge of the City, the ongoing maintenance service is available only from EI Technologies. The City has been purchasing maintenance services on an annual basis since 2007, but EI Technologies is now offering the City a savings of approximately \$15,000 for the 3-year agreement.

9. FINANCIAL IMPLICATIONS: Funds for this purchase are from the following account: 101.1200.0000.5419.000000 General Fund, IT Applications & Client Support, Other Support and Maintenance \$61,940.

10. PROPOSED MOTION: Move to approve a 3-year agreement for the purchase of support and maintenance for the Land Information System (LIS) from EI Technologies in an amount not to exceed \$61,940.

APPROVALS

11. Requesting Department

Dawn Crawford, IT Applications Support Manager

12. Department Head

Steven Philbrick, Chief Information Officer

13. Procurement Officer

Carolee Stees, CPPB

14. City Manager

Rich Dlugas

**CITY OF CHANDLER
PROFESSIONAL SERVICES AGREEMENT**

Project No. IT1-918-3010

Project Name: LIS Annual Maintenance

THIS AGREEMENT is made and entered into this 25th day of May, 2011, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Ei Technologies, hereinafter referred to as "CONSULTANT".

WHEREAS, the Mayor and City Council of the City of Chandler is authorized and empowered by provisions of the City Charter to execute contracts for professional services; and

WHEREAS, CONSULTANT represents that CONSULTANT has the expertise and is qualified to perform the services described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. CONTRACT ADMINISTRATOR:

1.1. To provide the professional services required by this Agreement CONSULTANT shall act under the authority and approval of IT Applications Manager or designee, (the Contract Administrator), who shall oversee the execution of this Agreement, assist the CONSULTANT with any necessary information, audit billings, and approve payments. The CONSULTANT shall channel reports and special requests through the Contract Administrator.

1.2. CITY reserves the right to review and approve any/all changes to CONSULTANT'S key staff assigned to the CITY project by the firm during the term of this Agreement.

2. **SCOPE OF WORK:** CONSULTANT shall provide those services described in Exhibit B attached hereto and made a part hereof by reference.

3. **ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by CITY to determine acceptable completion. All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Agreement, shall be and remain the property of CITY and shall be delivered to CITY before final payment is made to CONSULTANT.

4. **FEE SCHEDULE:** For the services described in paragraph 2 of this Agreement, CITY shall pay CONSULTANT a fee not to exceed the sum of Sixty-one Thousand Nine Hundred Forty dollars (\$61,940) in accordance with the fee schedule attached hereto as Exhibit C and incorporated herein by reference.

5. **TERM:** The term of this agreement shall be July 1, 2011 through June 30, 2014.

6. TERMINATION:

6.1. **Termination for Convenience:** City may cancel the 3rd year (July 1, 2013 through June 30, 2014) of support with notification to Consultant no later than December 31,

2012. Consultant shall refund \$10,000 to the City within 30 days of notice of cancellation.

6.2 Termination for Cause: City may terminate this Contract for Cause upon the occurrence of any one or more of the following events:

- 1) If CONSULTANT fails to perform pursuant to the terms of this Agreement
- 2) If CONSULTANT is adjudged a bankrupt or insolvent;
- 3) If CONSULTANT makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for CONSULTANT or for any of CONSULTANT'S property;
- 5) If CONSULTANT files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If CONSULTANT disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- 7) Where Agreement has been so terminated by CITY, the termination shall not affect any rights of CITY against CONSULTANT then existing or which may thereafter accrue.

6.3. Availability of Funds for the next Fiscal Year. Funds may not presently be available under this agreement beyond the current fiscal year. No legal liability on the part of the CITY for services may arise under this agreement beyond the current fiscal year until funds are made available for performance of this agreement. The CITY may reduce services or terminate this agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.

7. INDEMNIFICATION: The Consultant agrees to indemnify, defend, and save harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively; from all losses, claims, suits, actions, payments and judgments, demands, expenses, attorney's fees, defense costs, or actions of any kind and nature resulting from personal injury to any person, including employees of the Consultant or of any Sub Consultant employed by the Consultant (including bodily injury and death) or damages to any property, arising or alleged to have arisen out of the negligent performance of the Consultant for the work to be performed hereunder, except any such injury or damages arising out of the sole negligence of the City, its officers, agents or employees. IT IS THE INTENTION OF THE PARTIES to this contract that the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees, individually and collectively, are to be indemnified against their own negligence unless and except their negligence is found to be the sole cause of the injury to persons or damages to property.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

8. INSURANCE REQUIREMENTS: CONSULTANT shall provide and maintain the insurance as listed in Exhibit D attached hereto and made a part hereof by reference.

9. ENTIRE AGREEMENT: This Agreement constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the

services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives or each party.

10. **ARIZONA LAW:** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 10.1 Pursuant to the provisions of A.R.S. § 41-4401, the Consultant hereby warrants to the City that the Consultant and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Consultant Immigration Warranty").
- 10.2 A breach of the Consultant Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.
- 10.3 The City retains the legal right to inspect the papers of any Consultant or Subcontractor employee who works on this Contract to ensure that the Consultant or Subcontractor is complying with the Consultant Immigration Warranty. The Consultant agrees to assist the City in the conduct of any such inspections.
- 10.4 The City may, at its sole discretion, conduct random verifications of the employment records of the Consultant and any Subcontractors to ensure compliance with Consultants Immigration Warranty. The Consultant agrees to assist the City in performing any such random verifications.
- 10.5 The provisions of this Article must be included in any contract the Consultant enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a Consultant or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 10.6 In accordance with A.R.S. §35-393.06, the Consultant hereby certifies that the offeror does not have scrutinized business operations in Iran.
- 10.7 In accordance with A.R.S. §35-391.06 the Consultant hereby certifies that the offeror does not have scrutinized business operations in Sudan.
11. **CONFLICT OF INTEREST:**
- 11.1 **No Kickback.** CONSULTANT warrants that no person has been employed or retained to solicit or secure the Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the CITY has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. section 38-501. Any such interests were disclosed in CONSULTANT'S proposal to the CITY.
- 11.2 **Kickback Termination.** CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the agreement on behalf of the CITY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONSULTANT to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice for CITY is received by all other parties, unless the notice specifies a later time (A.R.S. 38-511).

11.3 No Conflict. CONSULTANT stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

12. DISPUTE RESOLUTION:

12.1 Alternative Dispute Resolution. The parties hereby agree that there shall be a sixty (60) day moratorium on litigation commencing on the day that a claim is filed by CONSULTANT pursuant to A.R.S. § 12-821.01 during which time the parties will negotiate in good faith to resolve the dispute and evaluate the viability of pursuing alternative dispute resolution procedures such as mediation and arbitration.

12.2 Arizona Law. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

12.3 Jurisdiction and Venue. The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.

12.4 Fees and Costs. Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees; provided, however, that no award of attorney's fees shall exceed ten percent (10%) of the damages awarded the prevailing party unless the non-prevailing party has been determined to have acted in bad faith or in a frivolous manner during the adjudication.

13. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of City:
City of Chandler
Purchasing Division
P.O. Box 4008, Mail Stop 901
Chandler, AZ 85244-4008
480.782. 2400

In the case of CONSULTANT:
Ei Technologies, LLC
Nirav Shah
19750 E Parker Square Dr #100
Parker, CO 80134
www.eitek.com

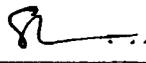
Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 25th day May of 2011.

CITY OF CHANDLER

CONSULTANT

Mayor Date

By: 
Title: NIRAV SHAH, PRESIDENT

APPROVE AS TO FORM

ATTEST: If Corporation

City Attorney 

Secretary

ATTEST:

City Clerk SEAL

EXHIBIT A

**Consultant Immigration Warranty
To Be Completed by Consultant Prior to Execution of Contract**

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the Consultant and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

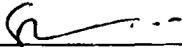
By completing and signing this form the Consultant shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

Contract Number: IT1-918-3010		
Name (as listed in the contract): EI Technologies, LLC		
Street Name and Number: 19750 E Parker Square Drive		
City: Parker	State: CO	Zip Code: 80134

I hereby attest that:

1. The Consultant complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees.

Signature of Consultant (Employer) or Authorized Designee:



Printed Name: NIRAV SHAH

Title: President

Date (month/day/year): 05.25.2011

EXHIBIT B SCOPE OF WORK

Consultant shall provide support/maintenance for certain key applications and integrations that are part of LIS Migration at the City of Chandler for the term of July 1, 2011 through June 30, 2014. Specifically included are:

1. ArcSDE Support – Consultant shall help with maintenance of ArcSDE server as needed. Consultant will trouble shoot and maintain this server remotely as part of this task.
2. CAMPS Support – Consultant shall help with maintenance of CAMPS as needed. Consultant will trouble shoot and maintain this application remotely as part of this task.
3. Enhancements to application in response to City requests – up to 40 hours per year.
4. Onsite Support – Consultant shall include one trip during the entire three year period for up to 2.5 days as part of this agreement to help with any onsite support needs that the City may have.

Telephone & Email Support:

Consultant guarantees that they shall be responsive to the City's requests for information about CAMPS by returning telephone calls promptly and addressing each one in a professional manner.

Consultant's technical staff shall be available to address City applications, data, and hardware questions in a three-tiered structure: Tier I and II support provides answers to questions within four business hours or escalation to senior consultants and developers; and, Tier III provides answers by senior consultants and developers. Consultant shall provide support Monday to Friday from 7 am to 6 pm Arizona Time.

Application Modification Due to Software Changes:

Consultant tests and maintains the applications under support agreements on a semi-annual basis. Every six months Consultant will have a release of the application that will support the latest database platform, operating system, and release of ArcGIS. Consultant limits revisions to the applications to database platforms, operating systems and ArcGIS versions that are released more than three months prior to the applications updates. This ensures the City that software products are tested in a stable environment and are ready when the City rolls out the next release of the supported database management system, operating system, or version of ArcGIS.

Application Enhancement:

Consultant shall provide up to forty (40) hours annually (total 120 hours for three years) for programming and application enhancements requested by the City. The Consultant shall not perform additional services not covered in this agreement. Additional services not covered under this agreement shall require a separate ordering contract. The Consultant shall notify the City the number of hours remaining after completing an agreed upon enhancement. The forty hours is the maximum number of hours allowed in a year.

**EXHIBIT C
FEE SCHEDULE**

City shall pay Consultant an amount not to exceed \$61,940 for support and maintenance for the term of July 1, 2011 through June 30, 2014. Full payment will be due and payable within 10 days of execution of this Agreement.

If the City cancels the 3rd year of support and maintenance by December 31, 2012, Consultant shall refund \$10,000 to the City within 30 days of notice of cancellation.

**EXHIBIT D
INSURANCE REQUIREMENTS**

1. CONSULTANT, at its own expense, shall purchase and maintain insurance of the types and amounts required in this section, with companies possessing a current A.M. Best, Inc. rating of B++6, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to CITY.
2. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
3. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of CITY, constitute a material breach of this Agreement and may result in termination of this contract.
4. If any of the insurance policies are not renewed prior to expiration, payments to the CONSULTANT may be withheld until these requirements have been met, or at the option of the City, the City may pay the Renewal Premium and withhold such payments from any monies due the CONSULTANT.
5. All insurance policies, except Workers' Compensation and Professional Liability required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for claims arising out of the performance of this contract, the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
6. CONSULTANT's insurance shall be primary insurance over any insurance available to the CITY and as to any claims resulting from this contract, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.
7. The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of CONSULTANT's acts, errors, mistakes, omissions, work or service.
8. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall be assumed by and be for the account of, and at the sole risk of CONSULTANT. CONSULTANT shall be solely responsible for the deductible and/or self-insured retention. The amounts of any self-insured retentions shall be noted on the Certificate of Insurance. CITY, at its option, may require CONSULTANT to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit. Self-insured retentions (SIR) in excess of \$25,000 will only be accepted with the permission of the Management Services Director/designee..
9. All policies and certificates shall contain an endorsement providing that the coverage afforded under such policies shall not be reduced, canceled or allowed to expire until at least thirty (30) days prior written notice has been given to CITY.
10. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONSULTANT with reasonable promptness in accordance with the CONSULTANT's information and belief.

11. In the event that claims in excess of the insured amounts provided herein, are filed by reason of any operations under this contract, the amount of excess of such claims, or any portion thereof, may be withheld from payment due or to become due the CONSULTANT until such time as the CONSULTANT shall furnish such additional security covering such claims as may be determined by the CITY.

C.1 PROOF OF INSURANCE - CERTIFICATES OF INSURANCE

1. Prior to commencing work or services under this Agreement, CONSULTANT shall furnish to CITY Certificates of Insurance, issued by CONSULTANT's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the City's Risk Management Division approval of such Certificates.
2. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the City of Chandler five (5) days prior to the expiration date.
3. All Certificates of Insurance shall identify the policies in effect on behalf of CONSULTANT, their policy period(s), and limits of liability. Each Certificate shall include the job site and project number and title. Coverage shown on the Certificate of Insurance must coincide with the requirements in the text of the contract documents. Information required to be on the certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance company.
4. CITY reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise CONSULTANT of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONSULTANT from, or be deemed a waiver of CITY's right to insist on, strict fulfillment of CONSULTANT's obligations under this Agreement.

C.2 REQUIRED COVERAGE

1. Such insurance shall protect CONSULTANT from claims set forth below which may arise out of or result from the operations of CONSULTANT under this Contract and for which CONSULTANT may be legally liable, whether such operations be by the CONSULTANT or by a Sub-consultant or subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.
2. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
3. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Consultant's employees;
4. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Consultant's employees;
5. Claims for damages insured by usual personal injury liability coverage;
6. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

7. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; Coverage will be at least as broad as Insurance Service Office, Inc., coverage Code "I" "any auto" policy form CA00011293 or equivalent thereof.
8. Claims for bodily injury or property damage arising out of completed operations;
9. Claims involving contractual liability insurance applicable to the Consultant's obligations under the Indemnification Agreement;
10. Claims for injury or damages in connection with one's professional services;
11. Claims involving construction projects while they are in progress. Such insurance shall include coverage for loading and off loading hazards. If any hazardous material, as defined by any local, state or federal authorities are to be transported, MCS 90 endorsement shall be included.

C.2.1 Commercial General Liability - Minimum Coverage Limits

The Commercial General Liability insurance required herein shall be written for not less than \$1,000,000 limits of liability or ten percent (10%) of the Contract Price, whichever coverage is greater. Any combination between general liability and excess general liability alone amounting to a minimum of \$1,000,000 per occurrence (or 10% per occurrence) and an aggregate of \$2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the Insurance Services, Inc's (ISO) Additional Insured, Form B, CG 20101001, and shall include coverage for CONSULTANT's operations and products, and completed operations.

C.2.2 General Liability - Minimum Coverage Limits

The General Liability insurance required herein, including, Comprehensive Form, Premises-Operations, Explosion and Collapse, Underground Hazard, Products/Completed Operations, Contractual Insurance, Broad Form Property Damage, Independent Consultants, and Personal Injury shall be written for Bodily Injury and Property Damage Combined shall be written for not less than \$1,000,000 or 10% of the contract cost and with a \$2,000,000 aggregate.

C.2.3 Automobile Liability

CONSULTANT shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the CONSULTANT's work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards if hazardous substances, materials or wastes are to be transported and a MCS 90 endorsement shall be included with coverage limits of \$5,000,000 per accident for bodily injury and property damage.

C.2.4 Worker's Compensation and Employer's Liability

CONSULTANT shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONSULTANT's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease coverage for each employee, and \$1,000,000 disease policy limit.

In case any work is subcontracted, CONSULTANT will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CONSULTANT.

C.2.5 Professional Liability

CONSULTANT shall maintain Professional Liability insurance covering acts, errors, mistakes and omissions arising out of the work or services performed by DESIGN CONSULTANT, or any person employed by CONSULTANT, with a claims made policy limit of not less than \$1,000,000.