



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

24

2. Council Meeting Date:

April 26, 2007

TO: MAYOR & COUNCIL

3. Date Prepared: April 18, 2007

THROUGH: CITY MANAGER

4. Requesting Departments:

City Manager/Management Services

5. SUBJECT: Approval of agreement IT7-209-2421 to provide a timekeeping and absence management solution, implementation services and necessary hardware from IntelliTime Systems Corporation in an amount not to exceed \$250,000.

6. RECOMMENDATION: Recommend approval of agreement IT7-209-2421 to provide a timekeeping and absence management solution, implementation services and necessary hardware from IntelliTime Systems Corporation in an amount not to exceed \$250,000.

7. HISTORICAL BACKGROUND/DISCUSSION: The City's payroll system was implemented in 1999 and since that time the City has seen considerable growth to the employee population. The Time & Labor/Absence Management Project will enable the City of Chandler to modify their current process in an effort to use standard functionality within the Oracle environment and enable absence reporting functionality. The project will enable the City to track hours worked for compliance with federal and state laws. The project will also provide an automated process to record time that will enable the efficient management of the City's leave and time reporting for payroll purposes.

8. EVALUATION PROCESS: On December 8, 2006, staff issued RFP IT7-209-2421 for the purchase of a timekeeping and absence management solution. The RFP was advertised, all registered vendors were notified, and additional copies were sent to known providers of the requested solution. Responses were due January 17, 2007. The City received offers from IntelliTime Systems Corporation, TimeLink, Workforce Software, Inc., TimeTrak Systems of Arizona, Ortec International USA, Inc., Echelon 3 Technologies, Inc., and Stromberg. An evaluation committee, which consisted of representatives from Information Technology, Human Resources, Community Services and Management Services evaluated the offers received and recommends award to IntelliTime Systems. The committee's recommendation is based on criteria set forth in the RFP which included functionality/implementation, company profile and references, overall cost, maintenance, support, warranty and training, and responsiveness to proposal.

9. FINANCIAL IMPLICATIONS: Funds for this project are available in 101.1285.0000.5219.2MS015 General Funds, Info Tech Capital, Other Professional Services, 11i Core Module IMP \$176,701.80 and in 101.1285.0000.5219.4IT021 General Funds, Info Tech Capital, Other Professional Services, Oracle Enhancements Phase 2 \$73,298.20.

10. PROPOSED MOTION: Move to approve agreement IT7-209-2421 to provide a timekeeping and absence management solution, implementation services and necessary hardware from IntelliTime Systems Corporation in an amount not to exceed \$250,000, and authorize the Mayor to sign the agreement.

APPROVALS

11. Requesting Department

Sheneka Coleman, IT Project Manager

12. Department Heads

O.D. Burr, Acting Management Services Director
Debra Stapleton, Human Resource Director

13. Procurement Officer

Carolee Stees, CPPB

14. City Manager

W. Mark Pentz

**CITY OF CHANDLER SERVICES AGREEMENT
TIME & LABOR/ABSENCE MANAGEMENT SOLUTION
AGREEMENT NO. IT7-209-2421**

THIS AGREEMENT is made and entered into this [REDACTED] day of [REDACTED], 2007, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and IntelliTime Systems Corporation, hereinafter referred to as "CONTRACTOR".

WHEREAS, CONTRACTOR represents that CONTRACTOR 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. **Contract Administrator.** CONTRACTOR shall act under the authority and approval of the Information Technology Project Manager/designee (Contract Administrator), to provide the services required by this Agreement.
- 1.2. **Key Staff.** This Contract has been awarded to CONTRACTOR based partially on the key personnel proposed to perform the services required herein. CONTRACTOR shall not change nor substitute any of these key staff for work on this Contract without prior written approval by CITY.
- 1.3. **Subcontracts.** CONTRACTOR shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Contract.

2. SCOPE OF WORK: CONTRACTOR shall provide a complete time & labor/absence management solution all as more specifically set forth in the Scope of Work, labeled Exhibit A, attached hereto and made a part hereof by reference therein.

- 2.1. **Non-Discrimination.** The CONTRACTOR shall comply with State Executive Order No. 99-4 and all other applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.2. **Advertising, Publishing and Promotion of Contract.** The CONTRACTOR shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the CITY.
- 2.3. **Compliance With Applicable Laws.** CONTRACTOR shall comply with all applicable Federal, state and local laws, and with all applicable license and permit requirements.
- 2.4. **Ownership.** All deliverables and/or other products of the Contract (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by CONTRACTOR in performance of the Contract) shall be the sole, absolute and exclusive property of CITY, free from any claim or retention of right on the part of CONTRACTOR, its agents, sub-contractors, officers or employees.
- 2.5. **One-Year Warranty.** CONTRACTOR shall provide a one-year warranty on solution provided from the date of final acceptance by the CITY.

3. ACCEPTANCE AND DOCUMENTATION: Each task shall be reviewed and approved by the Contract Administrator to determine acceptable completion.

- 3.1. **Records.** The CONTRACTOR shall retain and shall contractually require each SUBCONTRACTOR to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract.
- 3.2. **Audit.** At any time during the term of this Contract and five (5) years thereafter, the CONTRACTOR'S or any SUBCONTRACTOR'S books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Contract or Subcontract. Upon request, the CONTRACTOR shall produce a legible copy of any or all such records.
4. **PRICE:** CITY shall pay to CONTRACTOR an amount not to exceed two hundred and fifty thousand Dollars (\$250,000) for the completion of all the work and services described herein, which sum shall include all costs or expenses incurred by CONTRACTOR, payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.
 - 4.1 **Payment.** A separate invoice shall be issued for each milestone completed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice.
 - 4.2 **IRS W9 Form.** In order to receive payment CONTRACTOR shall have a current I.R.S. W9 Form on file with CITY, unless not required by law.
5. **TERM:** The work must be completed within 240 days from the Notice to Proceed.
6. **USE OF THIS CONTRACT:**
 - 6.1 **Right to Use Other Sources.** The Contract is for the sole convenience of the City of Chandler. CITY reserves the rights to obtain like services from another source to secure significant cost savings or when timely completion cannot be met by CONTRACTOR.
 - 6.2 **Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.
7. **CITY'S CONTRACTUAL REMEDIES:**
 - 7.1. **Right to Assurance.** If the Contract Administrator, in good faith, has reason to believe that the CONTRACTOR does not intend to, or is unable to perform or continue performing under this Contract, the Contract Administrator may demand in writing that the CONTRACTOR give a written assurance of intent to perform. Failure by the CONTRACTOR to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Contract in addition to any other rights and remedies provided by law or this Contract.
 - 7.2. **Stop Work Order.** The Contract Administrator may, at any time, by written order to the CONTRACTOR, require the CONTRACTOR to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the City after the order is delivered to the CONTRACTOR. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the CONTRACTOR shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
 - 7.2.1 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the CONTRACTOR shall resume work. The Contract Administrator shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

- 7.3. **Non-exclusive Remedies.** The rights and the remedies of the City under this Contract are not exclusive.
- 7.4. **Nonconforming Tender.** Services and materials supplied under this Contract shall fully comply with Contract requirements and specifications. Services or materials that do not fully comply constitute a breach of contract.
- 7.5. **Right of Offset.** The City shall be entitled to offset against any sums due CONTRACTOR, any expenses or costs incurred by the City, or damages assessed by the City concerning the CONTRACTOR'S non-conforming performance or failure to perform the Contract, including expenses to complete the work and other costs and damages incurred by CITY.

8. TERMINATION:

- 8.1. **Termination for Convenience.** CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with 10 days written notice. In the event of such termination, CONTRACTOR shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and SUBCONTRACTORS to cease such work. As compensation in full for services performed to the date of such termination, the CONTRACTOR shall receive a fee for the percentage of services actually performed. This fee shall be in the amount to be mutually agreed upon by the CONTRACTOR and CITY, based on the agreed Scope of Work. If there is no mutual agreement, the **Management Services Director** shall determine the percentage of work performed for each task detailed in the Scope of Work and the CONTRACTOR'S compensation shall be based upon such determination and CONTRACTOR'S fee schedule included herein.
- 8.2. **Termination for Cause.** CITY may, upon written notice, terminate this Agreement for CONTRACTOR'S failure to comply with the terms of this Agreement.
- 8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, CITY may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the City is or becomes at any time while this Contract or an extension of this Contract is in effect, an employee of or a consultant to any other party to this Contract. The cancellation shall be effective when the CONTRACTOR receives written notice of the cancellation unless the notice specifies a later time. CONTRACTOR 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.
- 8.4. **Gratuities.** CITY may, by written notice, terminate this Contract, in whole or in part, if CITY determines that employment or a Gratuity was offered or made by CONTRACTOR or a representative of CONTRACTOR to any officer or employee of CITY for the purpose of influencing the outcome of the procurement or securing this Contract, an amendment to this Contract, or favorable treatment concerning this Contract, including the making of any determination or decision about contract performance. The CITY, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by CONTRACTOR.
- 8.5. **Suspension or Debarment.** CITY may, by written notice to the CONTRACTOR, immediately terminate this Contract if CITY determines that CONTRACTOR has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a SUBCONTRACTOR of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the CONTRACTOR is not currently suspended or debarred. If CONTRACTOR becomes suspended or debarred, CONTRACTOR shall immediately notify CITY.

- 8.6. **Continuation of Performance Through Termination.** The CONTRACTOR shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
10. **ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process set forth in Exhibit D shall be the exclusive means for resolution of claims or disputes and other matters in question between the City and the CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance of or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.
11. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold harmless the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees individually and collectively; from and against all losses, claims, suits, actions, payments and judgments, demands, expenses, damages, including consequential damages and loss of productivity, attorney's fees, defense costs, or actions of any kind and nature relating to, arising out of, or alleged to have resulted from CONTRACTOR'S work or services. CONTRACTOR'S duty to defend, hold harmless and indemnify the City of Chandler, its Mayor and Council, appointed boards and commissions, officials, officers, employees shall arise in connection with any claim or amounts arising or recovered under Worker Compensation Laws, damage, loss or expenses relating to, arising out of or alleged to have resulted from any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of CONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts CONTRACTOR may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including the City of Chandler. 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.
12. **INSURANCE:** CONTRACTOR, at its own expense, shall purchase and maintain insurance of the types and amounts required as listed in Exhibit C attached hereto and incorporated herein by reference. Such insurance must be written by 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.

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 the CITY

Contract Administrator: Sheneka Coleman

Contact: Information Technology

Mailing Address: PO Box 4008 MS 301

Physical Address: 275 E. Buffalo Street

City, State, Zip Chandler, AZ 85244

Phone: 480-782-2486

FAX: 480-782-2440

In the case of the CONTRACTOR

Firm Name: IntelliTime Systems Corporation

Contact: Dennis Peters

Address: 3710 S. Susan Street, Suite 200

City, State, Zip Santa Ana, CA 92704

Phone: 888-757-0337

FAX: 714-444-3263

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.

14. CONFLICT OF INTEREST:

14.1. **No Kickback.** CONTRACTOR warrants that no person has been employed or retained to solicit or secure this 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 CONTRACTOR'S proposal to the CITY.

14.2. **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 CONTRACTOR to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from CITY is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).

14.3. **No Conflict:** CONTRACTOR 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.

15. GENERAL TERMS:

15.4. **Entire Agreement.** This Agreement, including Exhibits A, B, C, D, E & F attached hereto, 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 of each party.

- 15.5. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
- 15.6. **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.
- 15.7. **Amendments.** The Contract may be modified only through a written Contract Amendment executed by authorized persons for both parties. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the CONTRACTOR are violations of the Contract. Any such changes, including unauthorized written Contract Amendments shall be void and without effect, and the CONTRACTOR shall not be entitled to any claim under this Contract based on such changes.
- 15.8. **Independent Contractor.** The CONTRACTOR under this Contract is an independent CONTRACTOR. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 15.9. **No Parole Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 15.10. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this day of _____ 2007.

FOR THE CITY OF CHANDLER

MAYOR

ATTEST:

City Clerk

[Signature]

City Attorney

SEAL

FOR THE CONTRACTOR

By: *[Signature]*

Signature

ATTEST: If Corporation

[Signature]

Secretary

EXHIBIT A

SCOPE OF WORK

Contractor shall provide a time and labor/absence management solution that shall successfully integrate with existing City of Chandler systems and provide all implementation services; data import and export, documentation, training, and one-year warranty upon acceptance of the solution. The Contractor shall provide the following requirements:

1. Define, set up and implement all necessary absence codes
2. Provide reports on employee(s) by:
 - Absence by category
 - Absence by employee (Absence taken by a particular employee for a specified period of time)
 - Absence by Organization (cost center)/Department/City of Chandler (COC)
 - Absence by type
 - Number of hours used by category
 - Number of hours used by type
 - Absence by timeframe
 - Absence by reason
 - Absence by hours used by reason
 - Absence by job title
 - Cost of absence by category
 - Cost by absence by type
 - Cost of absence by reason
 - Liability cost of accrual plan balances
 - Projected accruals for all employees
 - Payroll reports both canned and ability for ad hoc reports
 - Exception time reporting where required

Parameters for all above must include ability to report based on a specific period of time

3. Define, setup and implement an automated process for employees to accrue or pay 1 personal holiday each year during the first pay period of the tax year or upon hire during the year. The accrual must be eliminated if not used by the last day of the same tax calendar year.
4. Define, setup and implement a process to allow Fire Fighters and Police (by People Group) to accrue additional holiday hours each period that a holiday occurs
5. Setup absence types and accruals for employees and supervisors to access their own absence and accrual balance data via a link in Oracle Self Service Human Resources (SSHR)
6. Define, setup and implement the ability to record paid and unpaid absences via a link in Oracle SSHR
7. Provide the ability for Human Resources users and managers to view employee accrual balances, net entitlement and last accrual date

8. Define, setup and implement an automatic process for transferring employee's current accrual balances to the new accrual plans
9. Provide the ability to reduce accrual balance when leave is taken
10. Provide the ability to view carryover balances for employees that have exceeded the 240 hours and 336 hours ceiling into separate accrual plans. Carryover balances must reduce first before reducing the regular vacation balance.
11. Define, setup, and implement all accrual plans and earnings necessary to report time by interfacing with Oracle Payroll
12. Define, setup and implement functionality for a time and labor process for all employee types in accordance with COC requirements
13. Define and setup required shift premium pay that reflect total hours worked in a day as well as Start and Stop time for Shift Premium
14. Define and setup all COC work schedules that represent the different start and end days in a period
15. Define and setup all COC schedules to auto-generate employee schedule on time cards (work and holiday)
16. Define and setup required holiday schedules for holiday worked (ability to pay holiday overtime, auto pay Firefighters and sworn Police, holiday benefit payout)
17. Define, setup and implement all required COC earnings rules and policies
18. Define, setup and implement policies to automatically calculate overtime, shift differential, premium pay and deduction of hours based on set rules
19. Attach any earning policies programmatically to employees
20. Define, setup and implement Self Service time entry. Functionality must include both employee and timekeeper entry and must allow for part-time temporary employees to "clock" in and out at remote sites using employee i.d., fingerprints, or city-issued i.d. badge.
21. Provide payroll reporting to meet COC needs
22. Provide training for Time and Labor/Absence Management/Accrual Management system for the following: System administration (Technical, Functional), Payroll/HR Staff and Payroll clerks
23. Provide training manuals and other materials that can be duplicated
24. Provide application documentation for system configuration
25. Develop test scripts with assistance of City staff
26. Provide the ability to track part-time temporary employees time by Program, function and site

System Support Requirements

27. Two weeks (14 consecutive calendar days) on site support after release into production environment
28. Ninety-day remote support after project implementation at no additional cost
29. Vendor must provide 24X7 support for critical issue resolution

Optional requirements

30. Provide automated interfaces for different department time reporting processes
 - Community Services
 - Fire
 - Police
 - Public Works
31. Provide training for Self Service time entry Citywide
32. Management report capabilities

INSTALLATION AND IMPLEMENTATION SERVICES

1. Installation and implementation, General. CONTRACTOR shall install and implement a Time keeping software system solution, which meets the above outlined CITY of Chandler requirements
2. Project Management: Under CITY direction, CONTRACTOR shall be responsible for the management of the Project for installation and implementation of the Time Keeping software system, including activities conducted by CITY personnel.
3. Project Management shall include, at a minimum:
 - Project plan (following standard project management methodology of the Project Management Institute (PMI) and best practices)
 - Task schedule, administration and coordination of activities
 - Project time and expense management
 - Project status reporting
 - Project risk reporting
 - Change order control management
 - Quality management
 - Implementation of the solution
4. Project time and expense management: The CONTRACTOR shall provide written project time and expense weekly and monthly reports to the CITY of Chandler Project Manager. The reporting period begins with execution of the contract and continues through acceptance and completion of the system.
5. Project Status Reports: The CONTRACTOR shall provide a weekly written project status report to the CITY of Chandler Project Manager, with monthly and quarterly status reports to be conducted with the CITY'S management team as necessary. The reporting period begins with execution of the contract and continues through acceptance and completion of the system.
6. Statement of Work: The CONTRACTOR shall prepare the statement of work document outlining the overall project plan details and timing along with tasks, resources, responsibilities, completion criteria, deliverables and milestones. The resulting document shall be mutually agreed upon. The detailed project schedule will be determined after the commencement of the project being approved by council.
7. CONTRACTOR Expertise. CONTRACTOR shall provide sufficient staff with the necessary expertise and support to fully implement and carry out the Project, which includes but is not limited to, a transfer of knowledge to transition the deliverable to City of Chandler..
8. Discovery and Detailed Analysis of CITY of Chandler Requirement. The CONTRACTOR shall at the start of the project conduct a detailed analysis of the CITY'S timekeeping requirements. The IntelliTime team with assistance from the City of Chandler Team will interview payroll, supervisors, timekeepers and cost accounting

managers, and other key people in CITY departments. The CONTRACTOR shall identify areas where the IntelliTime timekeeping data can be used to eliminate duplicate data entry. The CONTRACTOR shall consult and provide advice on the best timekeeping technology for use in various departments. The CONTRACTOR shall document the CITY'S unique work rules and policies and how standard State and Federal policies are interpreted by the CITY of Chandler and document the various union agreements in place.

9. CITY Responsibilities. The CITY will provide office facilities, telephone access, Internet access and access to existing computer systems, but no secretarial support for the CONTRACTOR'S project team. The CITY will provide the CONTRACTOR with remote support connections to the IntelliTime server through a VPN connection for remote support

10. Software Modifications: The CITY intends to minimize modifications as much as possible, however, the CONTRACTOR shall perform only such modifications as necessary or directed by CITY to enable the software to function in the CITY'S environment. Modification decisions will be subject to the approval of the CITY'S project team. The CITY may consider changing business processes at its discretion.

11. Software Training: The CONTRACTOR shall utilize the "train-the-trainer" approach at the CITY'S facility. The CITY will be responsible to have computers and software installed and ready for training. CONTRACTOR shall train the CITY staff on the use of specific tools used to configure the software, create edits, and provide day-to-day operational support. Trained staff should achieve a sufficient level of software proficiency to allow the ongoing training of other staff members. The CONTRACTOR shall provide eight instructor-led User and Supervisor classes for the CITY of Chandler. The CITY'S trainer will attend the vendors, instructor-led classes and then provide the training for the balance of the CITY using the training material develop by the consultant.

12. Software Documentation: The CONTRACTOR shall provide user-friendly reference manuals/documentation that can be utilized to answer day-to-day questions over the lifetime of the software for end users, Supervisors, Administrators and Technical Staff. All training materials created for the CITY of Chandler will become the property of the CITY of Chandler.

13. Software Configuration: The CONTRACTOR shall provide the base software and prepare it for operation and access by the project team. Under CITY supervision, the CONTRACTOR shall install, configure, and prototype the software for acceptance testing. The CITY will assist with the set-up and configuration of the base software. The CONTRACTOR shall resolve issues as they arise.

14. Data Import/Export: Under CITY supervision, the CONTRACTOR assist in the design and implementation of the import and export of existing data. See Exhibit F.

15. Software Reports: The CONTRACTOR shall provide standard and ad hoc reports that are included in the base software package. The CITY will review the standard reports with the CONTRACTOR. The CONTRACTOR shall provide for installation and development of all reports outlined in the RFP.

16. Software Interfaces: The CONTRACTOR will be responsible for developing interfaces outlined in the contract. CONTRACTOR shall ensure that data structures and

coding is properly set up within system to ensure that the result of the interface execution will work properly with assistance from the CITY of Chandler. The CONTRACTOR agrees that the interfaces will not be affected by the upgrades. The CONTRACTOR will provide documentations and diagrams for all interfaces.

17. Hardware: The CITY will purchase hardware and install it at the CITY'S facility. The CITY'S technical staff will provide configuration of the hardware with the assistance of the CONTRACTOR. The CITY and CONTRACTOR shall configure the hardware as agreed upon in Exhibit F.

18. Software Installation: The CITY will install, with the support of the CONTRACTOR, all software at the CITY'S facility. CITY technical staff will be available to assist in the tuning and configuration of the system. The CITY will be responsible for performance testing of the system with procedural input from CONTRACTOR. CONTRACTOR shall test and confirm that the software functionality and configuration is properly working and accepted by the CITY.

19. Software Conversion and Testing: The CONTRACTOR, under CITY supervision, shall ensure that the base software and any modifications, meet the CITY'S business needs and functions as specified in the requirements; shall work with the City staff to address issues identified in unit and system testing of the software; shall work with City staff to help resolve data issues arising from converted data; shall immediately provide resources for product fixes resulting from errors identified during the software testing process; and shall provide additional training and/or support where necessary.

20. Final Acceptance: The CITY will provide a written final acceptance document upon determining that the system (and all its components) performs as proposed; problems and deficiencies have been corrected to the satisfaction of the CITY and final inspection, and testing and evaluation have been satisfactorily completed. And training has been satisfied.

21. Defective Products: CITY'S remedy for any defect in the Software and/or Hardware for which CONTRACTOR is responsible shall be for CONTRACTOR to repair, replace, or find other equipment/software that are equivalent to the system at no cost to the CITY. This includes labor, parts, installation, testing, freight, and other related costs. If CONTRACTOR cannot accomplish corrective action, CONTRACTOR will refund to the CITY the total cost of the Software and/or Hardware to include license permit cost, installation, freight, labor, maintenance service cost for current year, and the cost related to the Software and/or Hardware.

22. System Design Responsibility:

A. Nothing in the Specifications shall relieve CONTRACTOR of system package design responsibility, including, but not limited to, all equipment furnished by CONTRACTOR under this contract. CONTRACTOR shall be solely responsible for the performance of the delivered system based on the specifications of this Contract and for furnishing complete system documentation.

B. It is the expressed intent of the CITY to assume no liability for the design and performance of the supplied system as described in the specifications.

23. All training shall take place at the facility of CITY of Chandler.

23.1. All training shall occur prior to the CITY'S use of the system and shall be conducted at the mutual convenience of the CONTRACTOR and the CITY

23.2. CONTRACTOR hereby authorizes the CITY to make copies of user manuals/training materials for non-commercial use.

24. System Documentation. System documentation submitted shall describe the operational features of the basic system along with any changes made to the basic system to meet the proposal specifications. System documentation must also illustrate the system flow, such as with flow charts, etc. The system hardware and memory requirements must also be included, as well as details of the site licensing agreement. The CONTRACTOR shall provide hard copies and electronically copies of all system documentations.

25. User Documentation. Basic user documentation shall include things such as screen examples, a list of screens, etc. User training documentation shall contain easy to follow instructions on how to use, manage and maintain the software and hardware. Adequate user documentation shall be submitted with the training. CITY shall have the right to make additional copies of the software user documentation for its internal, non-commercial use. The CONTRACTOR shall provide hard copies and electronically copies of all user documentations.

26. Approach. The CITY of Chandler shall follow the approach outlined in the CONTRACTOR Project Overview and Approach Plan any and all changes will be mutually agreed upon.

27. Requirements. The CONTRACTOR shall meet all requirements outlined in the contract's scope of work.

**EXHIBIT B
PAYMENT SCHEDULE**

Payments will be made on the following schedule:

Payment Milestone	Deliverable Details	Payment Value %
Initiation & Planning Phase	Signed Agreement Kickoff Meeting Complete Discovery and Detailed Analysis of CITY of Chandler Requirements Document. Implementation Plan. Software Installation Phase Sign off.	15%
Configuration and Testing	Configuration, System testing, Test Plan User Acceptance Testing. Test Scripts Data testing Installation and Configurations documents. Test results with action plan document(s). Phase Sign off.	20%
Pilot	Training Plan Document(s). Copies of all training materials. Administrator, Functional and Technical training complete. Identify Pilot Group. Train Pilot group. Pilot testing. Test Interfaces. Final User Acceptance Testing. Phase Sign off.	15%
Move to Production & Training	Roll out plan schedule. All Interfaces operational. Move to production. End-user, Supervisor, Payroll clerk, timekeeper training.	10%
Rollout	Document rollout process Phased Roll approach out for each City Departments Payment made when every 2 departments have been completed End-user, Supervisor, Payroll clerk, timekeeper training.	25% Approx. \$3150 per department

Full Implementation	Transition document. Perform formal assessment. Document results achieved. Post production support. Implementation complete. Project sign off.	15%
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The deliverables may be reviewed and modified upon the written agreement of the parties once the Project Schedule is completed and approved.

Software License Fee IntelliTime SQL Server Database 4.5 Enterprise License including Payroll Interface to Oracle Payroll System FTP, Import Data, Payroll Editing Reports, Electronic Signatures, Audit Trail, Rule Engine, computer Based Training Module, Timecard Image Archive	\$ 4,000.00
VTI User License Fee 2,000 users and supervisors includes bi-weekly timecard, leave request prior period adjustment forms	\$90,000.00
Implementation Services Fees	\$15,965.00
Project Management Fee	\$ 8,500.00
Administrator Training Fee VTI Group Administrator Class (Technical, Functional, Payroll Clerks, Payroll Supervisors) Four half-day, onsite at City, includes on-site support during roll-out to go live	\$ 5,000.00
End User Training 8 VTI User or Supervisor Class – Classroom or Lecture Options	\$ 4,000.00
Automated Interfaces for Different Time Reporting Processes Part Number 6013 Fire Telestaff, Police Telestaff, Public Works Interface	\$23,250.00
Travel Expenses (not to exceed)	\$ 7,520.00

OPTIONAL:

Hardware IntelliTime, Time Clock, Biometric, TCP/IT; Configure Time Clock Stripes Maintenance and Support	\$1,995.00 \$3,720.00 \$200.00
IntelliTime Touchpad USB Badge Reader, Mag Strip or Bar Code; Implementation Cost	\$295.00 Included

IVR Controller 4 ports	\$3,995.00
Install/Configure IVR Controller	\$3,720.00
Maintenance and Support	\$750.00
Active Directory Link	\$6,200.00
Configure IntelliTime server to use Active Directory Single Sign-on Feature	
Professional Services Rate \$155.00 per hour	

FEE SCHEDULE FOR ANNUAL MAINTENANCE AND SUPPORT

Payment to Contractor shall be made annually in advance for the entire year's maintenance and support services for Years 2 through 5

- Year 1 - \$21,800
- Year 2 - \$21,800
- Year 3 - \$21,800
- Year 4 - \$21,800
- Year 5 - \$21,800

EXHIBIT C
INSURANCE REQUIREMENTS

1. INSURANCE:

1.1. Insurance Representations and Requirements:

- A. CONTRACTOR, 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.
- B. Policies written on a "Claims made" basis are not acceptable without written permission from the City's Risk Manager.
- C. 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.
- D. If any of the insurance policies are not renewed prior to expiration, payments to the CONTRACTOR 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 CONTRACTOR.
- E. All insurance policies, except Workers' Compensation 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.
- F. CONTRACTOR'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.
- G. 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 CONTRACTOR'S acts, errors, mistakes, omissions, work or service.
- H. 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 CONTRACTOR. CONTRACTOR 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 CONTRACTOR 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.

- I. 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.
- J. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the CONTRACTOR with reasonable promptness in accordance with the CONTRACTOR'S information and belief.
- K. 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 CONTRACTOR until such time as the CONTRACTOR shall furnish such additional security covering such claims as may be determined by the CITY.

1.2. Proof of Insurance – Certificates of Insurance

- A. Prior to commencing work or services under this Agreement, CONTRACTOR shall furnish to CITY Certificates of Insurance, issued by CONTRACTOR'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.
- B. 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.
- C. All Certificates of Insurance shall identify the policies in effect on behalf of CONTRACTOR, 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.
- D. REQUIRED 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 CONTRACTOR of any deficiencies in such policies and endorsements, and such receipt shall not relieve CONTRACTOR from, or be deemed a waiver of CITY'S right to insist on, strict fulfillment of CONTRACTOR'S obligations under this Agreement.

1.3. Coverage

- A. Such insurance shall protect CONTRACTOR from claims set forth below which may arise out of or result from the operations of CONTRACTOR under this Contract and for which CONTRACTOR may be legally liable, whether such operations be by the CONTRACTOR or by a SUBCONTRACTOR 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.
- B. Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- C. Claims for damages because of bodily injury, occupational sickness or disease, or death of the CONTRACTOR'S employees;
- D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONTRACTOR'S employees;
- E. Claims for damages insured by usual personal injury liability coverage;
- F. Claims for damages, other than to Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- G. 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.
- H. Claims for bodily injury or property damage arising out of completed operations;
- I. Claims involving contractual liability insurance applicable to the CONTRACTOR'S obligations under the Indemnification Agreement;
- J. Claims for injury or damages in connection with one's professional services;
- K. 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.

1.4. Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for not less than \$500,000 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 CONTRACTOR'S operations and products, and completed operations.

1.5. 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 CONTRACTORS, 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.

1.6. Automobile Liability

CONTRACTOR 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 CONTRACTOR'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).

1.7. Worker's Compensation and Employer's Liability

CONTRACTOR shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over CONTRACTOR'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, CONTRACTOR will require the SUBCONTRACTOR to provide Workers' Compensation and Employer's Liability to at least the same extent as required of CONTRACTOR.

**EXHIBIT D
ALTERNATE DISPUTE REQUIREMENTS**

1. **ALTERNATE DISPUTE RESOLUTION:** Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternate dispute resolution (ADR) process provided herein shall be the exclusive means for resolution of claims or disputes and other matters in question between the City and the CONTRACTOR arising out of, or relating to the Contract documents, interpretation of the Contract, or the performance of or the breach by any party thereto, including but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.
 - 1.1. **Notice.** CONTRACTOR shall submit written notice of any claim or dispute to the Contract Administrator within thirty (30) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as it occurs and not postponed until the end of the Contract nor lumped together with other pending claims.
 - 1.2. **Forfeiture.** Failure to submit a notice of any claim, dispute, or other issue within such thirty (30) days shall constitute CONTRACTOR'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONTRACTOR'S agreement and acceptance of the CITY'S position.
 - 1.3. **CITY Response.** The Contract Administrator will provide to CONTRACTOR a written response to any claim, request for clarification or dispute on or before thirty (30) days from receipt of CONTRACTOR'S written claim.
 - 1.4. **Appeal.** If CONTRACTOR disagrees with the response of the Contract Administrator, within fifteen days of the date of the response by the Contract Administrator, CONTRACTOR shall file with the Contract Administrator, written notice of appeal. The Contract Administrator shall provide copies of all relevant information concerning the Contract and claim or dispute to the Assistant Management Services Director who will determine the appeal. The Assistant Management Services Director may request additional information from either party, may hold an informal informational hearing or may make the determination based on the information provided. The Assistant Management Services Director shall make a final determination of the appeal and provide written notice to CONTRACTOR within sixty (60) days from the date of CONTRACTOR'S written notice of appeal.
 - 1.5. **Arbitration.** If CONTRACTOR is not satisfied with the determination of the Assistant Management Services Director, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes. If CONTRACTOR chooses not to accept the decision of the Assistant Management Services Director, CONTRACTOR shall notify the Contract Administrator in writing within ten (10) business days of receipt of the Assistant Management Services Director's decision of a request for arbitration. The CONTRACTOR shall post a cash bond with the Arbitrator in the amount of

\$5,000, or a greater amount as determined by the Arbitrator, that will defray the cost of the arbitration as set forth in paragraph M, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitrator.

- A. **Arbitration Panel:** The Arbitration Panel shall consist of the arbitrators selected by the parties involved in the dispute, (i.e., CITY will select one arbitrator, CONTRACTOR will select one arbitrator, and any other CONTRACTOR who has a contract with the CITY which contains this ADR provision and is a party to the same dispute will also select an arbitrator), and the foregoing arbitrators shall select a neutral Arbitrator who will hear the matter and make a final determination, as set forth herein.
- B. **Expedited Hearing:** The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Arbitrator to set an expedited hearing if circumstances justify it. The Arbitrator shall contact the parties and schedule the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than sixty (60) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitrator upon a showing of emergency circumstances.
- C. **Procedure:** The Arbitrator shall conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the Arbitrator a written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitrator shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Arbitrator, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Arbitrator.
- D. **Hearing Days:** To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.
- E. **Award:** The Arbitrator shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Contract and the laws of the State of Arizona.

- F. **Scope of Award:** The Arbitrator shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitrator shall also be without authority to issue an award against any individual party in excess of \$500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of \$50,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.
- G. **Jurisdiction:** The Arbitrator shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.
- H. **Entry of Judgment:** Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.
- I. **Severance and Joinder:** To reduce the possibility of inconsistent adjudications, the Arbitrator, may at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision, and the Arbitrator may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. The Arbitrator is not authorized to join to the proceeding parties not in privity with the CITY.
- J. **Appeal:** Any party may appeal errors of law by the Arbitrator if, but only if, the errors arise in an award in excess of \$100,000; the exercise by the Arbitrator of any powers contrary to or inconsistent with the Contract; or any of the grounds provided in A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.
- K. **Uniform Arbitration Act:** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 12-1501, et. seq.
- L. **Fees and Costs:** Each party shall bear its own fees and costs in connection with any informal hearing before the Assistant Management Services Director. All fees and costs associated with any arbitration before the Arbitrator, including without limitation, the Arbitrator's fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the nonprevailing party, except as provided for herein. The determination of prevailing and nonprevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitrator.

Equitable Litigation: Notwithstanding any other provision of ADR to the contrary, any party may petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to ongoing work pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitrator. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.

EXHIBIT E

Software License and Annual Support Agreement

SOFTWARE LICENSE AGREEMENT made this _____ day of _____, by and between Intellitime Systems Corporation, incorporated under the laws of the State of California, USA ("Licensor") and the City of Chandler, formed under the laws of the State of Arizona "Licensee").

Licensee desires to license certain software programs owned by Licensor for Licensee's own internal use, and Licensor is willing to grant Licensee such a license, subject to the terms and conditions of this Agreement.

In consideration of the license fees to be paid hereunder and for other good and valuable consideration, the parties agree as follows:

1. GRANT OF LICENSE . Licensor grants to Licensee and Licensee accepts, on the terms and conditions set forth herein, a nontransferable, nonexclusive right to use the software programs identified on Exhibit B ("Programs") and the accompanying end user documentation (the "Documentation"; the Programs and the Documentation are collectively referred to herein as the "Software"). Each copy of a Program licensed under this Agreement may only be installed and used on one server at a time, and the Program may only be accessed at any one time by the number of users for which Licensee has paid a license fee. Additional Software may be added to this Software License Agreement through additional Schedules approved by both Licensor and Licensee.

2. DELIVERY AND PAYMENT . Licensor shall supply the number of copies of each of the Software listed on Exhibit B and Licensor will invoice Licensee for the License Fees indicated on Exhibit B . License Fees are exclusive of shipping charges and any federal, state, provincial or local taxes, including any VAT or other withholdings, imposed on this transaction, the License Fees, or on Licensee's use or possession of the Software, all of which shall be paid by Licensee without deduction from the License Fees. Licensee agrees to pay any invoice in full within 10 days of receipt by wire transfer to Licensor's bank pursuant to the wiring instructions set forth on Exhibit B. All prices and payments are in U.S. dollars unless otherwise indicated.

3. USE OF THE SOFTWARE .

3.1. Restrictions on Use . The license granted by Licensor to Licensee to use the Software is subject to the following restrictions:

3.1.1 The Software may be used only by Licensee for its internal business purposes and only for the direct benefit of Licensee.

3.1.2 The Software may be used at any point in time only by the number of persons for whom a license fee has been paid, as specified on Exhibit B; all such use may only be by those persons using the Software for the benefit of Licensee in the course and scope of their employment. Licensee shall be provided with a security code to permit use of the Software by the number of users for whom a license fee has been paid.

3.1.3 Licensee shall use the Software only in its original form, and shall not modify, reverse compile, reverse engineer, disassemble, or translate the Software, except to the extent necessary to permit interoperability between the Software and other software programs, nor shall Licensee create any derivative works or otherwise use the Software except as specifically permitted in this Agreement.

3.1.4 Licensee shall not rent, lease, sublicense, allow access to, or transfer the Software to any other party, by operation of law or otherwise.

3.1.5 Licensee will not export or re-export the Software without first having obtained the appropriate United States or foreign government export licenses; provided, however, that in no event may Licensee export the Software to any country to which export is prohibited by the United States, or to any country which is not a member of either the Universal Copyright Convention or the Berne Convention (a "Member Country"); provided, that any export to a Member Country is only permitted if such Member Country recognizes copyright protection for software.

3.2. Security Devices. Upon delivery of the Software, Licensor will provide to Licensee one or more authorization codes, which codes will allow the Software to be activated and to allow as many users as for which Licensee has purchased licenses to use the Software. Upon payment of additional license fees, Licensee shall be provided with one or more additional authorization codes that will allow for additional users. Licensee will not attempt to defeat, modify, copy, work around or duplicate any security devices protecting the Software.

3.3. Proprietary Rights. The Software is copyrighted material under the laws of the United States and international treaty provisions. Notwithstanding the copyright, the Software contains trade secrets and confidential information of Licensor. Licensee may make a reasonable number of copies in machine-readable form of the Program which is part of the Software, provided that the copies are used only for back-up or archival purposes and that all copies contain the original copyright notice and all proprietary legends. In addition, Licensee may make the same number of copies of the Documentation as the number of concurrent users for which Licensee has paid a license fee; provided that all copies of the Documentation contain the original copyright notice and all proprietary legends. No other copies may be made of the Software, the Documentation or any part thereof, except as specifically permitted herein.

3.4. Protection of Software. Licensee acknowledges that Licensor represents that the Software and all copies of it, regardless of the form or media in which the original or copies may exist, are the sole and exclusive property of Licensor. Licensee further acknowledges that Licensor represents that the Software, including the source and object codes, logic and structure, constitute valuable trade secrets of Licensor. Licensee agrees to secure and protect the Software consistent with the maintenance of Licensor's rights in the Software, as set forth in this Agreement. Except as expressly permitted herein, Licensee agrees not to disclose or otherwise make available any part of the Software to any third party on any basis. By accepting this License, Licensee does not become the owner of the Software; Licensor retains all right, title and interest in and to the Software. This section shall survive any termination of this Agreement.

4. TERM OF AGREEMENT .

4.1. Term and Termination. This Agreement is effective from the date on which Licensor accepts it after execution by Licensee, and shall remain in effect until terminated. Licensee may terminate this Agreement: (a) at any time upon written notice to Licensor or (b) thirty (30) days after written notice to Licensor in the event that Licensor breaches any provision of this Agreement and has not cured such breach within the thirty (30) day period. Licensor may terminate this Agreement: (a) at any time upon written notice to Licensee in the event of any breach of Section 3 hereof or (b) thirty (30) days after written notice to Licensee in the event that Licensee breaches any provision of this Agreement other than Section 3 hereof and has not cured such breach within the thirty (30) day period.

4.2. Actions to be Taken Upon Termination. Upon termination Licensee shall immediately discontinue use of and return all complete or partial copies of Software, in whatever form or media, and shall delete the Software from its computer libraries.

4.3. Effect of Termination. Termination of this Agreement shall not bar Licensor from seeking any other remedy it may have available against Licensee for breach of the Agreement. Licensee shall hold Licensor harmless for any loss or other consequences of a termination of the License under this Article 4.

5. WARRANTY.

5.1. Limited Warranty. Licensor warrants that the Programs licensed to Licensee hereunder, if properly installed and used, shall materially conform to the specifications set forth in the accompanying Documentation for a period of three (3) months from the date of shipment of the Software to Licensee (hereinafter the "Warranty Period"). Licensee shall promptly notify Licensor in writing upon the discovery of any non-conformance. Licensor shall correct any such non-conformance of which it has been properly notified within the Warranty Period, through the means it determines to be most appropriate, whether by telephone instructions, the issuance of updating documentation, corrective code, or other methods. Any replacement of Software shall be effected only after the return of the non-conforming Software to Licensor.

5.2. Notwithstanding the warranty provisions above, Licensor shall have no warranty obligations with respect to any part or parts of the Software which have been damaged in transit or by improper installation or operation, or by misuse, abuse or negligent use or repair or alteration or improper storage or which have been damaged by use which does not conform to the specific or general instructions of Licensor or to the provisions of the Documentation, or if Licensee or any third party has modified or attempted to modify the Software or if the damage has occurred due to causes external to the Software, or if the Software has been subjected to an extreme power surge or electromagnetic field, whether or not through the fault of Licensee, or if Licensee has refused to implement software changes recommended by Licensor.

5.3. THE WARRANTY SET FORTH ABOVE SHALL BE EXCLUSIVE AND IN LIEU OF ALL OTHER LIABILITIES, OBLIGATIONS, CONDITIONS AND/OR WARRANTIES, EXPRESSED OR IMPLIED (INCLUDING BUT NOT LIMITED TO ANY IMPLIED AND/OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY,

NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY IMPLIED AND/OR STATUTORY WARRANTIES ARISING FROM THE COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE), AND LICENSEE HEREBY WAIVES ALL OTHER RIGHTS, OBLIGATIONS AND/OR WARRANTIES AND ASSUMES ALL RISKS AND LIABILITIES IN RESPECT THEREOF. LICENSOR MAKES NO WARRANTY THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR FREE OR WITHOUT INTERRUPTION. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE SHALL OPERATE WITH ANY HARDWARE OR SOFTWARE OTHER THAN AS SPECIFIED IN THE DOCUMENTATION

6. LIMITATION OF LIABILITY.

IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY LOSS OF OR DAMAGE TO REVENUES, PROFITS OR GOODWILL OR OTHER SPECIAL, INCIDENTAL, INDIRECT AND CONSEQUENTIAL DAMAGES OF ANY KIND, RESULTING FROM ITS PERFORMANCE OR FAILURE TO PERFORM PURSUANT TO THE TERMS OF THIS AGREEMENT OR ANY OF THE ATTACHMENTS HERETO, OR RESULTING FROM THE FURNISHING, PERFORMANCE, OR USE OR LOSS OF ANY SOFTWARE OR OTHER MATERIALS DELIVERED TO LICENSEE HEREUNDER, INCLUDING WITHOUT LIMITATION ANY INTERRUPTION OF BUSINESS, WHETHER RESULTING FROM BREACH OF CONTRACT OR BREACH OF WARRANTY OR OTHERWISE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Notwithstanding anything herein to the contrary, the maximum aggregate amount of money damages for which Licensor may be liable to Licensee under this Agreement, resulting from any cause whatsoever, shall be limited to the amounts actually paid by Licensee to Licensor under this Agreement.

6.1 Patent and Copyright Infringement - To the extent of any limited liability expressed in the contract, IntelliTime Systems Corporation agrees to indemnify, defend, and hold harmless, not excluding the Licensee' right to participate, the Licensee from any and all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorney's fees and expenses, arising out of any claims of infringement by the contractor of any United States Patent or trade secret, or any copyright, trademark, service mark, trade name, or similar proprietary rights conferred by common law or by any law of the United States or any state said to have occurred because of systems provided or work performed by IntelliTime Systems Corporation, and, IntelliTime System Corporation shall do what is necessary to render the subject matter non-infringing in order that the Licensee may continue its use without interruption or otherwise reimburse all consideration paid by the Licensee to IntelliTime Systems Corporation.

7. SUPPORT AND MAINTENANCE TERMS AND CONDITIONS.

7.1. Provision of Support and Maintenance . Licensee may elect to purchase support and maintenance for the Software as described in this Section 7 by paying Licensor the applicable Maintenance Fees described in herein.

7.2. Term of Maintenance . Licensor agrees to provide Maintenance (as defined herein) to Licensee pursuant to the terms and conditions set forth herein provided that Licensee pays the Maintenance Fee for each Software product for which Maintenance is desired

as further described in Section 7.6 below. The remaining portion of the calendar year after the effective date of this Agreement is the first "Maintenance Period" hereunder; each one-year period thereafter beginning on January 1 during the term of this Agreement for which Licensee has paid the applicable Maintenance Fee is a subsequent "Maintenance Period."

7.3. Maintenance Services. In exchange for the Maintenance Fee, Licensor agrees to provide to Licensee during the term of this Agreement support and maintenance (collectively "Maintenance") as follows:

7.3.1. Support - - Licensor will provide telephone support to Licensee for current versions of the Software between the hours of 8:00 a.m. and 5:00 p.m. MST, Monday through Friday, excluding holidays. Licensor will investigate all questions and problems of Licensee promptly. Licensee agrees to provide adequate information to Licensor to assist in the investigation and to confirm that any problems have been resolved.

7.3.2. Maintenance -- Licensor will supply to Licensee, at no additional charge, any improvements, upgrades, or modifications to the Software that Licensor makes generally available. Any such improvements, upgrades, or modifications shall become part of the Software for all purposes of this Agreement.

The professional service hours required to install the software and/or new features provided under this section is not included in the annual support maintenance and support fee. These charges will be quoted in advance and approved by the customer's project manager before any billable work is undertaken in this regard.

7.3.2 Licensee acknowledges and agrees that the Maintenance to be provided by Licensor hereunder is limited to the most current version of the Software and the immediately preceding version.

7.4. Training. Licensee may purchase training from Licensor at Licensor's then current fees for training. The date and time of the training shall be scheduled by Licensor. All travel, living, and other out-of-pocket expenses incurred by Licensee's employees will be paid by Licensee.

7.5. Exclusions. Licensor's obligation to provide Maintenance is contingent upon proper use of the Software. Moreover, Licensor shall be under no obligation to provide Maintenance should such services be required due to (a) damage occurring in transit; (b) improper installation or operation by Licensee; (c) misuse, abuse or negligent use, repair, alteration or improper storage or any use which does not conform to the specific or general instructions of Licensor or to the provisions of the Documentation; (d) any modification or attempted modification of the Software by Licensee or any third party; (e) causes external to the Software or if the Software has been subjected to an extreme power surge or electromagnetic field, whether or not through the fault of Licensee; or (f) Licensee's failure or refusal to implement software changes recommended by Licensor.

7.6. Consideration. In payment of the services to be provided by Licensor hereunder, Licensee shall pay Licensor on an annual basis 20% of the then current license fee for each Software program listed on Exhibit B of this Agreement or such of those Software programs for which Licensee wishes to continue Maintenance ("Maintenance Fee").

Licensor shall invoice Licensee for Maintenance Fees annually, unless either party terminates Maintenance for a subsequent Maintenance Period as provided herein. In addition, Maintenance shall be discontinued for any Maintenance Period for which Licensee fails to pay Licensor's invoice within ten (10) days after the date of the invoice. All payments to Licensor under this Agreement shall be payable in the U.S. dollars and shall be net of any and all taxes, withholdings, set-offs or deductions of any nature. In the event that, by prevailing laws of the territory in which Licensee operates, any withholding or other tax may become necessary, Licensee shall pay on its own account such taxes directly to the tax authorities of the territory.

7.7. Termination. In addition to the rights of Licensor to terminate Maintenance for Licensee's failure to pay Maintenance Fees when due, either party may terminate Maintenance hereunder by so notifying the other party at least thirty (30) days prior to the start of any Maintenance Period. Licensor may terminate the Maintenance for any Software provided it notifies Licensee of such termination at least ninety (90) days prior to such termination and it refunds to Licensee a pro-rated portion of the prepaid Maintenance Fee for such Software. Licensor may terminate Maintenance without notice or refund if this Agreement is terminated. Termination of Maintenance hereunder shall not in and of itself terminate this Agreement.

8. MISCELLANEOUS PROVISIONS .

8.1. Assignment. Neither this Agreement nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferrable by Licensee, and any purported assignment or transfer shall be null and void.

8.2. Severability. If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this Agreement will not be affected. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY OR LIMITED WARRANTY IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH.

8.3 Breach. No consent by either party to, or waiver of, a breach of this Agreement by the other party, whether express or implied, shall constitute a consent to, waiver of, or excuse for any other different, continuing, or subsequent breach.

8.4 Escrow for Source Code. Deposited materials shall include the source code, compilers, programmer notes, flow charts, utility programs and documentation.

8.4.1. Contractor shall re-deposit upgrades, updates and/or new releases within thirty (30) days of release of any upgrade, update or new release and notify City in writing.

8.4.2. City shall have verification rights.

8.4.3. City reserves the right and Contractor agrees that it will release all City documents upon demand from the City in the following situations: Licensor fails

to carry out obligations imposed in the Software License Agreement; Licensor fails to support/maintain the system; Licensor fails to continue to do business in the ordinary course; Licensor files bankruptcy;

- 8.4.4. The escrow agent/agency must verify that they have received the data. The agent/agency is under no obligation to verify the data for completeness, accuracy, or functionality. If the City chooses to verify (i.e., test and operate) the data for functionality, the City retains the right to enter into such agreement at the City's

EXHIBIT F

EXCHANGE OF DATA BETWEEN UNIX/ORACLE AND INTELLITIME VTI

1. The CONTACTOR shall provide a table/view within the VTI database on the SQL Server 2005 cluster where employee HR information to be imported into VTI will be stored. This table will contain information like Employee Number, Employee Name, Employee leave balances, etc. The exact fields will be decided during the discovery.

1.1 The CONTACTOR shall configure the existing VTI employee import to read from the above table/view, instead of a text file. The import is initiated by a VTI user through the browser.

1.2 The CITY OF CHANDLER shall implement an integration package transferring data from Oracle HR to the above mentioned table/view. The CONTRACTOR shall assist with testing and advice.

2. The CONTRACTOR shall provide a table/view within the VTI database on the SQL Server 2005 cluster where the exported time transactions are stored. This table will contain information like Employee Number, pay code used, hours worked, etc. The exact fields will be decided during the discovery.

2.1 The CONTRACTOR shall configure the existing VTI export to write to the above table/view, instead of a text file. The upload is initiated by a VTI user through the browser.

2.2 The CITY OF CHANDLER shall implement an integration package transferring data from the above-mentioned view/table in VTI to Oracle Payroll. The CONTRACTOR shall assist with testing and advice.

2.3 VTI provides the capability for multiple exports. This is utilized when different departments are exported at different times. All the data in this table/view will be overwritten upon each upload. The integration package has to be able to transfer the data from the table/view to Oracle Payroll before the next export is started.

Desired IntelliTime Solution for the City of Chandler

