



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

46

2. Council Meeting Date:
June 14, 2007

TO: MAYOR & COUNCIL

3. Date Prepared: May 30, 2007

THROUGH: CITY MANAGER

4. Requesting Department: City Manager

5. **SUBJECT:** Approve an agreement for consultant services with Mountaineer Consulting in an amount not to exceed \$40,000

6. **RECOMMENDATION:** Recommend an agreement for consultant services with Mountaineer Consulting in an amount not to exceed \$40,000

7. **HISTORICAL BACKGROUND/DISCUSSION:** The City of Chandler GIS group requires assistance with testing the City's GIS applications with the new 9.2 version of ESRI software. It is expected that due to changes and enhancements by ESRI that the City's applications will need adjustments made to continue to operate with the new version and to take advantage of the additional functionality provided by ESRI. Mountaineer Consulting employees are very familiar with GIS applications at the City of Chandler and experience with the new version of ESRI products.

Mountaineer Consulting will also assist with enhancements to the City of Chandler GIS applications and make recommendations for future development.

8. **EVALUATION PROCESS:** Mountaineer Consulting was the original developer of the City's GIS applications and it was deemed in the best interest of the City to use the same consultant to perform these modifications and enhancements.

9. **FINANCIAL IMPLICATIONS:** Funds for this project are available in 101.1200.0000.5219 General Funds, IT Applications, Other Professional Services \$40,000.

10. **PROPOSED MOTION:** Move to approve an agreement for consultant services with Mountaineer Consulting in an amount not to exceed \$40,000.

APPROVALS

11. Requesting Department

Rick Taylor, Applications Manager

12. Department Head

Patrick Hait, Acting Chief Information Officer

13. Procurement Officer

Carolee Stees, CPPB

14. City Manager

W. Mark Pentz

CITY OF CHANDLER
PROFESSIONAL SERVICES AGREEMENT

Project Name: ArcGIS 9.1 to ArcGIS 9.2

THIS AGREEMENT is made and entered into this 14 day of June, 2007, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Mountaineer Consulting, 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 Project 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 A 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 forty thousand (\$40,000) in accordance with the fee schedule attached hereto as Exhibit B and incorporated herein by reference.

5. TERM: Following execution of this Agreement by CITY, CONSULTANT shall commence hourly work as requested by the CITY. This contract shall expire on March 31, 2008.

6. TERMINATION: CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with fifteen (15) days written notice. In the event of such termination, CONSULTANT shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subconsultants to cease such work. As compensation in full for services performed to the date of such termination, the

CONSULTANT shall receive a fee for the percentage of services actually completed. This contract is also subject to termination pursuant to ARS Section 38-511.

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 C attached hereto and made a part hereof by reference.
9. **NON-DISCLOSURE:** There shall be no disclosure of confidential information outlined in Exhibit D.
10. **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.
11. **ARIZONA LAW:** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
12. **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:
 Jeff Pellegrin, President
 Mountaineer Consulting, inc.
 P.O. Box 24801
 Chandler, AZ 85285-4801
 480.753.0140

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 day of _____ 2007.
CITY OF CHANDLER

Mayor Date

CONSULTANT

By: Jeff Pellegrin
Title: PRESIDENT

APPROVE AS TO FORM

City Attorney

ATTEST: If Corporation

Colleen Pellegrin
Secretary

ATTEST:

City Clerk

SEAL

EXHIBIT A SCOPE OF WORK

Consultant shall assist in making the transition from ArcGIS 9.1 to ArcGIS 9.2

Consultant shall provide the following assistance:

- Strategize, train, support services in the migration of ArcIMS from 9.1 to 9.2, on the new GISNET server, to include not only the new software, but also migrating the existing 9.1 sites to 9.2.
- Strategize, train, support in the migration of ArcSDE from 9.1 to 9.2, to include support for testing & code changes of LIS Maintenance app to work with 9.2.
- Code changes to custom tools that are run as scheduled tasks on GISNET (or even those that run on a desktop like the AsBuilt Data Entry tool), to include code changes (possibly from VB6 to NET).
- Strategize, train, support in the migration of ArcGIS Server from 9.1 to 9.2, and document testing steps and results for future testing direction by the City.
- Advise and assist City staff in the installation and implementation of ArcGIS Image Server.
- Advise and assist City staff as much as time allows with LIS migration project.

Optional:

Other GIS consultant services not specifically listed above.

**EXHIBIT B
FEE SCHEDULE**

CONSULTANT shall be paid a total not to exceed \$40,000 including travel expenses. Consultant shall bill the City at an hourly rate for consultant services. The hourly rates are \$110 for a Programmer and \$145 for a Principal Consultant.

No Consultant travel expenses are allowed for remote assess work or consultant travel less than 60 mile radius from the City. Reimbursable expenses include travel cost for airfare (coach), car rental (economy) and parking and fees and are paid at face value. Travel, per diem and all expenses shall be invoiced and reimbursed at actual cost not to exceed the GSA daily rates found at this website:

http://www.gsa.gov/Portal/gsa/ep/contentView.do?queryYear=2007&contentType=GSA_BASIC&contentId=17943&queryState=Arizona&noc=T

CONSULTANT shall provide copies of receipts for reimbursable expenses.

EXHIBIT C
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 subConsultant 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 \$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 \$1,000,000 (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 \$1,500,000 aggregate.

C.2.3 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 \$500,000 for each accident, \$500,000 disease coverage for each employee, and \$500,000 disease policy limit.

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

C.2.4. Professional Liability N/A

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.

EXHIBIT D

Non-Disclosure

In order to protect certain Confidential Information (as defined below) which may be disclosed between the CITY, the state of Arizona (including its divisions or departments as part of the local municipal government offices) and CONSULTANT agree that;

1. Discloser(s) of Confidential Information under is: the CITY (as defined above)

Recipient(s) of Confidential Information hereunder is CONSULTANT and its representative.
2. Recipient(s) are participating in work for the Discloser(s) and which may include systems, Discloser(s) system shares with other entities, Discloser(s) hardware systems, etc. (Projects). In the course of the Projects, the company/Contractor or Representatives thereof may review or obtain access to confidential information on or about Discloser(s).
3. By definition, the term Confidential Information as used herein shall also include any and all information discussed between the Discloser(s) and Recipient(s). Recipient(s) hereby agrees not to disclose to others, either directly or through any third party, Confidential Information, regardless of the manner in which the Confidential Information was communicated to or received by the Recipient(s), whether oral, written, digital or otherwise, and regardless of whether the Confidential Information was marked as confidential or proprietary.
4. The term confidential Information means nonpublic information concerning the Discloser(s) that Company/Contractor or Representatives obtain in the course of performing services, or doing tasks or work on Projects. Confidential Information may be provided by Discloser(s) to CONSULTANT or its Representatives, or may be contained or reflected in application technology roadmaps, data, analyses, reports, compilations or other documents prepared by CONSULTANT or its Representatives or others. Confidential information includes, without limitation, reports, interpretations, financial statements and reports, forecasts and projections, budgets, records, information relating to released and unreleased Discloser(s) products, the marketing or promotion of any Discloser(s) products, Discloser(s)'s business policies or practices, Discloser(s)'s business and product strategies, other proprietary and secret information of Discloser(s), and information received by others that Discloser(s) is obligated to treat as confidential. Confidential information also includes, without limitation, all tangible materials containing Confidential Information such as written or printed documents, graphs, analyses, compilations, studies, and electronic data and information originating, stored, and transferred from or to Discloser(s) electronic devices such as computer media whether machine or user readable.
5. CONSULTANT agrees Confidential Information under this Agreement is received for the Projects only and shall not be used for any other purpose whatsoever. CONSULTANT also agrees that the Confidential Information will be treated by it confidentially and will not be disclosed to any other person or entity; provided, however, that (1) any such Confidential Information may be disclosed to those of the Company's/Contractors Representatives who need to know such information for the purpose of the Projects and who have agreed in writing to be bound by the terms of the Agreement to the same extent that the CONSULTANT is bound (2) any disclosure or use of such Confidential Information may be made to which Discloser(s) consents in writing, and (3) CONSULTANT shall give Discloser(s) reasonable notice prior to such disclosure.

- CONSULTANT agrees that, as to the Confidential Information, it shall use the same degree of care as for its own information or like importance, but at least use reasonable care in safeguarding against disclosure of the Confidential Information.
6. This agreement covers Confidential Information, which is disclosed between the effective date and term of the agreement
 7. Company's/Contractor's obligations regarding Confidential Information received under the Agreement expires 3 years from the date of disclosure.
 8. This Agreement imposes no obligation upon Recipient or its Representatives with respect to Confidential Information disclosed under this Agreement (1) is now available or becomes available to the public without breach of this Agreement (2) is explicitly approved for release by written authorization or Discloser(s), (3) is lawfully obtained from a third part or parties without a duty of Confidentiality, (4) is disclosed to a third party by Discloser(s) without duty of Confidentiality, (5) is known to Recipient prior to such disclosure, or (6) is at any time developed by Recipient independently of any such disclosure(s) from Discloser(s).
 9. Recipient agrees that all Confidential Information received is and will remain the property of Discloser(s) and that such shall not be copied or reproduced without the express permission of the Discloser(s), except for such copies as many be absolutely necessary in order to perform work for the benefit of the Discloser(s) and in connection to the Projects. After the Projects work, services, and tasks are completed and upon written request, recipients will, at Discloser(s)'s option, either return all the copies of portions of the Confidential Information, or destroy all Confidential Information and certify that by written memorandum that all such Confidential Information has been destroyed.
 10. Recipients agree it will not reverse engineer, decompile or disassemble any software disclosed to Recipient.
 11. Recipient agrees it will not in any form export, re-export, resell, ship or divert or cause to be exported, re-exported, resold, shipped or diverted, directly or indirectly, any product or technical data or software furnished hereunder or the direct product of such technical data or software to any country for which the United State Government or any agency thereof at the time of export and re-export requires and export license or other governmental approval without the first obtaining such license or approval from the United States Government agency thereof tasked with granting such license and or approval.
 12. Recipient agrees it will notify Discloser(s) immediately upon discovery of any unauthorized use or disclosure of Confidential Information, or any other breach of this Agreement by Recipient or its Representatives, an will cooperate, and will use its best efforts to cause its Representatives to cooperate, with Discloser(s) in every reasonable way to help Discloser(s) regain possession of the Confidential Information and prevent further unauthorized use.
 13. Recipient agrees that for a period of 2 years from the date of this Agreement, neither it nor any of its subsidiaries or affiliates or Representatives will, without the prior written consent of Discloser(s), directly or indirectly solicit to employ or employ any officer or employee or Discloser(s) with whom Recipient or any of its Representatives come into contact during the Projects or who are identified in any of the Confidential Information.
 14. The Recipient agrees that in addition to all other remedies the Discloser(s) shall be entitled to specific performance and injunctive or other equitable relief as a remedy for

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

CONSULTANT

Mayor Date

By: _____
Title: _____

APPROVE AS TO FORM

ATTEST: If Corporation

City Attorney
ATTEST: 

Secretary

City Clerk
SEAL

AMENDMENT NUMBER ONE
TO AGREEMENT BETWEEN THE CITY OF CHANDLER AND PROGRESS SOFTWARE
CORPORATION FOR LICENSING AND SUPPORT

This Amendment #ONE to that certain Agreement Between the City Of Chandler and PROGRESS SOFTWARE CORPORATION for Software Maintenance dated July 27, 2006 between the City of Chandler (CITY) and Progress Software Corporation is entered into this _____ day of May, 2007.

NOW THEREFORE, the parties agree as follows:

1. The term of this agreement is amended to extend the term of the Agreement from July 1, 2007 through June 30, 2008.
2. All other terms and conditions of the above referenced Agreement shall remain unchanged and in full force and effect.

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

CITY OF CHANDLER:

PROGRESS SOFTWARE CORPORATION

By: _____
Mayor

By: _____
Title: _____

APPROVED AS TO FORM:

City Attorney *JLM*

ATTEST: (If corporation)

ATTEST:

City Clerk

Secretary

WITNESS: (If individual or Partnership)

[SEAL]