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PURCHASING ITEM FOR COUNCIL AGENDA

1. Agenda Item Number: 19

2. Council Meeting Date: March 27, 2008

TO: **MAYOR & COUNCIL**

3. Date Prepared: February 22, 2008

THROUGH: **CITY MANAGER**

4. Requesting Department: City Manager

5. SUBJECT: Approval of an agreement for an Information Technology Disaster Recovery Assessment with Marsh USA, Inc. in an amount not to exceed $54,500.

6. RECOMMENDATION: Recommend approval of an agreement for an Information Technology Disaster Recovery Assessment with Marsh USA, Inc. in an amount not to exceed $54,500.

7. HISTORICAL BACKGROUND/DISCUSSION: The Disaster Recovery Assessment will establish the requirements for improvement of crisis response and business continuity strategies for the City. The purpose is to identify the effect of different external and internal impacts upon the various departments of the City in times of crisis. It will document which departmental functions will be most affected by an incident and what effect it will have upon the City as a whole. The assessment will encompass strategies on how the organization must respond and manage natural and man-made disasters to continue operations with minimal impact to its citizens. The assessment will establish an ongoing effort to ensure that there are contracts, agreements and business continuity plans in place to rebuild and/or replace critical system and/or business operations. The IT Oversight Committee approved this study.

8. EVALUATION PROCESS: Marsh USA currently provides broker services to the City of Chandler and can offer a citywide disaster recovery plan that is comprehensive and will include integration of emergency response, crisis management, continuity of operations, IT disaster recovery, supply chain, security, and claims management and will result in each city department having its own business continuity plan. Because Marsh USA is experienced in working with municipalities and assessing potential risks that could negatively impact citizens, it is in the best interest of the city to award an agreement to Marsh USA.

9. FINANCIAL IMPLICATIONS: Funds for this project are available in 101.1290.0000.5219.6IT032 General Funds, Non-Departmental, Other Professional Services, Disaster Recovery Phase 1 $54,500.

10. PROPOSED MOTION: Move to approve an Information Technology Disaster Recovery Assessment with Marsh USA, Inc. in an amount not to exceed $54,500.

APPROVALS

11. Requesting Department Juan Padilla, IT Project Manager	**12. Department Head** Patrick Hait, Acting Chief Information Officer
13. Procurement Officer Carolee Stees, CPPB	**14. City Manager** W. Mark Pentz

CC Form 10 - 02/95

CITY OF CHANDLER
SERVICES AGREEMENT

PROJECT NAME: INFORMATION TECHNOLOGY DISASTER RECOVERY – CAPABILITIES ASSESSMENT

THIS AGREEMENT is made and entered into this day of March, 2008, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "CITY", and Marsh USA, Inc., hereinafter referred to as "CONSULTANT".

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. CONSULTANT shall act under the authority and approval of IT Project Manager or designee, to provide the services required by this Agreement.

1.2. The 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 perform a business impact analysis study all as more specifically set forth in the Scope of Work, labeled Exhibit A, attached hereto and made a part hereof by reference.

3. ACCEPTANCE AND DOCUMENTATION: Each task shall be reviewed and approved by the IT Project Manager or designee to determine acceptable completion.

4. FEE SCHEDULE: CITY shall pay to CONSULTANT an amount not to exceed Fifty-four Thousand Five Hundred Dollars ($54,500) for the work, which sum shall include all costs or expenses incurred by CONSULTANT payable as set forth in Exhibit B, attached hereto and made a part hereof by reference.

5. TERM: The work must be completed within six (6) months from the Notice to Proceed.

6. TERMINATION

6.1. Termination for Convenience: CITY reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) 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 SUBCONTRACTORS 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 performed. This fee shall be in the amount to be mutually agreed upon by the CONSULTANT 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 CONSULTANT'S compensation shall be based upon such determination and CONSULTANT'S fee schedule included herein.

6.2. Termination for Cause: CITY may, upon written notice, terminate this Agreement for CONSULTANT'S failure to comply with the terms of this Agreement.

7. GENERAL TERMS

7.1. **Entire Agreement:** This Agreement, including Exhibits A, B and C 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 or each party.

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

7.3. **Assignment:** Services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the CITY.

8. CONFLICT OF INTEREST

8.1. **No Kickback:** CONSULTANT 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 CONSULTANT'S proposal to the CITY.

8.2. **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'S departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a CONSULTANT to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from the CITY is received by all other parties to the Agreement, unless the notice specifies a later time (A.R.S. §38-511).

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

9. **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
480-782-2410 Fax

In the case of CONSULTANT:
Marsh USA, Inc.
Tony Adame
3131 E. Camelback Road #400
Phoenix, AZ 85016
949-299-5962
949-399-5972 Fax

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.

10. 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.

11. TAXES: CONSULTANT shall be solely responsible for any and all tax obligations, which may result out of the CONSULTANT'S performance of this Agreement. The CITY shall have no obligation to pay any amounts for taxes, of any type, incurred by the CONSULTANT.

12. SUBCONTRACTORS: CONSULTANT shall not enter into any Subcontract under this Agreement for the performance of this Agreement without the advance written approval of CITY. The subcontract shall incorporate by reference the terms and conditions of this Agreement.

13. INDEMNIFICATION AND INSURANCE

13.1. **Indemnification**

The Consultant agrees to indemnify, defend, and hold 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, to the extent resulting from the negligent performance of the Consultant for the work to be performed hereunder.

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.

In no event shall either party to this Agreement be liable for any indirect, special, incidental, consequential or punitive damages or for any lost profits or other economic loss relating to, arising out of or in connection with this Agreement or the services provided hereunder. In any event, Consultant's liability if any, relating to or arising out of this Agreement or the services rendered hereunder shall not exceed the total compensation paid to Consultant for such services hereunder.

13.2. Insurance Representations and Requirements:

A. 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 (rating not applicable to Professional Liability).

B. Except for Professional Liability, 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 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.

E. All insurance policies, except Professional Liability and Workers' Compensation required by this Agreement, and self-insured retention or deductible portions, shall name, to the fullest extent permitted by law for liability arising out of CONSULTANT'S performance of this contract, the City of Chandler, its representatives, officers, directors, officials and employees as Additional Insureds.

F. CONSULTANT'S insurance (except for Professional Liability and Workers Compensation) 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 losses arising solely from CONSULTANT'S provision of services under this contract and covered by the described insurance.

G. The insurance policies, except Professional Liability and Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its representatives, officers, directors, officials and employees for any claims arising out of CONSULTANT'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 CONSULTANT. CONSULTANT shall be solely responsible for the deductible and/or self-insured retention.

I. All policies and certificates shall provide that the Insurer or CONSULTANT will endeavor to give at least thirty (30) days prior written notice to CITY of any material modification or cancellation of the coverage afforded under such polices.

13.3. Proof of Insurance – Certificates of Insurance

A. Prior to commencing work or services under this Agreement, CONSULTANT shall furnish to CITY Certificates of Insurance 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 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.

13.4. Coverage

A. 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 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 CONSULTANT'S employees;

D. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the CONSULTANT'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 CONSULTANT'S obligations under the Indemnification Agreement;

J. Claims for injury or damages in connection with one's professional services;

13.5. Commercial General Liability - Minimum Coverage Limits.

The Commercial General Liability insurance required herein shall be written for $1,000,000 limits of liability or ten percent (10%) of the Contract Price, whichever coverage is greater. Any combination between general liability and excess general liability alone amounting to a minimum of $1,000,000 per occurrence (or 10% per occurrence) and an aggregate of $2,000,000 (or 20% whichever is greater) in coverage will be acceptable. The Commercial General Liability shall include CITY as an additional by blanket endorsement for its vicarious liability arising from CONSULTANT'S provision of services hereunder and shall include coverage for CONSULTANT'S operations and products, and completed operations, contractual liability, premises operations.

13.6. Automobile Liability

CONSULTANT shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of $1,000,000 each occurrence with respect to any owned, hired, and non-owned vehicles assigned to or used in performance of the CONSULTANT'S work. Coverage shall be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof).

13.7. Worker's Compensation and Employer's Liability

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

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

13.7. Professional Liability (Errors and Omissions)
CONSULTANT shall maintain Professional Liability insurance covering acts, errors, mistakes and omissions arising out of work or services performed by CONSULTANT, or any person employed by CONSULTANT, with a claims made policy limit of $1,000,000.

14. SEVERABILITY AND AUTHORITY

14.1. **Severability:** If any term or provision of this Agreement shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted.

14.2. **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, understand it, and agrees to be bound by it.

15. NO THIRD PARTY BENEFITS

The parties hereto mutually agree that this Agreement is intended by them to be solely for the benefit of the parties hereto and that no third parties may rely on any reports, analysis or other material provided by Marsh or shall obtain any direct or indirect benefits from the Agreement, have any claim or be entitled to any remedy under this Agreement or otherwise in any way be regarded as third party beneficiaries under this Agreement.

16. LIMITATION ON WARRANTIES:

THIS IS A SERVICES ENGAGEMENT. CONSULTANT WARRANTS THAT IT WILL PERFORM SERVICES HEREUNDER IN GOOD FAITH CONSISTENT WITH THE STANDARD OF CARE OF SIMILAR CONSULTANTS PERFORMING SIMILAR SERVICES. CONSULTANT DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED.

ALL CONSULTING ACTIVITIES PERFORMED BY CONSULTANT ARE ADVISORY IN NATURE. ALL REPORTS WILL BE BASED UPON CONDITIONS OBSERVED AND INFORMATION SUPPLIED BY CITY. CONSULTANT DOES NOT GUARANTEE OR WARRANT THE SAFETY OF ANY CITY'S PROPERTIES OR OPERATIONS OR THAT CITY OR ANY SUCH PROPERTIES OR OPERATIONS ARE IN COMPLIANCE WITH FEDERAL, STATE OR LOCAL LAWS, CODES, STATUTES, ORDINANCES, STANDARDS OR RECOMMENDATIONS.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this day of March 2008.

CITY OF CHANDLER

_____

MAYOR Date

CONSULTANT

By: _____

Title: _____

APPROVE AS TO FORM

_____

City Attorney

ATTEST: If Corporation

_____

Secretary

ATTEST:

_____

City Clerk

SEAL

14.2. **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, understand it, and agrees to be bound by it.

15. NO THIRD PARTY BENEFITS

The parties hereto mutually agree that this Agreement is intended by them to be solely for the benefit of the parties hereto and that no third parties may rely on any reports, analysis or other material provided by Marsh or shall obtain any direct or indirect benefits from the Agreement, have any claim or be entitled to any remedy under this Agreement or otherwise in any way be regarded as third party beneficiaries under this Agreement.

16. LIMITATION ON WARRANTIES:

THIS IS A SERVICES ENGAGEMENT. CONSULTANT WARRANTS THAT IT WILL PERFORM SERVICES HEREUNDER IN GOOD FAITH CONSISTENT WITH THE STANDARD OF CARE OF SIMILAR CONSULTANTS PERFORMING SIMILAR SERVICES. CONSULTANT DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED.

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IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this day of March 2008.

CITY OF CHANDLER

MAYOR Date

APPROVE AS TO FORM

City Attorney

ATTEST:

City Clerk

SEAL

CONSULTANT

By:

Title: MANAGING DIRECTOR

ATTEST: If Corporation

Secretary

EXHIBIT A
SCOPE OF WORK

1.1. The Consultant shall review general recovery capabilities within seven (7) groups within the City's Information Technology (IT) Department (TAOD, NOS, DOS, GIS, CJIS, Administration and PMO)

1.2. The Consultant with the assistance of the City shall gather City Requirements for Disaster Recovery Critical Systems (Citywide)

1.3. The Consultant shall provide a high level business impact analysis detailing the impact to business in the event of a disaster

1.4. The Consultant with the assistance of the City shall define procurement processes for emergency purchases of hardware

1.5. The Consultant with the assistance of the City shall work with Risk Management to identify insurance for disaster recovery

1.6. The Consultant shall analyze the City's IT Application Inventory (as developed by the City's IT personnel) recommending reasonableness relative to tiering and prioritization

1.7. The Consultant shall provide a definition of Disaster Recovery and Business Continuity

1.8. The Consultant shall conduct informational sessions with IT Managers (or designees). These sessions shall be focused on relaying to Managers the general condition of the IT Department's capabilities and limitations regarding its general Disaster Recovery programming

1.9. Informational sessions shall last approximately one (1) hour and shall be face-to-face

1.10. The Consultant shall prepare and deliver one (1) Power Point Presentation to the Project Sponsor and others as determined by the Sponsor regarding its findings relative to the IT Application Inventory review and general IT Disaster Recovery analysis/capabilities

1.11. The Consultant with the assistance of the City shall identify existing business continuity plans. The Consultant with the assistance of the City will collect business continuity plans

1.12. The Consultant with the assistance of the City's Project Manager will gather all relevant City owned or managed materials required for the Consultant to complete their work

1.13. The City's Project Manager will schedule all IT data gathering meetings and Departmental Informational Sessions

1.14. The City's Project Manager shall participate in all meetings with both IT and City Department personnel

1.15. The Consultant with the assistance of the City's Project Manager shall customize/modify Memo to Directors

1.16. The Consultant with the assistance of the City's Project Manager shall customize/modify the Power Point presentation to the Project Sponsor

DELIVERABLES

1.1.1 General recovery capabilities within seven (7) groups within the City's Information Technology (IT) Department (TAOD, NOS, DOS, GIS, CJIS, Administration and PMO)

1.1.2 City Requirements for Disaster Recovery Critical Systems (Citywide)

1.1.3 Business impact analysis detailing the impact to business in the event of a disaster

1.1.4 Procurement processes defined for emergency purchases of hardware

1.1.5 Identification of insurance for disaster recovery

1.1.6 Recommendations relative to tiering and prioritization of the City's Application Inventory

1.1.7 Definition of Disaster Recovery and Business Continuity

1.1.8 IT Department's capabilities and limitations regarding general Disaster Recovery programming

1.1.9 Power Point Presentation to the Project Sponsor

1.1.10 Existing business continuity plans

1.1.11 Customize/modify Memo to Directors

Project Management

1. Project Initiation Phase

   a. The Consultant shall complete the following during this phase:

      i. Determine the project's objectives, requirements and expectations
      ii. Determine Roles and Responsibilities
      iii. Questionnaire for Department Heads regarding business continuity of operations for the department
      iv. Determine work plan / timeline
      v. Conduct kickoff meeting

   b. Criteria for Acceptance
      i. Signoff on project's objectives, requirements and expectations
      ii. Signoff on Roles and Responsibilities documents

iii. Signoff questionnaire for Department Heads regarding business continuity of operations for the department
iv. Signoff on work plan / timeline
v. Kickoff Meeting completed

2. Project Execution Phase
   a. The Consultant shall complete the following during this phase:
      i. Information requirements (IT) for Disaster Recovery Critical Systems (Citywide)
      ii. Review general recovery capabilities within seven (7) groups within the City's Information Technology (IT) Department (TAOD, NOS, DOS, GIS, CJIS, Administration and PMO)
      iii. High level business impact analysis detailing the impact to business in the event of a disaster
      iv. Procurement Emergency Process
      v. Informational sessions with IT Managers (or designees). These sessions shall be focused on relaying to Managers the general condition of the IT Department's capabilities and limitations regarding its general Disaster Recovery programming
      vi. Existing business continuity plans from Departments

   b. Criteria for Acceptance
      i. Signoff of information requirements (IT) for Disaster Recovery Critical Systems (Citywide)
      ii. Signoff of general recovery capabilities within the City's Information Technology (IT) Department (TAOD, NOS, DOS, GIS, CJIS, Administration and PMO)
      iii. Signoff of high level business impact analysis detailing the impact to business in the event of a disaster
      iv. Signoff Emergency Procurement Process document
      v. Informational sessions with IT Managers (or designees) completed
      vi. Signoff document of existing business continuity plans from Departments

3. Project Closeout Phase

   a. The Consultant shall conduct the following during this phase:
      i. Conduct Executive Briefing to Department Heads
   b. Criteria for Acceptance
      i. Executive Briefing to Department Heads completed

NOTE: <u>IT infrastructure hardware and software assets associated with Fire and Police operations relative to Life Safety (command, control, dispatch, response, etc.) are outside the Scope of this Project</u>.

EXHIBIT B
FEE SCHEDULE

Payments will be made on the following schedule:

Payment Milestones	Payment	Payment Value %
Project Initiation Phase Completion	$16,350	30
Project Execution Phase Completion	$16,350	30
Project Closeout Phase Completion	$21,800	40
TOTAL FEE	$54,500	100%

No travel or related expenses apply to this project.

EXHIBIT C
NON-DISCLOSURE AGREEMENT

In order to protect certain Confidential Information (as defined below), which may be disclosed between the City of Chandler, herein (CITY) in 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 hereunder is: the CITY (as defined above)

   Recipient(s) of Confidential Information hereunder is the CONSULTANT and its representative.

2. Recipient is participating in work for the Discloser(s) such work may include sharing records related by not limited to systems, data, files and CITY information. In the course of the Projects, the company/CONSULTANT 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/CONSULTANT 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 Recipient or its Representatives, or may be contained or reflected in application technology roadmaps, data, analyses, reports, compilations or other documents prepared by Recipient 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 sensitive 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. Recipient agrees Confidential Information under this Agreement is received for the Projects only and shall not be used for any other purpose whatsoever. Recipient 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/CONSULTANT's 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 Recipient is bound (2) any disclosure or use of such Confidential Information may be made to which Discloser(s) consents in writing, and (3) Recipient shall give Discloser(s) reasonable notice prior to such disclosure. Recipient agrees that, as to the Confidential Information, it shall use the same degree or 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/CONSULTANT'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 may 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. Recipient agrees 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 States Government or any agency thereof at the time of export and re-export requires an 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 and its Representatives 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 such breach or threatened breach, and agrees to waive any requirement for the securing or posting of any bond in connection with any remedy.

15. All obligations created by this agreement shall survive change or termination of the parties' business relationship.

16. Recipient agrees it will return all materials afore mentioned under section 4 of this agreement and shall verify and prove to Disclosers all materials under section 4 have been destroyed or returned in whole to Disclosure when contract is fully executed.

17. Recipient will certify by signing the Data Destruction Statement that the Recipient has destroyed all copies of disclosed information in electronic and hard copy from.

DATA DESTRUCTION STATEMENT

The Recipient states and by this signing this document certifies that the recipient has (1) returned to Discloser information and data in electronic of print that was agreed to be returned to discloser and (2) destroyed from recipients' network drives and any other media, information from the discloser that was modified to meet the terms of the contract and stored temporarily on the recipients computer network, all information pursuant to section 4 of this agreement.

Disclosed Items to be returned and destroyed from recipients computers and network:

1. All electronic or printed material exchanged with the recipient and disclosed by the discloser pursuant to the statement of work, which are records that contain personal identifying information in electronic files, databases and are records of but not limited to employees, citizens, vendors, CONSULTANTs and customers of the City of Chandler

2. All electronic or printed materials exchanged with the discloser during the engagement to facilitate access to the systems under the statement of work.

3. All materials where access to the logical network was granted.

4. Upon successful completion of the engagement remote access permissions that were granted shall be terminated.

DISCLOSER	RECIPIENT
_____	By: _____
Date	Title: _____