



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

44

2. Council Meeting Date:
June 25, 2009

TO: **MAYOR & COUNCIL**

3. Date Prepared: June 9, 2009

THROUGH: **CITY MANAGER**

4. Requesting Department: Planning and
Development

5. **SUBJECT:** Approval of sole source purchase of annual maintenance for the Accela Automation system from Accela, Inc. in an amount not to exceed \$126,000.

6. **RECOMMENDATION:** Recommend approval of sole source purchase of annual maintenance for the Accela Automation system from Accela, Inc. in an amount not to exceed \$126,000.

7. **HISTORICAL BACKGROUND/DISCUSSION:** This agreement is for maintenance for the Accela Automation system purchased by the City in 2007. Over 100 employees throughout the city use this system to track and manage all aspects of the land development process including zoning conditions on properties, building and civil permits, plan review and inspection results, and calculate and collect all development-related fees. The maintenance agreement is effective through June 30, 2012.

8. **EVALUATION PROCESS:** Because the system is proprietary, this maintenance service is available only through Accela. No other vendors are authorized to provide these maintenance services.

9. **FINANCIAL IMPLICATIONS:** Funding for this maintenance is available in these accounts:
101.1286.0000.5419.8IT038 and 101.1530.0000.6316.

10. **PROPOSED MOTION:** Move to approve sole source purchase of annual maintenance for the Accela Automation system from Accela, Inc. in an amount not to exceed \$126,000.

APPROVALS

11. Requesting Department

Dave Nakagawara, Asst. Planning & Development
Director

12. Department Head

Jeff Kurtz, Acting Planning & Development Director

13. Procurement Officer

Carolee Stees, CPPB

14. City Manager

W. Mark Pentz

1. MAINTENANCE AGREEMENT

1. <u>Parties</u>	ACCELA Accela, Inc. 2633 Camino Ramon, Suite 120 Bishop Ranch 3 San Ramon, California 94583 Attention: Contracts Administration T: 925.659.3200 F: 925.407.2722 e-Mail: contractsadmin@accela.com	CUSTOMER City of Chandler, Arizona 55 North Arizona Place Chandler, Arizona 85255 Attention: Kyle McMaster T: 480.782.3005 F: N/A e-Mail: kyle.mcmaster@ci.chandler.az.us
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This Maintenance Agreement ("MA") is intended for the exclusive benefit of the Parties; nothing herein will be construed to create any benefits, rights, or responsibilities in any other parties.

2. Term and Termination

2.1. Term This MA is effective as of October 25, 2007 and will continue until June 30, 2012. Customer may elect to continue its maintenance coverage for additional annual terms by paying to Accela the fees associated with such terms when these are due. Should Customer fail to renew its maintenance coverage or pay the applicable fees, Accela reserves the right to withhold all support. If Customer resumes maintenance coverage after one or more periods without such coverage, Customer will pay an amount equivalent to one hundred ten percent (110%) of all maintenance fees attributable to the period(s) without coverage, as such fees are calculated based upon pricing in effect at the time of resumption of maintenance coverage.

2.2. Termination Either party may terminate if the other party materially breaches this MA and, after receiving a written notice describing the circumstances of the default, fails to correct the breach within thirty (30) calendar days. Upon any termination or expiration of this MA, all rights granted to Customer are cancelled and revert to Accela.

3. Scope of Maintenance

3.1. Maintenance Services

3.1.1. Telephone Support Accela will provide Customer with a telephone number to contact the Customer Resource Center (CRC), Accela's live technical support facility, which is available from 6:00 a.m. until 6:00 p.m. Pacific time Monday through Friday, excluding Accela's observed holidays.

3.1.2. E-Mail Support Accela will provide Customer with one or more electronic mail addresses to which Customer may submit routine or non-critical support requests, which Accela will address during its regular business hours.

3.1.3. Online Support Accela will provide Customer with access to archived software updates and other technical information in Accela's online support databases, which are continuously available.

3.1.4. Remote Support When required to properly resolve a maintenance request, Accela will provide remote assistance to Customer via the WebEx™ Meeting Center™ environment or another mutually-acceptable remote communications method.

- 3.1.5. On-Site Support If Customer does not wish for Accela to resolve its maintenance requests remotely, Accela will provide on-site assistance to Customer at Accela's then-current time-and-materials rates. In addition to these charges, Customer will compensate Accela for associated airfare, lodging, rental transportation, meals, and other incidental expenses as such expenses accrue.
- 3.1.6. Software Updates Accela will provide revisions of and enhancements to maintained software products to Customer as such updates are generally-released by Accela.

3.2. Maintenance Limitations

3.2.1. Limitations Generally The following are not covered by this MA, but may be separately available at rates and on terms which may vary from those described herein:

- a) Services required due to misuse of the Accela-maintained software products;
- b) Services required due to software corrections, customizations, or modifications not developed or authorized by Accela;
- c) Services required by Customer to be performed by Accela outside of Accela's usual working hours;
- d) Services required due to external factors including, but not necessarily limited to, Customer's use of software or hardware not authorized by Accela;
- e) Services required to resolve or work-around conditions which cannot be reproduced in Accela's support environment;
- f) Services which relate to tasks other than maintenance of Customer's existing implementation and configuration of the Accela-maintained software products including, but not necessarily limited to, enhancing or adapting such products for specific operating environments;
- g) Services requested by Customer to implement software updates provided by Accela pursuant to this MA; and
- h) New or additional applications, modules, or functionality released by Accela during the term of this MA.

3.2.2. Legacy Releases Accela will provide maintenance support for the current release of each of its maintained software applications and for the release immediately preceding such current release. All other releases are deemed to be "Legacy Releases". Accela will respond to maintenance requests concerning Legacy Releases only using currently-available information. Services requiring additional research, engineering-level support, or coding or programming by Accela will not be provided pursuant to this MA, but may be separately available at rates and on terms which may vary from those described herein.

3.3. Warranty Accela will commence and complete the maintenance obligations described in this MA in a good and workmanlike manner, consistent with the practices and standards of care generally-accepted within and expected of Accela's industry, to ensure that the operation of the maintained software products does not materially differ from documented specifications. Accela may make repeated efforts within a reasonable time period to resolve maintenance requests. When a maintenance request cannot be resolved, Customer's exclusive remedy will be damages in an amount equal to the total of maintenance fees paid to Accela for the defective or non-conforming software products; where this MA has a multi-year term, such amount will be equal to the total of the maintenance fees paid to Accela for the defective or non-conforming software products for the twelve (12) calendar months immediately preceding Customer's maintenance request.

3.4. Compensation

3.4.1. Maintenance Fees In exchange for the Maintenance Services described hereinabove, Customer will pay to Accela the amounts indicated in Exhibit A.

3.4.2. Payment Terms Amounts are quoted in United States dollars and do not include applicable taxes, if any. Customer will be responsible for payment of all federal, state or provincial, and local taxes and duties, except those based on Accela's income. If Customer is exempt from certain taxes, Customer will provide Accela with an appropriate certificate of exemption. Customer will be invoiced for all amounts as they become due. The payment terms of all invoices are net thirty (30) calendar days from the dates of the invoices. Any payment not paid to Accela within said period will incur a late payment fee equal to five percent (5%) of the amount past due and will accrue interest in an amount equal to one-and-a-half percent (1.5%) per month, compounded monthly, on the outstanding balance from the billing date. Accela may, at its sole discretion, suspend its obligations hereunder without penalty until payments for all past-due billings have been paid in full by Customer.

4. Confidentiality

4.1. Definitions "Disclosing Party" and "Recipient" refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. Either Accela or Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personnel information, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the Parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this Section:

- a) information which is in Recipient's possession prior to disclosure by Disclosing Party;
- b) information which is available to Recipient from a third party without violation of this MA or Disclosing Party's intellectual property rights;
- c) information disclosed pursuant to Subsection 4.4 below;
- d) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party;
- e) information which is subpoenaed by governmental or judicial authority; and
- f) information subject to disclosure pursuant to a state's public records laws.

4.2. Confidentiality Term The obligations described in this Section commence on the Effective Date and will continue until two (2) years following any termination or expiration of this MA ("Confidentiality Term").

4.3. Confidentiality Obligations During the Confidentiality Term, Recipient will protect the confidentiality of Confidential Information using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect Confidential Information. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to

any third party without Disclosing Party's advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees or agents under its control and direction in the normal course of its business and only on a need-to-know basis. In responding to a request for Confidential Information, Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner not inconsistent with applicable laws, to protect the Confidential Information to the fullest extent possible.

4.4. Publicity During the term of this MA, including the term of any amendment hereto, Accela may publicly disclose its ongoing business relationship with Customer. Such disclosures may indicate Customer's identity and the Accela product(s) and services provided or contracted to be provided to Customer, but may not expressly or impliedly indicate Customer's endorsement of Accela's products or services without Customer's prior written authorization.

5. Other Terms and Conditions

5.1. Customer Obligations As required, Customer will provide Accela with appropriate access to Customer's facilities, data systems, and other resources. If Security restrictions impair such access, Customer acknowledges that some maintenance services hereunder may not be provided to Customer. It is Customer's sole responsibility to maintain current backup copies of its data and of its implementation of Accela's software products. If Customer's failure to create proper backups substantially increases the difficulties of any remedial actions by Accela hereunder, Accela reserves the right to charge Customer for any extra work reasonably-attributable to such increased difficulty, as calculated at Accela's then-current time-and-materials rates.

5.2. Proprietary Rights The remedial methods, software updates, and product information provided to Customer pursuant to this MA are protected under the laws of the United States and the individual states and by international treaty provisions. Accela retains full ownership in such items and grants to Customer a limited, nonexclusive, nontransferable license to use the items, subject to the terms and conditions of this MA and other agreements between Accela and Customer.

5.3. Limitation of Liability Accela provides no warranty whatsoever for any third-party hardware or software products. Third-party applications which utilize or rely upon the Application Services may be adversely affected by remedial or other actions performed pursuant to this MA; Accela bears no liability for and has no obligation to remedy such effects. Except as set forth herein, Accela provides all Maintenance Services "as is" without express or implied warranty of any kind regarding the character, function, capabilities, or appropriateness of such services or deliverables. To the extent not offset by its insurance coverage and to the maximum extent permitted by applicable laws, in no event will Accela's cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by Customer or any other person or entity exceed the fees paid to Accela by Customer during the twelve (12) calendar months immediately preceding the circumstances which give rise to such claim(s) of liability, even if Accela or its agents have been advised of the possibility of such damages.

5.4. Force Majeure If either party is delayed in its performance of any obligation under this MA due to causes or effects beyond its control, that party will give timely notice to the other party and will act in good faith to resume performance as soon as practicable.

5.5. Dispute Resolution This MA is governed by the laws of the State of Arizona. Any controversy or claim arising out of or relating to this MA, or the breach thereof, will be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, including the Emergency Interim Relief Procedures, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The place of arbitration will be Santa Clara County, California. Either party may apply to the arbitrator for injunctive relief until the arbitration award is rendered or the controversy is

otherwise resolved. Either party also may, without waiving any remedy under this MA, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitrator's determination of the merits of the controversy. Each party will initially bear its own expenses and an equal share of the costs of the arbitration, but the prevailing party may be awarded its expenses, reasonable attorneys' fees, and costs. The failure of either party to object to a breach of this MA will not prevent that party from thereafter objecting to that breach or any other breach of this MA.

5.6. Assignment Accela may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets. Accela may subcontract with qualified third parties to provide portions of the Maintenance Services described hereinabove.

5.7. Survival The following provisions will survive the termination or expiration of this MA: Section 2.1, as to Customer's obligation to pay any fees associated with a lapse in maintenance coverage upon resumption of such coverage; Section 3.3, as to limitation of remedy; Section 3.4 and all subsections thereof, as to Customer's obligation to pay any fees accrued or due at the time of termination or expiration; Section 4 and all subsections thereof; and Section 5 and all subsections thereof with the exceptions of Subsections 5.1 and 5.4.

5.8. Alternate Terms Disclaimed The parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer.

5.9. Severability and Amendment If any particular provision of this MA is determined to be invalid or unenforceable, that determination will not affect the other provisions of this MA, which will be construed in all respects as if the invalid or unenforceable provision were omitted. No extension, modification, or amendment of this MA will be effective unless it is described in writing and signed by the Parties.

ACCELA
By: 
(Signature)
MICHAEL E. HARRISON
(Print Name)
Its VICE PRESIDENT OF SALES
(Title)
Dated: 12/13/07
(Month, Day, Year)

CUSTOMER
By: 
(Signature) Boyd W Dunn
(Print Name)
Mayor
(Title)
12/14/2007
Dated: _____
(Month, Day, Year)

Exhibit Follows.

END OF DOCUMENT

APPROVED AS TO FORM

CITY ATTORNEY

ORIGINAL

EXHIBIT A

Deliverables	Fees
First-Term Annual Maintenance for Accela Automation® Land Management (1 Server License and 150 Named User Licenses)	\$67,970.00
First-Term Annual Maintenance for Accela Wireless™ (1 Server License and 50 Named User Licenses)	\$24,990.00
First-Term Annual Maintenance for Accela Citizen Access™ (1 Server License and 1 Use License [Based Upon 244,393 Population])	\$4,931.72
Credit for amount paid by Customer in current fiscal year	(\$25,016.51)
Total of Fees	\$72,875.21

First-Term Annual Maintenance Fees are fixed-price deliverables for which full payment is due upon signing. A credit for the amount paid by Customer for Accela Permits Plus® maintenance during this fiscal year (less outstanding amounts owed by Customer to Accela) will be applied to the First-Term Annual Maintenance Fees.

Effective July 1, 2008, Second-Term Annual Maintenance Fees will increase from First-Term Annual Maintenance Fees by an amount equivalent to the then-most-recent annual Consumer Price Index for the Phoenix-Mesa, Arizona Metropolitan Area (CPI-U [Phoenix-Mesa, AZ]) plus three percent (3%); said Second-Term Annual Maintenance Fees are due on the first anniversary of the Effective Date.

Effective July 1, 2009, Third-Term Annual Maintenance Fees will increase from Second-Term Annual Maintenance Fees by an amount equivalent to the then-most-recent annual CPI-U (Phoenix-Mesa, AZ) plus three percent (3%); said Third-Term Annual Maintenance Fees are due on the second anniversary of the Effective Date.

Effective July 1, 2010, Fourth-Term Annual Maintenance Fees will increase from Third-Term Annual Maintenance Fees by an amount equivalent to the then-most-recent annual CPI-U (Phoenix-Mesa, AZ) plus three percent (3%); said Fourth-Term Annual Maintenance Fees are due on the third anniversary of the Effective Date.

Effective July 1, 2011, Fifth-Term Annual Maintenance Fees will increase from Fourth-Term Annual Maintenance Fees by an amount equivalent to the then-most-recent annual CPI-U (Phoenix-Mesa, AZ) plus three percent (3%); said Fifth-Term Annual Maintenance Fees are due on the fourth anniversary of the Effective Date.

END OF DOCUMENT