



City of Des Plaines
City Manager's Office
Human Resources

Des Plaines, IL 60016
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INTEROFFICE MEMORANDUM

Date: December 7, 2012

To: Michael G. Bartholomew, City Manager

From: Michael J. Earl, Director of Human Resources

Re: IT Professional Consulting Services

Issue: With the resignation of former Director of Information Technology Services Director Michael Duebner, City staff is in need of temporary professional and technical oversight for its Information Technology operations.

Background: Under the City Manager's spending authority, the City entered into a limited professional services agreement with Progressive Intelligence Technologies (PIT) effective November 7, 2012. The initial term of the agreement is 30 days, which is automatically renewable for successive one month terms unless either party opts not to renew.

Discussion: PIT is being tasked with assisting in management and technical oversight of IT, which includes a "best practices" assessment of the IT function. PIT's findings will help staff determine where operational and structural changes need to be made. It is anticipated that PIT's services will be required until at least the first quarter of 2013. PIT is expected to work an average of 15 hours/week at a fee of \$150/hour. Because the cost of the services will exceed the City Manager's spending authority, City Council approval is required and is recommended.

A company profile and staff biographies of Director of Operations Matthew Klemp and Executive Consultant Sam Ferguson are attached. Please note that Mr. Klemp and Mr. Ferguson have many years of municipal experience in the Chicago suburban area and have an intimate knowledge of local government operations.

Recommendation: Staff recommends approval of the attached professional services agreement with Progressive Intelligence Technologies at a specified hourly rate for an initial 30 day period, with a provision for automatic one month terms unless either party opts not to renew, and adoption of the attached Resolution R-153-12.

COMPANY PROFILE

Progressive Intelligence Technologies - Professional Services for Government

Progressive Intelligence Technologies is an Iowa based consulting firm with representatives across the country that stand ready addresses the information systems and organizational planning needs of public safety agencies and local governments. Progressive Intelligence Technologies consultants apply their problem-solving skills to ensure that your organization's operations and objectives are fully satisfied by your manual and automated information systems.

Progressive Intelligence Technologies tailors consulting projects to your particular needs based on the objectives, long-range plans, and operations of your organization. We provide qualified recommendations through an expert internal staff with dozens of years in service to government. However, by recognizing the value of your internal resources, our team works to complement your staff to ensure non-disruptive and successful studies and implementations. Progressive Intelligence Technologies addresses the following primary areas that impact a range of operational issues:

1. **Organizational and Strategic Planning** for effective utilization of future expenditures, resource requirements, general and department specific information needs or modifications, new application system analysis and requirements.
2. **General government services** such as information systems planning, selection, and contract negotiations, implementation assistance including digitizing and scanning of manual drawings and photographs, procedure manuals, operations reviews, and integration strategies for organization-wide information systems.
3. **GIS / Mapping / Computer Aided Drafting and Design** systems for enterprise-wide access and sharing of information, required map generation, emergency procedures, incident analysis, spatial analysis, engineering and facility design and management.
4. **Public Safety Programs** for Police and Fire Departments, such as E-9-1-1, integrated computer-aided-dispatch, records systems and images, data communications between remote sites, and mobile computing (e.g., laptop computers, mobile data terminals, automated vehicle location, etc.).
5. **Process Continuance Planning** for mission-critical operations in the event of any process interruption, utilizing contingency planning for staffing and office space requirements, computer availability and compatibility with existing systems, voice/data communications, etc.

STAFF BIOGRAPHIES

Matthew W. Klemp
Director of Operations

Professional Summary

Mr. Klemp has an extensive background in the analysis, design and implementation of computer systems in a municipal setting. For thirteen years he has served municipal governments in various duties, including the latest eight years as IT Manager for the City of Rolling Meadows. On numerous occasions while with the City, Mr. Klemp has assisted other government IT managers in system studies and network implementations. He has provided support in all levels of IT from programming and system design to policy creation, procedure development and auditing, purchasing, staff supervision and direction.

As IT Manager, Mr. Klemp was responsible for all activities in the municipal IT environment. He has provided departmental support for planning and implementing Information Systems through user interviews, needs assessments, application planning/development and organizational impact studies. His broad knowledge base allows a unique perspective and understanding of the varied requirements found in the municipal environment. Serving at this level of the organization provided Mr. Klemp the opportunity to recommend, plan and manage change within the organization when technology was implemented.

Mr. Klemp's knowledge of the IT functions in a municipal setting has gained him recognition both at a local and national level. He has served as President in the Illinois chapter of Government Management Information Sciences (GMIS), as well as First and Second Vice-President. In addition he has spoken to numerous groups across the country on various topics related to IT issues and topics.

Sam Ferguson
Executive Consultant

Professional Summary

After over 29 years of service in local government, Mr. Ferguson has been a leader in the municipal information technology field. Mr. Ferguson recently joined Progressive Intelligence Technologies as Executive Consultant, after leading the Village of Schaumburg's IT Department for 14 years. The Village is home to over 70,000 residents and is known for being the headquarters for Motorola and Zurich America. The Village's IT Department provides information technology and telecommunications services for the organization's 500+ employees. Prior to his tenure at the Village of Schaumburg he held the same position at the Village of Palatine.

Mr. Ferguson adds considerable depth of experience and knowledge to the Progressive Intelligence Technologies team.

Mr. Ferguson career achievements are innumerable, including establishing information technology departments for different municipalities, bringing together "islands" of information into cohesive, service oriented departments. He was responsible for several multi-million dollar system installations and upgrades and recently orchestrated a new enterprise Voice Over Internet Protocol (VOIP) telecommunications system for the village. Additionally, the Village of Schaumburg has been recognized seven times in the last nine years as a Top Ten Digital City by the Center for Digital Government.

Mr. Ferguson has been very active in GMIS at both the state and International levels, starting as a member in 1991 while at the Village of Palatine. He then became the President of the Illinois Chapter in 1996 where he co-chaired a successful GMIS International conference in Illinois. In 1996 he was elected as the international GMIS Vice-President and then became the GMIS International President in 2000. Sam has served GMIS Illinois or GMIS International in one fashion or another for more than 15 years. This year he is the GMIS International conference chairman.

Throughout his tenure, Mr. Ferguson has been a progressive and influential force in the industry, commanding great respect from industry insiders and major vendors alike. "As I looked forward to the end of my municipal career, I knew I wanted to continue to contribute to advancements in local government. With a unique combination of drive and creativity, Progressive Intelligence Technologies is a great place for me to continue my contributions and have a positive impact. I am very excited to be part of this group" said Mr. Ferguson.

Mr. Ferguson holds a M.S. in Administration from Southern Illinois University, Carbondale, IL, a B.A., with departmental honors, from Monmouth College, Monmouth, IL, and graduated from the U.S. Army Computer Science School, Indianapolis, IN.

**CITY OF DES PLAINES
PROFESSIONAL SERVICES AGREEMENT**

This **PROFESSIONAL SERVICES AGREEMENT** ("**Agreement**") is dated as of the 7th day of November, 2012, and is by and between the **CITY OF DES PLAINES**, an Illinois home rule municipal corporation ("**City**"), and the Consultant identified in Section 1.A of this Agreement.

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, and pursuant to the City's statutory and home rule powers, the parties agree as follows:

SECTION 1. CONSULTANT.

A. Engagement of Consultant. The City desires to engage the Consultant identified below to perform and to provide all necessary professional consulting services to perform the work in connection with the project identified below:

Consultant Name ("Consultant**"):** Progressive Intelligence Technologies

Address: PO Box 499

Indianola, IA 50125

Telephone No. 866-492-3218

Email: jtrotter@prointeltech.com

Project Name/Description: Information Technology Consulting and Services

B. Project Description. The Consultant shall provide technical support and advisement on the day-to-day information technology activities of the City, provide strategic support to the City Manager and his designees, and monitor and respond to technology support requests, as more fully described in the proposal attached to this Agreement as **Exhibit A ("**Proposal**")**.

C. Representations of Consultant. The Consultant represents that it is financially solvent, has the necessary financial resources, and is sufficiently experienced and competent to perform and complete the consulting services that are set forth in the Proposal ("**Services**") in a manner consistent with the standards of professional practice by recognized consulting firms providing services of a similar nature.

SECTION 2. SCOPE OF SERVICES.

A. **Retention of the Consultant.** The City retains the Consultant to perform, and the Consultant agrees to perform, the Services.

B. **Services.** The Consultant shall provide the Services pursuant to the terms and conditions of this Agreement.

C. **Commencement; Time of Performance.** The Consultant shall commence the Services immediately upon receipt of written notice from the City that this Agreement has been fully executed by the Parties ("**Commencement Date**"). The Consultant shall diligently and continuously prosecute the Services for an initial term ending thirty days after the Commencement Date ("**Time of Performance**"). The City may modify the Time of Performance at any time upon ten days prior written notice to the Consultant

D. **Renewal.** This Agreement shall automatically renew for successive one month terms (each, a "**Renewal Term**") unless either party gives written notice to the other party of its intent not to renew this Agreement no less than ten days in advance of the expiration of the Time of Performance or a Renewal Term, as the case may be.

E. **Reporting.** The Consultant shall regularly report to the City Manager, or his designee, regarding the progress of the Services during the term of this Agreement.

SECTION 3. COMPENSATION AND METHOD OF PAYMENT.

A. **Compensation for Services.** The City shall compensate the Consultant for the Services as set forth in the attached **Exhibit B**. No claim for additional compensation shall be valid unless made in accordance with Sections 3.D or 3.E of this Agreement.

B. **Invoices and Payment.** The Consultant shall submit invoices in an approved format to the City for costs incurred by the Consultant in performing the Services. The amount billed in each invoice for the Services shall be based solely upon the rates set forth in the Proposal. The City shall pay to the Consultant the amount billed within 45 days after receiving such an invoice.

C. **Records.** The Consultant shall maintain records showing actual time devoted and costs incurred, and shall permit the City to inspect and audit all data and records of the Consultant for work done pursuant to this Agreement. The records shall be made available to the City at reasonable times during the term of this Agreement, and for one year after the termination of this Agreement.

D. **Claim In Addition To Agreement Amount.**

1. The Consultant shall provide written notice to the City of any claim for additional compensation as a result of action taken by the City, within 15 days after the occurrence of such action.

2. The Consultant acknowledges and agrees that: (a) the provision of written notice pursuant to Section 3.D.1 of this Agreement shall not be deemed or interpreted as entitling the Consultant to any additional compensation; and (b) any changes in the compensation shall be valid only upon written amendment pursuant to Section 8.A of this Agreement.

3. Regardless of the decision of the City relative to a claim submitted by the Consultant, the Consultant shall proceed with all of the work required to complete the Services under this Agreement, as determined by the City, without interruption.

E. Additional Services. The Consultant acknowledges and agrees that the City shall not be liable for any costs incurred by the Consultant in connection with any services provided by the Consultant that are outside the scope of this Agreement ("**Additional Services**"), regardless of whether such Additional Services are requested or directed by the City, except upon the prior written consent of the City.

F. Taxes, Benefits, and Royalties.

1. Each payment by the City to the Consultant includes all applicable federal, state, and City taxes of every kind and nature applicable to the Services, as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or similar benefits, and all costs, royalties, and fees arising from the use on, or the incorporation into, the Services, of patented or copyrighted equipment, materials, supplies, tools, appliances, devices, processes, or inventions. All claims or rights to claim additional compensation by reason of the payment of any such tax, contribution, premium, cost, royalty, or fee are hereby waived and released by the Consultant.

2. If required by law, the City shall report payments to the Consultant by filing a Form 1099 with the Internal Revenue Service.

G. Final Acceptance. The Services, or, if the Services are to be performed in separate phases, each phase of the Services, shall be considered complete on the date of final written acceptance by the City of the Services or each phase of the Services, as the case may be, which acceptance shall not be unreasonably withheld or delayed.

SECTION 4. PERSONNEL; SUBCONTRACTORS.

A. Key Project Personnel. The Key Project Personnel identified in the Proposal shall be primarily responsible for carrying out the Services on behalf of the Consultant. The Key Project Personnel shall not be changed without the City's prior written approval.

B. Availability of Personnel. The Consultant shall provide all personnel necessary to complete the Services including, without limitation, any Key Project Personnel identified in this Agreement. The Consultant shall notify the City as soon as

practicable prior to terminating the employment of, reassigning, or receiving notice of the resignation of, any Key Project Personnel. The Consultant shall have no claim for damages and shall not bill the City for additional time and materials charges as the result of any portion of the Services which must be duplicated or redone due to such termination or for any delay or extension of the Time of Performance as a result of any such termination, reassignment, or resignation.

C. Approval and Use of Subcontractors. The Consultant shall perform the Services with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved in advance by the City in writing. All subcontractors and subcontracts used by the Consultant shall be acceptable to, and approved in advance by, the City. The City's approval of any subcontractor or subcontract shall not relieve the Consultant of full responsibility and liability for the provision, performance, and completion of the Services as required by this Agreement. All Services performed under any subcontract shall be subject to all of the provisions of this Agreement in the same manner as if performed by employees of the Consultant. For purposes of this Agreement, the term "Consultant" shall be deemed also to refer to all subcontractors of the Consultant, and every subcontract shall include a provision binding the subcontractor to all provisions of this Agreement.

D. Removal of Personnel and Subcontractors. If any personnel or subcontractor fails to perform the Services in a manner satisfactory to the City and consistent with commonly accepted professional practices, the Consultant shall immediately upon notice from the City remove and replace such personnel or subcontractor. The Consultant shall have no claim for damages, for compensation in excess of the amount contained in this Agreement, or for a delay or extension of the Time of Performance as a result of any such removal or replacement.

SECTION 5. CONFIDENTIAL INFORMATION.

A. Confidential Information. The term "***Confidential Information***" shall mean information in the possession or under the control of the City relating to the technical, business, or corporate affairs of the City; City property; user information, including, without limitation, any information pertaining to usage of the City's computer system, including and without limitation, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms and conditions of, this Agreement. City Confidential Information shall not include information that can be demonstrated: (1) to have been rightfully in the possession of the Consultant from a source other than the City prior to the time of disclosure of such information to the Consultant pursuant to this Agreement ("***Time of Disclosure***"); (2) to have been in the public domain prior to the Time of Disclosure; (3) to have become part of the public domain after the Time of Disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the Consultant or the City; or (4) to have been supplied to the Consultant after the Time of Disclosure without restriction by a third party who is under no obligation to the City to maintain such information in confidence.

B. No Disclosure of Confidential Information by the Consultant. The Consultant acknowledges that it shall, in performing the Services for the City under this Agreement, have access, or be directly or indirectly exposed, to Confidential Information. The Consultant shall hold confidential all Confidential Information and shall not disclose or use such Confidential Information without the express prior written consent of the City. The Consultant shall use reasonable measures at least as strict as those the Consultant uses to protect its own confidential information. Such measures shall include, without limitation, requiring employees and subcontractors of the Consultant to execute a non-disclosure agreement before obtaining access to Confidential Information.

SECTION 6. STANDARD OF SERVICES AND INDEMNIFICATION.

A. Representation and Certification of Services.

1. The Consultant represents and certifies that the Services shall be performed in accordance with the standards of professional practice, care, and diligence practiced by recognized consulting firms in performing services of a similar nature in existence at the Time of Performance. The representations and certifications expressed shall be in addition to any other representations and certifications expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the City.

2. The Consultant represents and warrants to the City the following: (a) the Consultant has not copied, retained, or digitally stored any property or proprietary information of former business relationships; (b) the Consultant will not bring any property or proprietary information, however stored or maintained, of former business relationships on the premises of the City or transmit the same to the City's information technology system; (c) the Consultant is not barred by any other agreement or undertaking which prohibits or substantially limits the Consultant from performing the Services. The Consultant further agrees to indemnify, defend, and hold the City harmless for any damages, attorneys' fees, expenses, and costs arising out of any breach of this Section 6.A.2 of this Agreement.

B. Indemnification. The Consultant shall, and does hereby agree to, indemnify, save harmless, and defend the City against all damages, liability, claims, losses, and expenses (including attorneys' fees) that may arise, or be alleged to have arisen, out of or in connection with the Consultant's performance of, or failure to perform, the Services or any part thereof, or any failure to meet the representations and certifications set forth in Section 6.A of this Agreement up to the amount identified in Section 6.C.

C. Insurance. The Consultant shall provide, at its sole cost and expense, liability insurance in the aggregate amount of \$1,000,000, which insurance shall include, without limitation, protection for all activities associated with the Services. The insurance shall be for a minimum of \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage. The Consultant shall cause the City to

be named as an additional insured on the insurance policy described in this Section 6.C. Not later than 10 days after the Commencement Date, the Consultant shall provide the City with either: (a) a copy of the entire insurance policy; or (b) a Certificate of Insurance along with a letter from the broker issuing the insurance policy to the effect that the Certificate accurately reflects the contents of the insurance policy. The insurance coverages and limits set forth in this Section 6.C shall be deemed to be minimum coverages and limits, and shall not be construed in any way as a limitation on the Consultant's duty to carry adequate insurance or on the Consultant's liability for losses or damages under this Agreement.

D. No Personal Liability. No elected or appointed official or employee of the City shall be personally liable, in law or in contract, to the Consultant as the result of the execution of this Agreement.

SECTION 7. CONSULTANT AGREEMENT GENERAL PROVISIONS.

A. Relationship of the Parties. The Consultant shall act as an independent contractor in providing and performing the Services. Nothing in, nor done pursuant to, this Agreement shall be construed: (1) to create the relationship of principal and agent, employer and employee, partners, or joint venturers between the City and Consultant; or (2) to create any relationship between the City and any subcontractor of the Consultant.

B. Conflict of Interest. The Consultant represents and certifies that, to the best of its knowledge: (1) no elected or appointed City official, employee or agent has a personal financial interest in the business of the Consultant or in this Agreement, or has personally received payment or other consideration for this Agreement; (2) as of the date of this Agreement, neither Consultant nor any person employed or associated with Consultant has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither Consultant nor any person employed by or associated with Consultant shall at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

C. No Collusion. The Consultant represents and certifies that the Consultant is not barred from contracting with a unit of state or local government as a result of: (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue, unless the Consultant is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in Section 11-42.1-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 *et seq.*; or (2) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.* The Consultant represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the City prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that the Consultant has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the

Consultant shall be liable to the City for all loss or damage that the City may suffer, and this Agreement shall, at the City's option, be null and void.

D. Interference With City Business.

1. Prohibited Conduct. The Consultant agrees that, during the Time of Performance and any Renewal Term of this Agreement, the Consultant will not directly: (a) cause any employee, vendor or other business partner to terminate or reduce its business relationship with the City; (b) cause any employee or independent contractor of the City to resign or terminate its relationship with the City; or (c) accept or undertake any engagement, whether as an employee, independent contractor or owner, with any business that directly conflicts with the business or services then offered by the City.

2. Injunctive Relief. Without limiting the right of the City to seek or obtain any legal, declaratory, or other equitable remedies of any kind, the Consultant agrees that the City shall be entitled to an injunction, without being required to post a bond, in order to remedy any breach of this Section 7.D.1 of this Agreement.

E. Termination. Notwithstanding any other provision hereof, the City may terminate this Agreement at any time upon 15 days written notice to the Consultant. In the event that this Agreement is so terminated, the Consultant shall be paid for Services actually performed and reimbursable expenses actually incurred, if any, prior to termination, not exceeding the value of the Services completed, which shall be determined on the basis of the rates set forth in the Proposal.

F. Compliance With Laws and Grants.

1. Compliance with Laws. The Consultant shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and with all applicable statutes, ordinances, rules, and regulations, including, without limitation: any applicable prevailing wage laws; the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes requiring preference to laborers of specified classes; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, and the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* The Consultant shall also comply with all conditions of any federal, state, or local grant received by the City or the Consultant with respect to this Agreement or the Services. Further, the Consultant shall have a written sexual harassment policy in compliance with Section 2-105 of the Illinois Human Rights Act.

2. Liability for Noncompliance. The Consultant shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-

governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with the Consultant's, or any of its subcontractors, performance of, or failure to perform, the Services or any part thereof.

3. **Required Provisions.** Every provision of law required by law to be inserted into this Agreement shall be deemed to be inserted herein.

G. Default. If it should appear at any time that the Consultant has failed or refused to prosecute, or has delayed in the prosecution of, the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Services or any other requirement of this Agreement ("**Event of Default**"), and fails to cure any such Event of Default within ten business days after the Consultant's receipt of written notice of such Event of Default from the City, then the City shall have the right, without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. **Cure by Consultant.** The City may require the Consultant, within a reasonable time, to complete or correct all or any part of the Services that are the subject of the Event of Default; and to take any or all other action necessary to bring the Consultant and the Services into compliance with this Agreement.

2. **Termination of Agreement by City.** The City may terminate this Agreement without liability for further payment of amounts due or to become due under this Agreement after the effective date of termination.

3. **Withholding of Payment by City.** The City may withhold payment, or may recover from the Consultant, any and all costs, including attorneys' fees and administrative expenses, incurred by the City as the result of any Event of Default by the Consultant or as a result of actions taken by the City in response to any Event of Default by the Consultant.

H. No Additional Obligation. The Parties acknowledge and agree that the City is under no obligation under this Agreement or otherwise to negotiate or enter into any other or additional contracts or agreements with the Consultant or with any vendor solicited or recommended by the Consultant.

I. City Authority. Notwithstanding any provision of this Agreement, any negotiations or agreements with, or representations by the Consultant to, vendors shall be subject to the approval of the City Manager or the City Council. For purposes of this Section 7.1, "vendors" shall mean entities engaged in subcontracts for the provision of additional services directly to the City. The City shall not be liable to any vendor or third party for any agreements made by the Consultant without the knowledge and approval of the City Manager or the City Council.

J. Mutual Cooperation. The City agrees to cooperate with the Consultant in the performance of the Services, including meeting with the Consultant and providing

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the Consultant with any such ~~non-confidential~~ information that the City may have that may be relevant and helpful to the Consultant's performance of the Services. The Consultant agrees to cooperate with the City in the performance and completion of the Services and with any other consultants engaged by the City.

K. News Releases. Notwithstanding information otherwise publicly available, the Consultant shall not issue any news releases, advertisements, or other public statements regarding the Services without the prior written consent of the City Manager.

L. Ownership. Designs, drawings, plans, specifications, photos, reports, information, observations, calculations, notes, and any other documents, data, or information, in any form, prepared, collected, or received from the City by the Consultant in connection with any or all of the Services to be performed under this Agreement ("**Documents**") shall be and remain the exclusive property of the City. At the City's request, or upon termination of this Agreement, the Consultant shall cause the Documents to be promptly delivered to the City.

M. GIS Data. The City has developed digital map information through Geographic Information Systems Technology ("**GIS Data**") concerning the real property located within the City. If requested to do so by the Consultant, the City agrees to supply the Consultant with a digital copy of the GIS Data, subject to the following conditions:

1. **Limited Access to GIS Data.** The GIS Data provided by the City shall be limited to the scope of the Services that the Consultant is to provide for the City;
2. **Purpose of GIS Data.** The Consultant shall limit its use of the GIS Data to its intended purpose of furtherance of the Services; and
3. **Agreement with Respect to GIS Data.** The Consultant does hereby acknowledge and agree that:
 - a. **Trade Secrets of the City.** The GIS Data constitutes proprietary materials and trade secrets of the City, and shall remain the property of the City;
 - b. **Consent of City Required.** The Consultant will not provide or make available the GIS Data in any form to anyone without the prior written consent of the City Manager;
 - c. **Supply to City.** At the request of the City, the Consultant shall supply the City with any and all information that may have been developed by the Consultant based on the GIS Data;
 - d. **No Guarantee of Accuracy.** The City makes no guarantee as to the accuracy, completeness, or suitability of the GIS Data in regard to the Consultant's intended use thereof; and

e. Discontinuation of Use. At such time as the Services have been completed to the satisfaction of the City, the Consultant shall cease its use of the GIS Data for any purpose whatsoever, and remove the GIS Data from all of the Consultant's databases, files, and records; and, upon request, an authorized representative of the City shall be afforded sufficient access to the Consultant's premises and data processing equipment to verify compliance by the Consultant with this Section 7.M.3.e.

SECTION 8. GENERAL PROVISIONS.

A. Amendment. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by the City and the Consultant in accordance with all applicable statutory procedures.

B. Assignment. The City may assign this Agreement to any of its successors, assigns or affiliates at any time, with or without the consent of the Consultant. The Consultant shall not assign this Agreement without the prior written consent of the City.

C. Binding Effect. The terms of this Agreement shall bind and inure to the benefit of the City, the Consultant, and their agents, successors, and assigns.

D. Notice. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (1) personally, (2) by a reputable overnight courier, or by (3) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of: (a) actual receipt; (b) one business day after deposit with an overnight courier, as evidenced by a receipt of deposit; or (c) four business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 8.D, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to the other party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the City shall be addressed to, and delivered at, the following address:

City of Des Plaines
1420 Miner Street
Des Plaines, IL 60016
Attention: City Manager

With a copy to:

Holland & Knight LLP
131 S. Dearborn, 30th Floor
Chicago, Illinois 60603

Attention: Peter M. Friedman

Notices and communications to the Consultant shall be addressed to, and delivered at, the following address:

Jason Trotter
Owner and Founder
Progressive Information Technologies

With a copy to:

E. Third Party Beneficiary. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the City.

F. Provisions Severable. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

G. Time. Time is of the essence in the performance of all terms and provisions of this Agreement.

H. Calendar Days and Time. Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

I. Governing Laws. This Agreement shall be governed by, construed and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

J. Authority to Execute.

1. **The City.** The City hereby warrants and represents to the Consultant that the persons executing this Agreement on its behalf have been properly authorized to do so by its corporate authorities.

2. **The Consultant.** The Consultant hereby warrants and represents to the City that the persons executing this Agreement on its behalf have the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement and that all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken.

K. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties to this Agreement and supersedes all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.

L. **Waiver.** Neither the City nor the Consultant shall be under any obligation to exercise any of the rights granted to them in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the City or the Consultant to exercise at any time any such rights shall not be deemed or construed as a waiver of that right, nor shall the failure void or affect the City's or the Consultant's right to enforce such rights or any other rights.

M. **Consents.** Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.

N. **Force Majeure.**

1. Either party shall be excused for delay or failure to perform its obligations under this Agreement, in whole or in part, when such delay or failure is a result of causes beyond the control and without the fault or negligence of the party unable to perform. Such causes include, without limitation, acts of God, acts of the public enemy, fires, floods, epidemics, quarantine restrictions, or embargoes.

2. The party whose performance is so affected shall promptly notify the other party of all pertinent facts and take all reasonable steps, promptly and diligently, to prevent such causes if it is feasible to do so, or to minimize or eliminate the effect thereof.

3. The inability of the Consultant or its subcontractors to meet the requirements of this Agreement as a result of City caused labor strikes, interruptions or disputes shall not be deemed to be a Force Majeure.

O. **Grammatical Usage and Construction.** In construing this Agreement, pronouns include all genders and the plural includes the singular and vice versa.

P. Interpretation. This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

Q. Headings. The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

R. Exhibits. The Exhibits attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an Exhibit and the text of this Agreement, the text of this Agreement shall control.

S. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.

T. Counterpart Execution. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement this 7th
day of NOVEMBER, 2011

CITY OF DES PLAINES

Print Name: Michael G. Bartholomew, City Manager

Signature: 

CONSULTANT

Print Name: Jason Trotter, Owner and Founder

Signature: 

EXHIBIT A

Services for the City

Scope of Work and Expectations

1. Technical support and advisement on the day to day IT activities of the City. Interact with management and staff to help resolve IT related items in a timely and cost effective manner. Assist with finding any "special services" that may be needed to support systems that require third party support (i.e. Virtual environment).
2. Provide strategic support and conduct studies, as authorized by the City Manager. Strategic support includes system and solution related decisions, budget monitoring and review, coordination of new system integration projects, assisting any outside consultants as necessary, existing system maintenance and support, and responses to emergency system outages or problems.
3. Conduct a "best practices" assessment of City's Information Technology Division. Study will examine all aspects of IT Division operations. Final work product to be completed within a time frame mutually agreeable to both parties.
4. Monitoring of the City's technology support requests made to the City's Work Order system to insure that the users continue to receive the level of response and service they have come to expect from the IT staff and solutions. Work with the existing technical staff to respond in a timely manner and keep system usage and productivity at the highest level possible.
5. Work with the City Manager and designates to address any additional information technology questions and problems that may occur and make our professional IT team available to review and assess IT related solutions and strategic considerations that may be presented by the City Counsel and staff.
6. Maintain a weekly work log of all work performed for the City including time spent, and submit log to City Manager and designee (Director of Human Resources) at the end of each bi-weekly work period.

EXHIBIT B

COMPENSATION

Contractor shall be entitled to compensation for performing those tasks and duties related to the Scope of Work as follows:

- \$150.00/hr for approximately 15hrs/week during contract period. The discounted rate is provided with the assumption that the city will provide the contractor with reasonable use of City resources, including but not limited to: office space on city maintained property, all resources to fully execute duties as contracted by the City, full legal and proper use of internet and technology resources during the contract period including utilities, email, electricity, and all related facilities. Contractor will advise City in writing in advance of any work required beyond 15/hrs. week and City will provide written response.
- Flexible Schedule and Work Environment. Contractor will be permitted to use work environment and space and resources provided during regular and reasonable business hours. The notable benefit is that contractor may be available at times where they may not otherwise have been immediately available.
- Payment Requests. Contractor will submit payment request to the City on a bi-weekly basis and shall be accompanied with weekly work logs. Once approved, payment request will be processed and payable to Contractor no later than 45 days.

CITY OF DES PLAINES

RESOLUTION R - 153 - 12

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN PROGRESSIVE INTELLIGENCE TECHNOLOGIES, LLC AND THE CITY OF DES PLAINES FOR INFORMATION TECHNOLOGY CONSULTING SERVICES FOR THE CITY OF DES PLAINES.

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution authorizes the City of Des Plaines to contract with individuals, associations and corporations, in any manner not prohibited by law or ordinance; and

WHEREAS, the City desires to enter into an agreement for information technology consulting services with Progressive Intelligence Technologies, LLC at a cost of \$150.00 per hour for an estimated 15 hours per week for an initial 30 day term period renewable thereafter for successive one month terms; and

WHEREAS, it is in the best interest of the City to enter into an agreement for information technology consulting services between Progressive Intelligence Technologies, LLC and the City of Des Plaines; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Plaines, County of Cook, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: That the recitals set forth herein above are incorporated herein by reference as the factual basis for this transaction.

SECTION 2: That the City Manager is hereby authorized to execute the Professional Services Agreement for information technology consulting services from Progressive Intelligence Technologies, LLC at a cost of \$150.00 per hour for an estimated 15 hours per week for an initial term of 30 days renewable thereafter for successive one terms, a copy of which is attached hereto and made a part hereof as Exhibit "A."

SECTION 3: That the Director of Finance is hereby authorized to issue payments to Progressive Intelligence Technologies, LLC, PO Box 499, Indianola, IA, 50125, upon receipt and review of invoice.

SECTION 4: That this Resolution shall be in full force and effect from and after its passage and approval according to law.

PASSED this ____ day of _____, 2012.

APPROVED this ____ day of _____, 2012.

VOTE: AYES ____ NAYS ____ ABSENT ____

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel