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MEMORANDUM

TO: Legal and Finance Committee

FROM: Lisa Seaman, GIS Coordinator

DATE: December 5, 2002

RE: Approval of a Contract with Varion Systems in an amount not to exceed $30,700 for the purchase of professional GIS software development for the Public Mapping Interface (Kiosk)

Attached please find a copy of the proposed contract with Varion Systems for the purchase of professional GIS software development services. The contract agreement has been prepared for a not to exceed amount of $30,700 and is subject to review by the Attorney's Office. Funds for this proposal are included in the 2002 GIS Budget.

Varion Systems software solution includes the deployment of two software packages, one for use by staff that provides sophisticated tools for navigation, query, thematic mapping and reporting functions and a scaled-down version for use by the public via the internet. The proposal submitted by Varion Systems included purchase of the two existing software packages and implementation services to customize the software to meet the specific requirements of the Public Mapping Interface Request for Proposal and train staff in the administration and use of the software.

On December 4, 2002 the LIS Task Force recommended approval of the attached contract upon review by the Attorney's Office and with the following stipulations:

Section C. 1. Testing and Acceptance – amend contract to allow the Client ten (10) working days to review, test and accept deliverables and to communicate any deficiencies to the Contractor.
Section C. 5. Product Modifications – amend contract to include the ability to print maps in either a landscape or portrait format and that all of the listed product enhancements be completed within the PV.Web Public interface.

Section D. 1. Fees – amend fee table to correct the apparent typographical or math error.

Section D. 3. Payment Terms - be amended to state that Varion Systems reserves the right to assess an 18% late fee for payments not received within 60-days.

Staff contacted Varion Systems and discussed the LIS Task Forces recommended amendments to the Public Mapping Interface contract. Varion Systems agreed to modify the contract to provide ten (10) days for client review, to modify the PV.Web Public software package to include the ability to include a user disclaimer on map output, and to extend the time in which late fees may be assessed to 45 days. Varion Systems also indicated that the software price listed in the Fee Table was incorrect but that the total contract amount of $30,700 is the correct contract amount.

Staff notified the LIS Task Force members of the contract terms suggested by Varion Systems and as of the writing of this memorandum no objections have been expressed by the members of the LIS Task Force.

Recommendation: The LIS Task Force recommends approval of the attached contract subject to revisions by the Attorney's Staff.

An Agreement for Professional Services

Between

Varion Systems
A Division of GeoAnalytics, Inc.

And

City of Rapid City, South Dakota

For

PV.Web and PV.Web Public Implementation

Date: December 2nd, 2002

•: varionsystems
A DIVISION OF GEOANALYTICS

Varion Systems
950 Lee Street Suite #202
Des Plaines, IL 60016
Phone: 847-824-6423
Facsimile: 312-896-5917
E-Mail: office@varionsystems.com

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An Agreement for Professional Services

Between

Varion Systems
a Division of GeoAnalytics, Inc.

and

City of Rapid City, South Dakota

To Conduct a Project Entitled

PV.Web and PV.Web Public Implementation

A. INTRODUCTION

This agreement is entered into by and between Varion Systems, a Division of GeoAnalytics, Inc., Des Plaines, Illinois, (hereinafter "Varion") and the City of Rapid City, South Dakota (hereinafter "Client") to conduct a project entitled *PV.Web and PV.Web Public Implementation*. This contract is in response to a formal Request for Proposal. The software provided and services to be performed under this agreement relate to the implementation of Varion's PV.Web and PV.Web Public products. Additional software and services, if any, will be undertaken by separate agreement. It is understood that this project will require Client involvement to be successful. As a result, the Client is committed to devote sufficient resources and staff time to ensure timely and fruitful completion of the project.

B. SCOPE OF SERVICES

Varion Systems will provide the Client with PV.Web and PV.Web Public, implementation and training services and annual maintenance and support for 1 year from contract date. This project will be completed in multiple phases. The following section summarizes Varion's objectives and activities for each phase.

PHASE 1: Situation Assessment

The primary objectives of this phase are to review PV.Web and PV.Web Public's out-of-the-box functionality, define the requirements for using the applications, examine the Client's spatial and tabular data to be included in the application, and review the IT infrastructure that needs to be in place to support the application.

a) Tasks

1) Project Kickoff
2) On-Site Working Session

b) Timeframe – 1 day

PHASE 2: Design

This phase is intended to map findings from the Assessment to the capabilities of the applications. Design will consider the data and technology issues as well as defining procedures for maintenance, data conversion and training. The objectives of this phase are to determine what functionality will be leveraged to meet the Client's needs and to define the required modifications.

a) Task

1) Off-Site Design

b) Timeframe – 2 weeks

PHASE 3: Construction

The next phase is comprised of data conversion, construction and deployment of a prototype of PV.Web and PV.Web Public on a Varion Systems server, and completion of Client staff testing of the application.

a) Tasks
1) Data Conversion
2) Prototype Development
3) Client Testing
    Prototype Modifications

b) Timeframe – 3 weeks

PHASE 4: Transition

The final phase encompasses on-site installation and training. The objectives of this phase are to install a final version of PV.Web at the Client site, complete administrative and user training, complete on-site testing and go live with the software.

a) Tasks
1) Installation
2) Training

b) Timeframe – 1 week

PHASE 5: Software

The initial task includes the purchase of a site license of PV.Web and PV.Web Public and one year of support and maintenance.

    a) Tasks

        1) PV.Web and PV.Web Public software and documentation will be provided to Client via CD upon final installation on a machine designated by Client.

    b) Timeframe – 1 day

Phase	Deliverable
Phase 1: Situation Assessment	• Project kick-off meeting • On-site assessment • Project management
Phase 2: Design	• Design document • Project management
Phase 3: Construction	• Functioning prototype • Project management
Phase 4: Transition	• Data publishing toolkit • Software installation • One, two hour user training • One, 4 hour administrative training • Project management
Phase 5: Software	• Software • Documentation

C. TERMS AND CONDITIONS

The information below is a clarification of the responsibilities of both Varion Systems and Client with regard to the successful completion of the project. The completion of all tasks shall remain under the supervision, management and control of Client with Varion Systems furnishing the necessary support services to aid Client. Varion Systems may also provide additional services at the request of Client.

1. Testing and Acceptance

Client is required to test product deliverables during the Construction and Transition phases. During the Construction phase, Client will have ten (10) working days to review, test and accept deliverables and to communicate any deficiencies to Varion Systems. Varion Systems will assist in testing final product delivery on 3 machines. Additional testing will be completed by Client.

2. Services

Varion Systems will perform services as agreed to in the Scope of Services section of this agreement. Fees for these services shall be charged in accordance with the Fees and

Expenses section of this agreement. Varion Systems will make all required efforts to effectively fulfill the obligations set forth in the above Scope of Services to Client satisfaction. If, however, additional services are necessary due to reasons beyond Varion Systems control or due to a change in Client specifications after the acceptance of this agreement, Varion Systems reserves the right to invoice Client at applicable service rates in effect at the time of the required services.

3. Sub-Contractors

Varion Systems may find it necessary to establish appropriate relationships with select consultants or vendors to supplement our in-house staff. Under these circumstances, Varion Systems is the "Customer" as to the vendor or sub-contractor at all times. Client will have the right to approve all subcontractors.

4. Contract Modifications

Should Client situation change to the extent that the role of Varion Systems is modified or expanded, Varion Systems' performance obligations may be re-negotiated or, if appropriate, terminated.

5. Product Modifications

Varion Systems will provide enhancements to PV.Web to meet the requirements specified in the request for proposal. These modifications will include:

- Printing for 11x17 paper size
- Landscape and portrait map production
- Hot linking from features
- Search by legal description
- User disclaimer placed on map output
- Map production modifications

PV.Web Public will be modified to allow for a user disclaimer to be placed upon the map output. All other product enhancements listed above will need to be pursued for PV.Web Public within a separate agreement.

6. Support and Maintenance

PV.Web and PV.Web Public are subject to an annual maintenance and support agreement that covers software upgrades, bug fixes and client support. Accordingly, Client will not alter the application's source code beyond reasonable, predetermined implementation services. Any Client alterations will void Varion's obligations under the support and maintenance agreement.

7. Limited Warranty

a. Varion makes no representation or warranty that the operations of the software will be error free or uninterrupted in all circumstances. If any portion of the website (including standard third-party operating systems or similar software in generally accepted industry use) or the media of which it is contained is found to contain an operability problem, bug, virus or other destructive programming device (whether or not any of the same are documented), then Varion's sole obligation and liability hereunder shall be upon the request of Client, and if appropriate upon Client return of the defective material, to correct the operability problem, bug, virus or other programming device (such as by providing an effective by-pass or patch where technically practicable) at no charge to Client, or, if GeoAnalytics is unable to do so, to replace the affected material with a functional equivalent.

b. Given that no software operates uninterrupted or is error-free, all deliverables and software will be designed and operate in all material respects in conformity with the relevant specifications and the terms and conditions of this Agreement. Varion does not disclaim the implied warranty of merchantability.

c. Notwithstanding the foregoing, Varion makes no representation or warranty that the operation of the software will not be adversely affected by other known errors in any Microsoft or other standard third-party operating system, enabling software (e.g., ArcIMS, Java, JSP), or similar software in generally accepted industry use (including Web server and database and other e-commerce software) included in the Client's site or on which their operations rely.

d. Varion does not disclaim the implied warranty of fitness for a particular purpose. The particular purposes are defined solely by the Client's procurement request, Varion's proposal, and this agreement.

e. IN THE EVENT THAT THE CLIENT MODIFIES THE SOURCE CODE, THE CLIENT SHALL HAVE VOIDED ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE SET FORT ABOVE AND INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

f. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, VARION MAKES NO WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY

8. Intellectual Property

a) Reservation of Intellectual Property Rights

Intellectual property, including applicable patent, trademark, copyright and trade secrets, developed under this agreement shall remain the sole and exclusive property of Varion Systems including rights of "authorship", as that term is used in U.S. Copyright law. Varion Systems grants Client a non-exclusive, irrevocable, royalty-free, right-to-use intellectual property developed under this agreement. Client, its employees and agents agree not to gift,

sell, lease or otherwise transfer, or make personal or professional use of these intellectual properties without the express, written consent of Varion Systems. This covenant shall survive the term of this agreement.

b) General Protection

It is illegal to use, make or distribute copies of copyrighted material (i.e., software programs) without authorization. Varion Systems will be an active participant in protecting the rights of copyright owners, including copyrights and other intellectual property it owns. All software including operating systems, applications, middle-ware, drivers, etc., must be registered according to the licensing requirements of the respective vendor. Varion Systems reserves the right to discontinue services if Varion Systems finds that Client is not in compliance with applicable federal copyright laws.

9. Trade Secrets and Confidentiality

Performance of this agreement may involve access to various confidential information or trade secrets of each party, such as software codes, methodologies, copyrighted materials and other intellectual properties. Each party shall retain all its rights, title and interests in its intellectual property, which includes patents, trademarks, copyrights, trade secrets and licensing agreements ("Intellectual Property Rights") in existence at the time this agreement is executed. Both Client and Varion Systems, their agents and employees, agree not to make personal or professional use of these confidential information or trade secrets or to reveal to any parties outside of each without the express, written consent of the other. Technical, personal, financial and/or proprietary data for which Client wishes to be treated in a confidential manner by Varion Systems, its employees and agents, must be so marked and identified before submission to Varion Systems. Confidentiality shall survive the term of this agreement.

10. Limitation of Liability

No employee or agent of Varion Systems shall have any individual professional liability to Client. Varion Systems assumes responsibility for the completion of services as specified in the scope of work. In no event shall Varion Systems be liable for any lost profits, lost savings or other incidental or consequential damages. Varion Systems shall not be liable for any claim by Client based on any third party claim of any kind whatsoever. Varion Systems shall not be liable for any incidental, special, or consequential damages or for loss or expense, even if Varion Systems has been advised of the possibility of such damages, directly or indirectly, including the destruction or loss of data or media resulting from services performed. Client hereby agrees that, to the fullest extent permitted by law, the total liability of Varion Systems to Client for any claim, loss or any incidental, consequential, direct or indirect damages arising out of the subject matter of this agreement, whether such liability shall arise by reason of negligence, breach of contract, breach of warranty or any other cause, will be limited to the actual amount of the fees for services of this contract.

11. Indemnification

a) Client

Client agrees, to the fullest extent permitted by law, to indemnify and hold Varion Systems harmless from any damage, liability or cost, including reasonable attorney's fees and costs of defense, arising from any changes made by anyone other than Varion Systems in, or from any reuse of, the deliverables under this Agreement without the prior written consent of Varion Systems. In the event of any use of adaptation by Client after termination of the project whereby the applications are revised, altered or otherwise modified by anyone other than Varion Systems, Client agrees to defend and indemnify Varion Systems from any claims, damages, cost or expenses (including reasonable attorney's fees), arising out of any defect or deficiency in the products.

b) Varion Systems

Varion Systems shall, at all times, fully indemnify and save harmless Client and its officers, members, agents, and employees from any and all claims and demands, actions and causes of action of any character whatsoever made by anyone whomsoever on account of, or in any way growing out of the performance of, this Agreement by Varion Systems, its employees, including, but not limited to, any claims that may be made by the employees themselves for injuries to their person or property or otherwise.

12. Insurance

Varion Systems retains commercial liability insurance including workers compensation and employers liability, commercial general liability, and automobile liability. If necessary, Varion Systems will provide a Certificate of Liability Insurance.

13. Termination

Client or Varion Systems may terminate this Agreement for cause, upon notice and opportunity to cure. Notice shall be by certified mail, return receipt requested, and terminations shall become effective fourteen (14) calendar days after receipt of the termination notice unless cured. Irrespective of which party to this Agreement shall effect termination, Client shall be obligated to pay Varion Systems for services rendered and reasonable costs incurred to the date of termination.

14. Term

Except where otherwise noted (see confidentiality and intellectual property), the term of this agreement shall begin as of execution and shall remain in effect until March 1st, 2003 unless otherwise extended in writing.

15. Waiver

Failure or delay of Varion Systems to enforce any right or remedy under this Agreement shall not be construed as an implied waiver or other waiver of any rights or remedies hereunder.

16. Entire Agreement

The parties agree that this Agreement, together with attachments, represents the sole and entire agreement of the parties with respect to the project.

17. Severability

If any provisions of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the remaining provisions shall remain in full force and effect.

18. Governing Law

This agreement, together with any riders and attachments shall be governed by the laws of the State of South Dakota. Legal discrepancies should be mitigated in the 7th Circuit Court, Rapid City, SD.

D. FEES AND EXPENSES

Fees are quoted not to exceed. If a need arises where adjustments must be made to the contract amount, both parties shall agree to the changes.

1. Fees

Products and Services	Cost
Phase 1: Situation Assessment	$2,000
Phase 2: Design	$2,000
Phase 3: Construction	$7,300
Phase 4: Transition	$4,400
Phase 5: Software • PV.Web and PV.Web Public: $12,500 • Annual support & maintenance: $2,500	$15,000
Sub-Totals	$30,700

2. Expenses

Project expenses are included as a part of the Fees listed above.

    a.   Administrative Expenses include postage, telephone, fax, reproduction, and publication.

    b.   Travel expenses are included in the project costs and will be charged at actual costs. Additional travel due to modifications of the project scope will require additional funding.

3. Payment Terms

All fees and expenses will be invoiced monthly until the completion of the project, and are due upon delivery of the invoice. In addition, the following items apply:

a. Payment for software and annual maintenance and support are due upon execution of this agreement.

b. Annual support and maintenance in subsequent years is due on the date this agreement is first executed.

c. Varion Systems reserves the right to assess an 18% late fee for payments not received within 45 days. The City will be notified prior to Varion Systems exercising this option.

Varion Systems

City of Rapid City, South Dakota

By: _____

By: _____

Paul Braun, President

City Mayor

Date: _____

ATTEST:
By:

_____

Date: _____

GeoAnalytics FEIN: 39-1861005