

AGREEMENT

This agreement is made this _____ day of _____ 2010 ("Effective Date") by and between Tyler Technologies, Inc., a Delaware corporation with offices at 5519 53RD Street, Lubbock, Texas 79414 ("Contractor") and Gila County, with offices at 1400 East Ash Street, Globe, Arizona 85501 ("County").

WHEREAS County issued a Request for Proposals for the purpose of acquiring General Ledger Treasurer's Banking Software and Support;

WHEREAS Contractor responded to County's Request for Proposals with a Proposal dated September 15, 2010;

WHEREAS County selected Contractor to furnish, deliver, install, and implement the products set forth in the investment summary;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth herein, Contractor and County agree that Contractor shall provide products and services, and County shall pay prices, as set forth in this agreement.

Laws and Ordinances

This agreement shall be enforced under the laws of the State of Arizona and Gila County. Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor. The Contractor shall comply with the applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the act.

Overcharges by Antitrust Violations

The County maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the County any and all claims for such overcharges as to the goods or services used to fulfill the contract.

Authority to Contract

This contract shall be based upon the Request for Proposal issued by the County and the offer submitted by the Contractor in response to the RFP. The offer shall substantially conform to the terms, conditions, specifications and other requirements set forth within the text of the RFP. The county reserves the right to clarify any contractual terms with the concurrence of the Contractor; however, any substantial non-conformity in the offer, as determined by the County Attorney, shall be deemed non-responsive and the offer rejected. The contract shall contain the entire agreement between Gila County and the Contractor relating to these requirements and shall prevail over any and all previous agreements, contracts, proposals, negotiations, purchase orders, or master agreement in any form. The contract activity is issued under the authority of the Gila County Manager, after the Gila County Board of Supervisors approves the award. No alteration of any portion of the contract, any items or services awarded, or any other agreement that is based upon this contract may be made without express written approval of the Gila County Board of Supervisors in the form of an official contract amendment. Any attempt to alter any documents on the part of the Contractor or any agency is a violation of the County Procurement Code.

Any such action is subject to the legal and contractual remedies available to the County inclusive, but not limited to, contract cancellation, suspension and/or debarment of the Contractor.

Contract Amendments

The contract shall be modified only by a written contract amendment signed by the Gila County Board of Supervisors and persons duly authorized to enter into contracts on behalf of the Contractor.

Contract Default

The County, by written notice of default to the Contractor, may terminate the whole or any part of this contract in any one of the following circumstances:

1. If the Contractor fails to make delivery of the supplies or to perform the services within the times specified; or
2. If the Contractor fails to perform any of the other provisions of this contract; and fails to remedy the situation within a period of ten (10) days after receipt of notice.

Right to Assurance

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the other party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within ten business (10) days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

Co-op Use of Contract – Intergovernmental Purchasing

Gila County has entered into an active purchasing agreement with other political subdivisions, cities, and towns of the State of Arizona in order to conserve resources, reduce procurement costs and improve timely acquisition and cost of supplies, equipment and services. The Contractor to whom this contract is awarded may be requested by other parties of said interactive purchasing agreements to extend to those parties the right to purchase supplies, equipment and services provided by the Contractor under this contract, pursuant to the terms and conditions stated herein. Any such usage by other entities must be in accord with the rules and regulations of the respective entity and the approval of the Contractor.

Cancellation of County Contracts

This contract is subject to the cancellation provisions of **A.R.S. §38-511**.

Termination of Contract

If Contractor fails to cure the defect, the County, with cause, may terminate this contract at by mutual written consent, or by giving thirty (30) days written notice to you. If this contract is terminated, the County shall be liable only for payment of any products and/or services provided by Contractor prior to notification of cancellation.

The County reserves the right to cancel the whole or any part of this contract due to failure of the Contractor to carry out any term, promise, or condition of the contract. The County will issue a written ten (10) day notice of default to Contractor for acting or failing to act as in any of the following:

1. The Contractor fails to perform the stipulations, conditions or services/specifications required in the contract.
2. The Contractor attempts to impose on the County material products, or workmanship, which is of unacceptable quality.
3. Contractor fails to furnish the required service and/or product within the time stipulated in the contract.
4. The Contractor fails to make progress in the performance of the requirements of the contract.

Each payment obligation of the County created hereby is conditioned upon the availability of County, State and Federal funds, which are appropriated or allocated for the payment of such an obligation.

If funds are not allocated by the County and available for the continuance of service herein contemplated, the contract period for the service may be terminated by the County at the end of the period for which funds are available. The County shall notify the Contractor at the earliest possible time which service may be affected by a shortage of funds. No penalty shall accrue to the County in the event this provision is exercised, and the County shall not be obligated or liable for any future payments due or for any damages as a result of termination under this paragraph. County is responsible for payment of any products and/or services provided by Contractor prior to notification of cancellation. County acknowledges that this non-appropriation provision is not intended to be used as a substitute for convenience termination nor for the purpose of replacing the Property with property or services intended to perform substantially similar functions. County, therefore, agrees to the extent permitted by applicable law (i) not to utilize these non-appropriation provisions for such purposes and (ii) if this Agreement is terminated because of non-appropriation of funds, not to purchase, lease, rent, or otherwise acquire property or services which are intended to perform substantially similar functions as those provided by the Property during the fiscal year following termination of this Agreement.

Indemnification Clause

Contractor shall indemnify, defend, save and hold harmless the County of Gila and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims.

Incorporation of COMPANY AGREEMENT TERMS AND CONDITIONS

The County and Contractor agree to incorporate by this reference Contractor's document "COMPANY AGREEMENT TERMS AND CONDITIONS" which shall be attached to this agreement as Exhibit 1. In the event the terms of this agreement and the terms of Contractor's "COMPANY AGREEMENT TERMS AND CONDITIONS" are found to be in conflict, the terms of this agreement shall prevail over the terms of the Contractor's document "COMPANY AGREEMENT TERMS AND CONDITIONS."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth below.

Gila County

Tyler Technologies, Inc.

Gila County Board of Supervisors:

Michael A. Pastor, Chairman, Board of Supervisors

Brett Cate; President, Local Government Division

Date: _____

Date: _____

Attest:

Marian Sheppard, Chief Deputy Clerk of the Board

Date: _____

Approved as to Form:

Bryan B. Chambers, Chief Deputy County Attorney
for Daisy Flores, County Attorney

Date: _____