



Board of Supervisors Memorandum

December 13, 2016

Intergovernmental Agreement with City of Tucson regarding Executive Pulse Customer Relations System

Background

As the City and the County work more closely together in expansion of local employers and attraction of new employers, a system to track prospects, coordinate activities, identify joint assets to propose, clarify incentives that each entity can provide, and present a coordinated proposal is needed. Systems were evaluated by both parties and contrasted to developing an in-house option and Executive Pulse was selected as the best alternative to meet individual jurisdiction's needs while also offering the capability to collaborate and share certain, but not all information. The basic functions of the system center around economic development efforts and based on joint evaluation is a good fit for both jurisdictions. Executive Pulse is felt to provide the tool to not only put our collective best foot forward, but also to trigger follow-up steps during the recruiting process and to insure that commitments by prospects and jurisdictions such as training and insuring qualifying thresholds have been met once they have been successfully recruited.

Cost Sharing and Operations

Pima County and the City of Tucson will share equally in the cost of the licensing and maintenance fees. Licenses will be issued to the City of Tucson with the vendor's acknowledgement that the City will grant use of the licenses to Pima County as long as maintenance fees are maintained. Each entity will provide at least 5 years of maintenance fees. Pima County will also pay to license the Outlook Integration Module as the City does not use Microsoft Outlook. Each entity will provide two employees for a Leadership Team and each will include one or more Economic Development staff plus technical staff necessary to facilitate the implementation and operation of the system as participants in the Business Support Team.

Initial License Fee for Pima County will be \$18,250 and annual maintenance costs will be \$2,722.50, per year for 5 years, plus user fees for 5 years of \$5,660 for a total contract amount of \$37,522.50.

Recommendation

I recommend approval of the Intergovernmental Agreement between Pima County and the City of Tucson for the Use of License Agreement #171610 Customer Relations Management Software System (CRM).

The Honorable Chair and Members, Pima County Board of Supervisors
Re: **Intergovernmental Agreement with City of Tucson regarding Executive Pulse Customer Relations System**

December 13, 2016

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Sincerely,

A handwritten signature in black ink, appearing to read "C.H. Huckelberry". The signature is written in a cursive style with a long, sweeping tail that extends downwards and to the right.

C.H. Huckelberry
County Administrator

CHH/dr (November 30, 2016)

Attachment

c: Dr. John Moffatt, Director, Economic Development Office

**Intergovernmental Agreement
between
Pima County and City of Tucson
for
Use of License Agreement #171610 Customer Relations Management Software System
(CRM)**

This Intergovernmental Agreement (IGA) is entered into by and between Pima County, a body politic and corporate of the State of Arizona (“County”) and the City of Tucson, a municipal corporation (“City”) pursuant to A.R.S. § 11-952.

Recitals

- A. County and City may contract for services and enter into agreements with one another for joint or cooperative action under A.R.S. §§ 11-951 through 11-955.
- B. County and City often cooperate on economic development projects, such that a shared Customer Relations Management (“CRM”) Software System is mutually beneficial.
- C. County and City desire to take action related to joint usage of an Economic Development CRM Software System (“System”).
- D. City has negotiated License Agreement #171610 – Customer Relations Management Software System (License Agreement) (Attachment A) with Executive Pulse.

NOW, THEREFORE, County and City, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

Agreement

- 1. **Purpose.** The purpose of this IGA is to provide cost effective and efficient County and City Economic Development customer relations through joint usage of the Executive Pulse CRM System. For the purposes of this IGA, the System includes Executive Pulse CRM along with annual maintenance costs and any additional Modules deemed necessary for enhanced usage.
- 2. **Scope.** This IGA establishes the agreement under which Executive Pulse (“Vendor”) will provide City and County with services (“Services”) as defined by the License Agreement. The System is to be configured by Executive Pulse and modified and implemented by City as desired by both parties.
- 3. **Agency Roles and Responsibilities.**
 - 3.1. **Lead Agency Designation and Duties.** City will be the lead agency and will directly contract with Vendor.

- 3.2. Leadership Team.** County and City will each identify two employees to serve on the Leadership Team to provide business related guidance and direction related to System configuration and enhancements, cross-department standards and new projects. The Leadership Team will meet as needed.
- 3.3. Business Support Team.** County and City will each designate a business support team (BST). The BST will be made up of one or more department employees from Pima County Economic Development and the City of Tucson's Economic Initiatives that have a solid grasp of department business processes, and an aptitude for understanding how business applications are used to support those processes. General responsibilities include:
- Serving as the first line of support and overall department representatives for Vendor;
 - Participating in Vendor training, administering business process training to end users, and responding to end user requests for assistance;
 - Attending BST meetings as needed to discuss issues and share experiences and ideas with other team members.
- 4. Licenses.** City will own the Vendor licenses and will grant use of said licenses to County subject to the terms of maintenance outlined in the License Agreements.
- 5. Application Administration.** Vendor will provide Application Administration and Development. Application Administration includes user maintenance, security, configuration changes, scripting, reporting and basic user training.
- 6. Application Configuration, Testing and Training.** City and County staff will directly be involved with Vendor for configuration, testing and training with direct participation from business personnel from City and County departments that will use the System.
- 6.1. Analysis and Configuration.** City and County will work with Vendor to properly customize the application to meet both City's and County's needs independently from each other.
- 6.2. Record Testing.** City and County will test configured system records for adherence to configuration specifications.
- 6.3. User Training.** Vendor will provide training, including power-user training. BST members will provide business process training to City and County end users.
- 7. System Maintenance and Support.** Vendor will provide System maintenance and support and maintain a system uptime of over 99% excluding scheduled updates and maintenance.

8. Data Separation. City and County staff will determine based on best practices what data can be collaboratively shared between the two entities. Each entity will have final determination over their proprietary data and whether they wish to share such data. For purposes of this section, “data” includes but is not limited to: contacts, negotiations, developments, parcel information, and vacant land lists.

8.1. Data Disputes. The Leadership Team will meet to discuss any issues regarding data and will propose possible resolutions.

9. Personnel. Assigned County and City personnel will remain employees of their respective employers. No employee of either party will have any claim to employment-related fringe benefits under the applicable Personnel or Merit system of the other party.

10. Financing. In consideration for the services, work products and software specified in this IGA City agrees to pay Vendor directly or through an authorized software reseller.

Product	Quantity	Price	City of Tucson Cost	Pima County Cost
Executive Pulse One-time License Fee	1	\$33,000	\$16,500	\$16,500
Executive Pulse Annual Maintenance	1 (per year)	\$5,445	\$2,722.50	\$2,722.50
Outlook Integration Module	1	\$1,750	N/A	\$1,750
Total Year 1 Costs		\$40,195	\$16,500	\$18,250
Total Annual Costs starting year 2			\$2,722.5	\$2,722.5

Additionally, the Outlook Integration Module requires a \$15 per user per month fee that will be billed annually, and a \$290 renewal fee for years 2-5.

10.1. Invoicing and Payment Requests. The City will obtain a Quote for services from Vendor and will pay Vendor the full amount for all invoices for service. County will pay City for one-half of the services obtained within thirty (30) days of receiving an invoice from City. County will also pay City the full amount invoiced by Vendor for additional modules or services which County orders from Vendor and which City will not use, such as the Outlook Integration Module.

- 10.2. Annual Executive Pulse Maintenance Fee.** City will pay the license fee in full on an annual basis for at least the next five (5) years. County will in turn pay the City for its half of the license fee within thirty (30) days of receiving an invoice from City.
- 11. Term.** This IGA will be effective on the date it is fully executed by both parties and will continue for a period concurrent with the term of the License Agreement unless it is, prior to the expiration of such period, terminated in accordance with Section 13 of this IGA or extended by agreement of the parties.
- 12. Dispute Resolution.** In the event of a dispute between the City and the County regarding delivery of services under this IGA, the following steps will be taken:
- 12.1. Leadership Team Review.** The Leadership Team will review disputes, identify options and take action to resolve the issues.
- 12.2. City Manager and County Administrator Review.** Any dispute not resolved by the Leadership Team will be referred to the City Manager and County Administrator, or their designees, who will review the dispute and options or resolution, and provide direction on actions to be taken. If a dispute cannot be resolved, either party may terminate the IGA in accordance with Section 13 below.
- 13. Termination.** Either party may terminate this IGA for convenience or breach as follows:
- 13.1. Termination for Convenience.** Either party may terminate this IGA for convenience, after first providing written notice of the intent to terminate to the other party at least 180 days in advance.
- 13.2 Termination for Breach.** A breach means one or more of the following events: (1) either party fails to perform services by the time and date required and the event of default or delay arises from unforeseeable causes beyond the control and without the fault or negligence of that party. Examples of such causes include—
- 13.2.1 Acts of God or of the public enemy,
 - 13.2.2 Acts of a non-party governmental entity in either its sovereign or contractual capacity,
 - 13.2.3 Acts of another contractor in the performance of a contract with either party,
 - 13.2.4 Fires,
 - 13.2.5 Floods,
 - 13.2.6 Epidemics,
 - 13.2.7 Quarantine restrictions,
 - 13.2.8 Strikes,
 - 13.2.9 Freight embargoes, or
 - 13.2.10 Unusually severe weather;
- (2) either party breaches any warranty, or fails to perform or comply with any term or agreement in the IGA. A party claiming a

breach has occurred must issue a written notice of breach to the other party providing a period not to exceed thirty (30) days in which there is an opportunity to cure. If the cure requires more than thirty (30) days, the party responsible for the breach will provide a plan acceptable to the party claiming a breach and, if exercising due diligence, will have a reasonable time to cure. Time allowed for cure will not diminish or eliminate liability for damages.

If the breach remains, after the opportunity to cure, the party claiming a breach may exercise any remedy provided by law.

13.3 Termination for Vendor Non-Compliance. In the event that the Vendor is not in compliance with City of Tucson License Agreement #171610 and City terminates the Agreement as a result, City may terminate this IGA upon termination of the License Agreement.

City will give notice to County thirty (30) days prior to terminating the License Agreement for Vendor Non-Compliance.

14. **Disposal of Property.** Upon the termination of this IGA, all property involved will revert back to the owner unless otherwise specified in the subsection below. Termination will not relieve any party from liabilities or costs already incurred under this IGA, nor affect any ownership of property pursuant to this IGA. City and County acknowledge that some information is being shared jointly and is therefore jointly owned at termination.
15. **Indemnification.** Each party (as Indemnitor) agrees to indemnify, defend and hold harmless the other party (as Indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") for bodily injury of any person (including death) or property damage, but only to the extent that such injury or damage is caused or alleged to be caused by a negligent or intentionally wrongful act or omission of the Indemnitor, or of any of its officers, officials, agents, employees, or volunteers.
16. **Insurance.** Each party will obtain and maintain at its own expense, during the entire term of this IGA the following type(s) and amounts of insurance:
 - a) Commercial General Liability in the amount of \$1,000,000.00 combined single limit Bodily Injury and Property Damage.
 - b) Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of \$1,000,000.00 combined single limit or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage.
 - c) If this Contract involves professional services, professional liability insurance in the amount of \$1,000,000.00.

- d) If required by law, workers' compensation coverage including employees' liability coverage.

Each party will provide thirty (30) days written notice to the other party of cancellation, non-renewal or material change of coverage.

The parties may meet the above requirement alternatively through self-insurance pursuant to A.R.S. §§ 11-261 and 11-981 or participation in an insurance risk pool under A.R.S. § 11.952.01, at no less than the minimum coverage levels set forth in this section.

17. **Compliance with Laws.** The parties will comply with all federal, state and local laws, rules, regulations, standards and Executive Orders. The laws and regulations of the State of Arizona will govern the rights of the parties, the performance of this IGA and any disputes. Any action relating to this IGA will be brought in a court in Pima County.
18. **Non-Discrimination.** The parties will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out their duties under this IGA. The parties will comply with the provisions of Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this IGA by reference.
19. **ADA.** The parties will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
20. **Severability.** If any provision of this IGA, or any application of a provision to the parties or any person or circumstance, is found by a court to be invalid, that invalidity will not affect other provisions or applications of this IGA that can be given effect without the invalid provision or application.
21. **Conflict of Interest.** This contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
22. **Non-Appropriation.** Notwithstanding any other provision in this IGA, this IGA may be terminated if for any reason the Pima County Board of Supervisors or the Mayor and Council of the City of Tucson does not appropriate sufficient monies for the purpose of maintaining this IGA. In the event of such cancellation, the parties will have no further obligations under this IGA other than for payment for services rendered prior to cancellation.
23. **Legal Authority.** Neither party warrants to the other its legal authority to enter into this IGA. If a court, at the request of a third person, should declare that either party lacks authority to enter into this IGA, or any part of it, then the IGA, or parts of it affected by such order, will be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.

- 24. Worker's Compensation.** Each party will comply with the notice of A.R.S. § 23-1022 (E). For purposes of A.R.S. § 23-1022, irrespective of the operations protocol in place, each party is solely responsible for the payment of Worker's Compensation benefits for its employees.
- 25. No Joint Venture.** It is not intended by this IGA to, and nothing contained in this IGA will be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between a party and the employees of the other party. Neither party will be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.
- 26. No Third Party Beneficiaries.** Nothing in this IGA is intended to create duties or obligations to or rights in third parties not parties to this IGA or affect the legal liability of either party to the IGA by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.
- 27. Notice.** Any notice required or permitted to be given under this IGA must be in writing and served by delivery or by certified mail upon the other party as follows (or at such other address as may be identified by a party in writing to the other party):

County:

City:

Economic Development, Director
130 West Congress, 10th Floor
Tucson, AZ 85701

Economic Initiatives Manager
255 W Alameda, 4th Floor
Tucson, AZ 85726

With copies to:

County Administrator
130 West Congress St., 10th Floor
Tucson, Arizona 85701

City Manager
255 W Alameda, 10th Floor
Tucson, AZ 85726

Clerk of the Board
130 West Congress, 5th Floor
Tucson, Arizona 85701

City Clerk
255 W Alameda, 9th Floor
Tucson, AZ 85726

- 28. Entire Agreement.** This document, and any exhibits attached to it, constitutes the entire agreement between the parties pertaining to the subject matter addressed, and all prior or contemporaneous agreements and understandings, oral or written, are

superseded and merged into this IGA. This IGA may not be modified, amended, altered or extended except through a written amendment signed by the parties.

In Witness Whereof, County has caused this Intergovernmental Agreement to be executed by the Chair of its Board of Supervisors and attested to by the Clerk of the Board, and City has caused this Intergovernmental Agreement to be executed by the Mayor upon resolution of the Mayor and Council and attested to by the City Clerk.

PIMA COUNTY:

CITY OF TUCSON:

Sharon Bronson, Chair
Board of Supervisors

Jonathan Rothschild, Mayor

ATTEST

ATTEST

Robin Brigode, Clerk of the Board

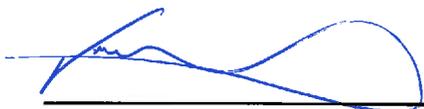
Roger Randolph, City Clerk

Intergovernmental Agreement Determination

The foregoing Intergovernmental Agreement between Pima County and the City of Tucson has been reviewed by the undersigned, each of whom has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the party the undersigned represents.

PIMA COUNTY:

CITY OF TUCSON:



11/29/16

Deputy County Attorney
TOBIN ROSEN

Assistant City Attorney