REPORT TO CITY COUNCIL

DATE: DECEMBER 19, 2012

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM GREG RAMIREZ, CITY MANAGER

BY: CHRISTY PINUELAS, DIRECTOR OF FINANCE

SUBJECT: APPROVAL OF AGREEMENT WITH TYLER TECHNOLOGIES, INC. TO UPGRADE FINANCE SOFTWARE

At the budget workshop held in June, staff discussed with the City Council the need to upgrade the City's existing financial software. The City Council included funds in the budget, and staff is now recommending that Incode, by Tyler Technologies, Inc. be purchased.

In 1999, the City purchased FundBalance, by Tyler Technologies, Inc, a software used to maintain the City's financial records, cash receipting, and payroll. The software is currently used by all employees at city hall to review their budgets and view actual expenditures. Finance staff utilizes the software in their day-to-day operations. Business Licensing is maintained in a separate database maintained by HdL; Personnel is maintained in Excel; and Public Works and Building and Safety utilize yet another platform, Energov. While the current software provides adequate record keeping, it is antiquated and cumbersome for staff to utilize. It is also not integrated. Tyler has released an upgrade to the software under the name of Incode; Incode provides a more integrated financial management solution. Tyler also recently acquired Energov, the software being utilized by Public Works and Building and Safety. The new Incode software will integrate business licensing, personnel, and, ultimately, public works and building and safety into one platform. It will reduce the use of separate spreadsheets and the redundancy of staff entering similar data into multiple software databases. The new software will allow staff to enter their budget data into an integrated database and allow for better reporting and forecasting tools. It will also provide for online capabilities to renew business licenses and, ultimately, to pull some building and public works permits.

Tyler Technologies is a leading provider of information management solutions. The company provides software and services to more than 9,000 local government offices throughout the United States, Canada, and the United Kingdom. Finance staff is very familiar with the service level provided, since we have utilized their software since 1999.

Staff attended demonstrations for three different software companies that provided the level of service needed by the City. All of the software provided an adequate level of service, but because we are upgrading with our existing company, Tyler Technologies, Inc, provided the best pricing. They also provided the easiest transition of data, since they can easily migrate the data

from FundBalance to Incode. Finally, they provide the best technology for integrating with our public works and building and safety options.

The options reviewed were as follows:

Company	One-Time Cost	Maintenance
New World Systems	$379,800	$37,120
Sungard One Solution	Approximately $350,000	Declined to quote
Tyler Technologies, Inc.	$53,714	$16,983

The 2012/13 City Budget includes $80,000 to cover the recommended upgrade of the financial systems software. The proposed agreement has been reviewed by the City Attorney and approved to as form.

RECOMMENDATION

Staff respectfully recommends the City Council approve the agreement with Tyler Technologies, Inc., for software and support services.

Attachment: Tyler Technologies, Inc., Systems Agreement

Systems Agreement

Local Government Division

Agreement between:

Tyler Technologies, Inc
5519 53rd Street
Lubbock, Texas 79414

(800) 646.2633
(806) 797-4849 Fax

And

City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301
(818) 597-7319

Issued date: *December 19, 2012*

AGREEMENT

This agreement is entered into by and between Tyler Technologies, Inc., hereinafter referred
to as COMPANY, located at 5519 53rd Street, Lubbock, Texas 79414; and;   **City of Agoura Hills**   ,
hereinafter referred to as CLIENT on,   _____ , 2012.

COMPANY and CLIENT agree as follows:

1. COMPANY shall furnish the products and services as described in this Agreement, and CLIENT shall pay the prices set forth in this Agreement.

2. This Agreement consists of this Cover and the following Attachments and Exhibits:
    Section A   Investment Summary (A-I)
    Section B   Company Migration Agreement Terms and Conditions
    Section C   Company Web Services - Internet Based Products Subscription Agreement Terms and Conditions

3. The License Fees set forth in the Investment Summary are based on defined category levels. Placement within a category is based on the size of the organization serviced and measured by such factors as operating budget, number of employees, number of utility accounts, number of sworn officers, population of the entity, etc.

IN WITNESS WHEREOF, persons having been duly authorized and empowered to enter into this
Agreement hereunto executed this Agreement effective as of the date last set forth below.

Client: City of Agoura Hills   **Tyler Technologies, Inc.:**

By: _____   By: _____
Signature   Signature

_____   _____
Printed Name   Printed Name

_____   _____
Title   Title
                                                                        12/19/12
_____   _____
Date   Issue Date

_____
Sales Tax Certificate Number

Investment Summary

Christy Pinuelas
City of Agoura Hills

Prepared for:	**City of Agoura Hills**
Contact Person:	Christy Pinuelas
Address:	30001 Ladyface Court
	Agoura Hills, CA 91301
Phone:	(818) 597-7319
Fax:	-
Email:	cpinuelas@ci.qgoura-hills.ca.cu

Contract ID # :	**2012-0147**
Issue Date:	**6/28/12**
Salesman:	**M. Smith**
Tax Exempt:	*Yes / No*

Product, Service & Equipment	Milestone # 1 On Execution	Milestone # 2 On Delivery	Milestone # 3 As Verified	As Progress Occurs	Totals	Maintenance
Total Applications Software						15,183.00
License Fees - INCODE Financial Suite			21,456.00		21,456.00	
License Fees - INCODE Personnel Management Suite			8,850.00		8,850.00	
License Fees - INCODE Customer Relationship Management Suite			15,875.00		15,875.00	
License Fees - INCODE Document Management Suite			14,550.00		14,550.00	
Less Preferred Customer Discount			(48,767.00)		(48,767.00)	
Total Professional Services						
On-Site Services				31,500.00	31,500.00	
Final Implementation				2,750.00	2,750.00	
Project Management			2,500.00		2,500.00	
Data Conversion & Assistance				5,000.00	5,000.00	
Tyler Online Training Center						600.00
Totals	**0.00**	**0.00**	**14,464.00**	**39,250.00**	**53,714.00**	**15,783.00**

Please note travel expenses will be billed as incurred.

		Initial Fees	Monthly Fees**
Total Monthly Services		600	100
Internet Services and Products			
**Please note this is not an Annual agreement, the fees listed herein are monthly fees.			
Totals		**600**	**100**

c

General Payment Terms: The fees and other charges set forth on the Investment Summary - Page C shall be due and payable as follows:

(a) **License Fees:** CLIENT shall pay to COMPANY the license fees for the Migrated Software upon the earlier of (A) COMPANY's verification of the software products; (B) CLIENT's completion of its own validation process; or (C) CLIENT's live processing (each as set forth in Section 2.3 of the Software License Agreement) per implemented product suite. In no case, shall this period exceed one hundred-eighty (180) days from delivery of the software.

(b) **Project Management Services**: Project management will be billed upon verification of software. In no case, shall this period exceed one hundred-eighty (180) days from delivery of the software.

(c) **Data Conversion Services:** Conversion Programming Fee will be billed upon verification of software. Associated service fees will be billed as incurred.

(d) **Professional Services:** All other professional service fees and expenses shall be billed as delivered and incurred and shall be due and payable net 30 days.

(e) **Annual Software Maintenance Fees:** The software license fees for the Migrated Software include maintenance from the date the Migrated Software is delivered until the anniversary date of CLIENT's existing Annual Software Maintenance Agreement, thereafter, the annual software maintenance fees for the Migrated Software set forth on the Investment Summary shall be billed annually in advance and due upon such anniversary date.

(f) The fees and other charges set forth on the Investment Summary - Page C do not include any tax or other governmental imposition including, without limitation, sales, use or excise tax. All applicable sales tax, use tax, or excise tax shall be paid by CLIENT and shall be paid over to the proper authorities by CLIENT or reimbursed by CLIENT to COMPANY on demand in the event that COMPANY is responsible or demand is made on COMPANY for the payment thereof. If tax-exempt, CLIENT must provide COMPANY with CLIENT's tax-exempt number or form.

Software Licenses

Christy Pinuelas
City of Agoura Hills
June 28, 2012

Application Software	QTY	License Fee	Annual Fee
Incode Financial Management Suite	1	21,456	5,364
Core Financials			
(General Ledger, Budget Prep, Bank Recon, Accounts Payable)			
Positive Pay			
Fixed Assets			
Incode Personnel Management Suite	1	8,850	2,213
Personnel Management			
(Payroll & Human Resources, FMLA Leave Tracking, Benefits Administration, Position Control/Budgeting)			
Employee Self Service *(Number of FTE Employees)*	35		N/C
(Employee Portal, Leave Tracking, Time Request & Approval)			
Incode Customer Relationship Management Suite	1	13,200	3,300
Cashiering			
(Support Credit/Debit Cards via ETS, PCI Compliant)			
Miscellaneous Accounts Receivable			
Project Accounting			
Business License			
Note: Central Cash Collection is not required but highly recommended.			
Incode Content/Document Management Suite	1	14,550	3,638
Incode Printing and Reporting Solutions			
Standard Forms Package			
(4 Overlays for Financials, 1 Logo)			
Secure Signatures *(includes 2 signatures)*			
Output Director			
Output Director			
(Base Engine, Print Output Channel, Tyler Content Management Output Channel, Email Output Channel)			
Laserfiche Output Channel			
Content Management			
Laserfiche Financial Suite Interface			
Laserfiche CRM Suite Interface			
System Software & Network Services		2,675	669
System Software			
System Software			
Incode Application Subtotal		58,056	14,514
Tyler | FundBalance Upgrade Discount		(48,767)	
System Software Subtotal		2,675	669
Application and System Software Total		**11,964**	**15,183**

Application Professional Services Summary	Estimated Hours	Estimated Services
Implementation Services		
Financial Suite	96	12,000
Personnel Management Suite	72	9,000
Customer Relationship Management Suite	60	7,500
Content Management Suite	24	3,000
Conversion Services		
Financial Suite	40	5,000
INCODE Professional Services		
Project Management		2,500
Final Implementation Services	22	2,750
Professional Services Total	**314**	**41,750**

Implementation Services Breakdown	QTY	Estimated Hours	Estimated Services
Incode Financial Suite			
Incode Financial Applications			
Core Financials	1	64	8,000
(General Ledger, Budget Prep, Bank Recon, Journal Entry Import, Exporter, Accounts Payable, Report Writer Viewer)			
Positive Pay	1		
Fixed Assets	1	16	2,000
Financial Consulting Services		16	2,000
Financial Suite Subtotal		96	12,000
Incode Personnel Management Suite			
Incode Personnel Management Systems			
Personnel Management	1	48	6,000
(Payroll & Human Resources, FMLA Leave Tracking, Benefits Administration, Position Control/Budgeting)			
Employee Self Service *(Number of FTE Employees)*	35	16	2,000
(Employee Portal)			
Personnel Management Consulting Service		8	1,000
Personnel Management Suite		72	9,000
Incode Customer Relationship Management Suite			
Cashiering	1	16	2,000
(Support Credit/Debit Cards via ETS, PCI Compliant)			
Miscellaneous Accounts Receivable	1	12	1,500
Business License	1	32	4,000
Note: Central Cash Collection is not required but highly recommended.			
Customer Relationship Management Suite Subtotal		60	7,500
Incode Content Management Suite			
Incode Printing and Reporting Solutions			
Standard Forms Package	1		N/A
(4 Overlays for Financials, 5 Overlays for CRM, 1 Logo)			
Secure Signatures *(includes 2 signatures)*	1		N/A
Output Director			
Output Director	1	8	1,000
(Base Engine, Print Output Channel, Tyler Content Management Output Channel, Email Output Channel)			
Laserfiche Output Channel	1		N/A
Content Management			
Laserfiche Financial Suite Interface	1	8	1,000
Laserfiche CRM Suite Interface	1	8	1,000
Content Management Suite Subtotal		24	3,000
Professional Services			
Professional Services			
Project Management			2,500
Final Implementation		22	2,750
Professional Services Subtotal		22	5,250

F

Professional Services

Christy Pinuelas
City of Agoura Hills
June 28, 2012

Conversion Services	Estimated Hours	Estimated Services	Conversion Services
Financial Applications			
General Ledger			
Chart of Accounts	4.0	500	500
Budgets	4.0	500	500
Detail History (2 years plus current year)	4.0	500	500
Accounts Payable			
Vendor File	4.0	500	500
Payroll			
Employee Static Information	24.0	3,000	3,000
Conversion Services Subtotal	40	5,000	5,000
Conversion Services Total	**40**	**5,000**	**5,000**

Hosted Applications

Christy Pinuelas
City of Agoura Hills
June 28, 2012

Service	QTY	Charges		Initial Year	Annual Fee
Citizen Portal					
One Time Setup Fee	1	800		800	
- Hardware Configuration					
- DNS registration					
INCODE Business License Online Component					
Monthly support/maintenance fee		100	/month		1,200
- Display of license status					
- Display of license for payment					
- Security -- SSL (Secure Socket Layer)					
- Payment Processing - Credit Card					
• Payment packet is created to be					
imported to Business License System					
NOTE: Customer pays $1.25 fee per transaction for payment on-line.					
Hosted Applications SubTotal				800	1,200
Tyler | FundBalance Upgrade Discount				(200)	
Hosted Applications Total				600	1,200

H

Tyler OnDemand - Tyler Online Training Center

Christy Pinuelas
City of Agoura Hills
June 28, 2012

Service	Annual Fee

Tyler OnDemand - Tyler Online Training Center

Tyler Online Training Center | 600

- Open for ALL Employees during subscription period
- Unlimited Access to Live Webinars and Archived Webinars
- Unlimited Access to Self Study Courses
- Available 24/7
- Continuing Professional Education Credit with NASBA Standards
- Live Webinars conducted monthly with an estimated 60 webinars annually
- Over 45 Online Self Study Courses
- General business knowledge and Microsoft Office software based courses
- Courses cover a variety of topics that span the entire suite of INCODE applications
    o Financials
    o Payroll
    o Human Resources
    o CRM

- New Webinars and Self Study Courses added throughout the year

Tyler Technologies, Inc. is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be addressed to the National Registry of CPE Sponsors, 150 Fourth Avenue North, Suite 700, Nashville, TN, 37219-2417. Web site: www.nasba.org

Tyler Online Training Center Total	**600**

COMPANY MIGRATION AGREEMENT
TERMS AND CONDITIONS

1. **General Terms.** The following terms set forth in this Section 1 apply to each of the Software License Agreement (Section 2), Professional Services Agreement (Section 3), Annual Maintenance Agreement (Section 4), Hardware and System Software Agreement (Section 5), Annual Hardware Maintenance Agreement (Section 6), Third Party Product Agreement (Section 7), and RMA Policy (Section 8) as if fully set forth therein.

1.1 **General Payment Terms.** See page D of the Investment Summary.

1.2 **Invoicing.** The Company shall invoice the Client in accordance with Section 1.1. In the event of any disputed invoice, Client shall provide written notice of such disputed invoice to Attention: Company Controller at the address listed on the cover of this Agreement. Such written notice shall be provided to Company within fifteen (15) days. An additional fifteen (15) days is allowed for the Client to provide written clarification and details for the disputed invoice. Company shall provide a written response to Client that shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by Company and Client to resolve any issues presented in Client's notification to Company. Client may withhold payment of only the amount actually in dispute until Company provides the required written response, and full payment shall be remitted to Company upon Company's completion of all material action steps required to remedy the disputed matter. Notwithstanding the foregoing sentence, if Company is unable to complete all material action steps required to remedy the disputed matter because Client has not completed the action steps required of them, Client shall remit full payment of the invoice. Any invoice not disputed as described above shall be deemed accepted by the Client. If payment of any invoice that is not disputed as described above is not made within sixty (60) calendar days, Company reserves the right to suspend delivery of all services under this Agreement.

1.3 **Cooperative Nature of Implementations.** Client acknowledges that the implementation of the products identified on the Investment Summary is a cooperative process requiring the time and resources of Client personnel. Client shall, and shall cause Client personnel to, use all reasonable efforts to cooperate with and assist the Company as may be reasonably required to timely implement the systems. The Company shall not be liable for failures to timely and effectively implement the systems when such failure is due to Force Majeure or to the failure by Client personnel to provide such cooperation and assistance (either through action or omission).

1.4 **No Intended Third Party Beneficiaries; Assignment.** This Agreement is entered into solely for the benefit of Company and Client. No third party shall be deemed a beneficiary of this Agreement or have the right to make any claim or assert any right under this Agreement. The Client shall not have the right to assign or transfer its rights hereunder to any party.

1.5 **Cancellation or Termination.** In the event of cancellation or termination of this Agreement, Client shall make payment to Company for all software products, services, and expenses delivered or incurred prior to the termination or cancellation of this Agreement.

1.6 **Entire Agreement.**
(a) This Agreement, including the functional description of the software products found in Company's written proposal and/or RFP Response to Client, represents the entire agreement of Client and Company with respect to the items listed within the Investment Summary and supersedes any prior agreements, understandings and representations, whether written, oral, expressed, implied, or statutory. Client hereby acknowledges that in entering into this Agreement it did not rely on any representations or warranties other than those explicitly set forth in this Agreement and the functional description of the software products found in Company's written proposal and/or RFP Response to Client.
(b) If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this

assistance to accommodate the transfer would be billable charges to Client. Advance

Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

(c) This Agreement may only be amended, modified, or changed by a written instrument signed by both parties.

(d) Client should return an executed copy of this Agreement to Company. If the Agreement is not returned to Company within 90 days from the issue date, then such Agreement is subject to be voided and prices are subject to change.

1.7 **Force Majeure.** Company shall not be responsible for delays in performing its obligations hereunder to the extent that such delays are caused by strikes, lockouts, riots, epidemic, war, government regulations, fire, power failure, acts of God, or other causes beyond its control.

1.8 **General Limitation of Liability.** IN NO EVENT SHALL CLIENT OR COMPANY BE LIABLE TO THE OTHER PARTY FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, OR SPECIAL DAMAGES OF ANY KIND OR NATURE, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, INTERRUPTION OF BUSINESS ACTIVITIES, OR FAILURE TO REALIZE SAVINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, IRRESPECTIVE OF WHETHER THE PARTIES HAVE ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGE.

1.9 **Approval of Governing Body.** Client represents and warrants to Company that this Agreement has been approved by its governing body and is a binding obligation upon Client. Client represents and warrants that funds are appropriated and/or arrangements have been made with a third party financier. Both parties represent that this Agreement has been executed by an authorized representative.

1.10 **Dispute Resolution.** In the event of a dispute between the parties under this Agreement that cannot be resolved by good faith negotiations between the parties, the matter shall be settled by arbitration in accordance with the prevailing rules of the AAA.

1.11 **Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Client's state of domicile. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Agoura Hills.**

1.12 **INSURANCE REQUIREMENTS**. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

    A. <u>Minimum Scope of Insurance</u>. Coverage shall be at least as broad as:

    1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.

    2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

    3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.

COMPANY MIGRATION AGREEMENT
TERMS AND CONDITIONS

assistance to accommodate the transfer would be billable charges to Client. Advance
4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Consultant's profession.

B. <u>Minimum Limits of Insurance</u>. Consultant shall maintain limits no less than:

1) General Liability: $2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: $2,000,000 per accident for bodily injury and property damage.

3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars ($1,000,000) per accident for bodily injury or disease.

4) Professional Liability coverage: Two million ($2,000,000) per claim and in aggregate

C. <u>Deductibles and Self-Insured Retentions</u>. Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. <u>Other Insurance Provisions</u>. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1) The City, its officers, officials, employees and volunteers are to be covered as additional insureds in respect to: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. <u>Acceptability of Insurers</u>. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

F. <u>Verification of Coverage</u>. Consultant shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the City. All endorsements are to be received and approved by the City before work commences. As

assistance to accommodate the transfer would be billable charges to Client. Advance an alternative to the City's forms, the Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

1.13 INDEMNIFICATION. A. The Company agrees to defend, indemnify, protect and hold harmless the Client, its officers, officials, and employees from and against any and all direct claims, demands, losses, defense costs or expenses, including reasonable attorney fees and reasonable expert witness fees, or liability of any kind or nature which the Client, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Company's negligent or wrongful acts or omissions arising out of or related to its obligations under this Agreement.
B. The Client agrees to defend, indemnify, protect and hold harmless the Company its officers, officials, and employees from and against any and direct all claims, demands, losses, defense costs or expenses, including reasonable attorney fees and reasonable expert witness fees, or liability of any kind or nature which the Company, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Client's negligent or wrongful acts or omissions arising out of or related to its obligations under this Agreement."

2.   **Software License Agreement**
2.1   **Software Product License.**
   (a) Upon Client's timely payment in full of the software products license fees set forth in the Investment Summary of this Agreement, Company shall grant to Client, and Client shall accept from Company, a non-exclusive, nontransferable, non-assignable license to use the software products and accompanying documentation for the internal business purposes of Client only, subject to the conditions and limitations in this Software License Agreement.
   (b) Client shall not (i) reverse engineer, de-compile, or disassemble any portion of the software products or (ii) sublicense, transfer, rent, or lease the software products.
   (c) Ownership of the software products, accompanying documentation and related materials, and any modifications and enhancements to such software products and any related interfaces shall remain at all times with Company.
   (d) The software products are not licensed to perform functions or processing for subdivisions or entities that were not considered by Company at the time Company issued this Agreement.
   (e) The right to transfer this license to a replacement hardware system is included in this Software License Agreement. The cost for new media or any required technical written notice of any such transfer shall be provided to Company.
   (f) Client agrees that the software products, any modifications and enhancements, and any related interfaces are proprietary to Company and have been developed as a trade secret at Company's expense. To the extent permitted by law, Client agrees to keep the software products confidential and use its best efforts to prevent any misuse, unauthorized use, or unauthorized disclosures by any party of any or all of the software products or accompanying documentation.
   (g) If Client has made modifications to the software products, Company will not support or correct errors in the modified software products, unless modifications were specifically authorized in writing by Company.
   (h) Client may make copies of the software products for archive purposes only. Client will repeat any proprietary notice on the copy of the software products. The documentation accompanying the software products may not be copied except for internal use.
   (i) The term of the license granted by this Section shall be perpetual.
   (j) Company maintains an escrow agreement with an escrow services company under which Company places the source code of each major release. At Client's request, Company will

assistance to accommodate the transfer would be billable charges to Client. Advance add Client as a beneficiary on its escrow account. Client shall be invoiced the annual beneficiary fee by Company and shall be solely responsible for maintaining its status as a beneficiary.

2.2 **License Fees.** Client agrees to pay Company, and Company agrees to accept from Client as payment in full for the license herein, the total sum of the Company license fees set forth in the Investment Summary, which shall be paid in accordance with the payment provisions set forth in Section 1.1.

2.3 **Verification of the Software Products.**

    (a) At the Client's request, within thirty (30) days after the software products have been installed on Client's system, Company shall test the software products in accordance with Company's standard verification test procedure. Demonstration shall constitute Client's verification that the software products substantially comply with Company's current specifications for the most current version of the software products and functional descriptions of the software found in Company's written proposal to Client.

    (b) At its option, Client may perform Client's own defined internal validation process to test the software to substantially comply with Company's current specifications for the most current version of the software products and functional descriptions of the software found in Company's written proposal to Client. Such validation test shall constitute Client's verification.

    (c) Notwithstanding anything contrary herein, Client's use of the software products for its intended purpose shall constitute Client's verification of the software products, without exception and for all purposes.

    (d) Verification or validation, by Client, that the software products substantially comply with Company's current specifications for the most current version of the software products and functional descriptions of the software found in Company's written proposal to Client shall be final and conclusive, except for latent defect, fraud, and such gross mistakes that amount to fraud. In the event said verification becomes other than final, or becomes inconclusive, Client's sole right and remedy against Company shall be to require Company to correct the cause thereof.

    (e) Company shall correct any functions of the software products that failed the standard verification testing or failed to comply with Company's current specifications for the most current version of the software products and functional descriptions of the software found in Company's written proposal to Client. If Client has made modifications to the software programs, Company will not make such corrections, unless such modifications were specifically authorized in writing by Company.

2.4   **Schedule of Verification.** Company will install the software products and cause the same to be verified within sixty (60) days after Client makes available to Company the equipment into which the software product is to be loaded. Company shall exercise reasonable efforts to cause the software products to be verified according to the schedule set forth in this paragraph, but Company shall not be liable for failure to meet said schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of Company.

2.5   **Limited Warranty.** Company warrants that the then current, unmodified version of the Company software products will substantially conform to the then current version of its published current specifications. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED OR VERBAL, STATUTORY OR OTHERWISE, AND WHETHER ARISING UNDER THIS AGREEMENT OR OTHERWISE ARE HEREBY EXCLUDED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.6   **Intellectual Property Indemnity.**
In the event that the software products are determined to infringe upon any existing United States patent, copyright, or trademark rights held by any other person or entity, Company shall defend and hold harmless Client and its officers, agents and employees from any claim or proceedings brought against Client and from any cost damages and expenses finally awarded against Client which arise as a result of any claim that is based on an assertion that Client's use of the software products under this Software License Agreement constitutes an infringement of any United States patent, copyright, or trademark; provided, however, that Client notifies Company promptly of any such claim or proceeding and gives Company full and complete authority, information, and assistance to defend such claim or proceeding and further provided that Company shall have sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement provided that Company shall consult with Client regarding such defense. In the event that the software products are finally held to be infringing and the use by Client is enjoined, Company shall, at its election: (1) procure for Client the right to continue use of the software products; (2) modify or replace the software products so that they become non-infringing; or (3) if procurement of the right to use or modification or replacement cannot be completed by Company, terminate the license for the infringing software product, and upon termination, refund the license fees paid for the infringing software product as depreciated on a straight-line basis over a period of seven (7) years with such depreciation to commence on the execution of this Agreement. Company shall have no liability hereunder if Client modified the software products in any manner without the prior written consent of Company and such modification is determined by a court of competent jurisdiction to be a contributing cause of the infringement or if the infringement would have been avoided by Client's use of the most current revision of the software products. The foregoing states Company's entire liability and Client's exclusive remedy with respect to any claims of infringement of any copyright, patent, trademark, or any property interest rights by the software products, any part thereof, or use thereof.

2.7   **Limitation of Liability.** IF THE MIGRATED SOFTWARE PRODUCTS DO NOT PERFORM AS WARRANTED PRIOR TO THE INITIATION OF THE PERIOD OF PAID MAINTENANCE FOR THE MIGRATED SOFTWARE, COMPANY'S SOLE OBLIGATION SHALL BE TO USE REASONABLE EFFORTS, CONSISTENT WITH INDUSTRY STANDARDS, TO CURE THE DEFECT. SHOULD THE COMPANY BE UNABLE TO CURE THE DEFECT OR PROVIDE A COMPANY REPLACEMENT PRODUCT, CLIENT SHALL BE ENTITLED TO A REFUND OF THE LICENSE FEE PAID, WHICH SHALL BE CLIENT'S SOLE AND EXCLUSIVE REMEDY UNDER THIS SOFTWARE LICENSE AGREEMENT, WHETHER CLIENT'S CLAIMS FOR DAMAGES ARE BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE

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AND STRICT LIABILITY. THE LICENSE FEES SET FORTH IN THE INVESTMENT SUMMARY REFLECT AND ARE SET IN RELIANCE UPON THIS ALLOCATION OF RISK AND THE EXCLUSION OF SUCH DAMAGES AS SET FORTH IN THIS SOFTWARE LICENSE AGREEMENT. UPON THE INITIATION OF PAID ANNUAL SOFTWARE MAINTENANCE FOR THE MIGRATED SOFTWARE, COMPANY'S OBLIGATIONS AND LIABILITIES SHALL BE AS SET FORTH IN SECTION 4, ANNUAL SOFTWARE MAINTENANCE AGREEMENT.

3. Professional Services Agreement

3.1 Services Provided. Company shall provide some or all of the following services to Client, as evidenced in the attached Investment Summary:

(a) Installation as described in the Investment Summary;

(b) Conversion of Client's existing data as set forth in the Investment Summary, with Client being responsible for reading and complying with Company's Data Conversion Process Statement;

(c) Training/Implementation as set forth in the Investment Summary;

(d) Consulting/Analysis as set forth in the Investment Summary; and

(e) Verification testing as described in the Software License Agreement.

3.2 Professional Services Fees.

(a) Notwithstanding specific prices to the contrary identified in the Investment Summary, all services will be invoiced in hourly increments as delivered, plus travel and other expenses, plus a 10% travel processing fee. Client agrees to pay Company for the actual amount of training provided. Client acknowledges that the Investment Summary represents only an estimate of time required to complete all phases of this Agreement.

(b) Upon the completion of each service day, or group of days, Company shall present a Daily Log. Client shall sign the report indicating acceptance of the service day and its subsequent billing, or noting reasons for Client's non-acceptance of such. This acceptance is final.

(c) Client is not charged for travel time to and from the Client's site; only time spent on-site is billed as training time, with the exception of those cases in which the Client requires the Company trainer(s) to travel on the weekend, in which case Client will be billed for weekend travel time at a rate of $500 per weekend day.

(d) If Client travels to Company location for training, Client shall be responsible for and shall pay for all expenses related to the transportation and lodging of Client's employees.

(e) All requests for supporting documentation shall be made within thirty (30) calendar days of invoice delivery. Such documentation will consist of quoted internet rates within 7 days from the date the request is received by the Company and not actual receipts. Such quotes will be deemed acceptable documentation if price is within 25% of actual amounts charged to Client, adjusted by unusual or seasonal travel circumstances.

(f) The rates for Verification Testing shall be the same as the Training/Implementation rates set forth in the Investment Summary.

3.3 Training Environment. If training is being conducted at the Client's site, the Client shall provide a productive environment to conduct training. Company is not responsible for its inability to conduct training or for inadequate training arising due to interruptions and/or unavailability of Client personnel to be trained. Time spent on-site by Company personnel that results in non-productive training time beyond Company's control will be billed as training time. Company will make reasonable efforts to schedule training on dates requested by the Client. Trainers will be on-site approximately noon Monday through noon Friday, which allows appropriate travel time to and from the Client's site.

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3.4   **Project Management.** CLIENT agrees to designate in writing a primary contact (the "Project Manager") to represent CLIENT and help coordinate CLIENT's personnel during the design, development, installation, training and maintenance of the system. The Project Manager shall have the authority to amend delivery schedules, seek additional services hours, and authorize other changes to this Agreement.

3.5   **Additional Services.** Services utilized in excess of those set forth in the Investment Summary and additional related services not set forth in the Investment Summary shall be billed at Company's then current market rate for the service as they are incurred. Travel and other expenses, plus a 10% travel processing fee, shall be billed as delivered.

3.6   **Limitation of Liability.** COMPANY SHALL NOT BE RESPONSIBLE FOR INACCURATE DATA IN COMPANY'S APPLICATION SOFTWARE THAT IS THE RESULT OF THE CONVERSION OF INACCURATE DATA FROM THE CLIENT'S PRIOR SYSTEM. COMPANY'S LIABILITY FOR DAMAGES ARISING OUT OF THIS PROFESSIONAL SERVICES AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO THE PROFESSIONAL SERVICES FEES IDENTIFIED IN THE INVESTMENT SUMMARY AND PAID TO COMPANY.

4.   **Annual Software Maintenance Agreement**

4.1   **Scope of Agreement.** The Client agrees to purchase, and Company agrees to provide maintenance and support services for, the software products listed in the Investment Summary of this Agreement in accordance with the following terms and conditions. Both parties acknowledge that this Annual Software Maintenance Agreement covers both the support for the software products listed in the Investment Summary of this Agreement and licensing of updates of such installed software products.

4.2   **Term of Agreement.** This Annual Software Maintenance Agreement is effective on the date executed by an officer of Company and shall have a term beginning upon the next anniversary due date of Client's existing Annual Software Maintenance Agreement following installation of the Migrated Software and ending upon the last day of the month one year following that date.

(a) This Annual Software Maintenance Agreement shall automatically renew for subsequent one-year terms unless either party gives the other party at least thirty days prior written notice of its intent not to renew prior to the expiration of the then current term. Fees for subsequent years are subject to change.

(b) If Client has not elected to participate in the Company Annual Software Maintenance Agreement, or elects not to renew the Annual Software Maintenance Agreement, the Client shall be governed by the "Support Terms for Clients Not Participating in the Annual Software Maintenance Agreement" set forth herein.

(c) In the event of termination, the city will be responsible only for payment of documented expenses incurred by Tyler up to the date of the notice.

4.3   **Payment.**

(a) Client agrees to pay Company the amount identified in the Investment Summary for licensing and support services of the software products in accordance with the payment provisions set forth in Section 1.1.

(b) Additional Charges. Any maintenance performed by Company for the Client, which is not covered by this Annual Software Maintenance Agreement, shall be charged at Company's then current market rates. All materials supplied in connection with such non-covered maintenance or support plus expenses shall be charged to Client.

(c) Support and services will be suspended whenever Client's account is thirty (30) calendar days overdue and shall be reinstated when Client's account is made current.

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4.4   **Licensing of Updates, Releases, and New Versions of the Installed Software Products.**

(a) In consideration for the payment of the annual maintenance fees, Client's license of the Company's installed software products set forth in the Investment Summary shall be extended to include any and all updates, releases, and/or new versions of the installed software products delivered to Client under this Annual Software Maintenance Agreement, subject to the terms, conditions, and restrictions set forth in Section 2.1 of the Software License Agreement.

(b) For as long as a current Annual Software Maintenance Agreement is in place, Company shall promptly correct any functions of the software products that fail to substantially comply with Company's current specifications for the most current version of the software products. If Client has made modifications to the software products, Company will not make such corrections, unless modifications were specifically authorized in writing by Company.

(c) Company reserves the right to change the functionality of future releases of its software and Client understands that Company is not obligated to include specific functionality in future releases unless provided for herein.

4.5   **Terms and Conditions for Support.**

(a) Company shall provide software-related Client support during standard support hours, which are currently 7:00am to 7:00pm, Central Standard Time, Monday thru Friday, excluding holidays. Company reserves the right to modify these support hours as Company sees fit in order to better serve its entire client base. Assistance and support requests which require special assistance from Company's development group shall be taken and directed by support personnel.

(b) Company shall maintain staff that is appropriately trained to be familiar with the software products in order to render assistance, should it be required.

(c) Company shall provide Client with all updates that Company may make to the then current version of the installed software products covered in this Agreement. CLIENT agrees to install such updates promptly after receipt.

(d) Client acknowledges that the updates/enhancements may not be compatible with Client's particular hardware configuration or operating system. Client acknowledges that additional hardware and software may be required, at the Client's expense, in order to utilize the updates/enhancements.

(e) Company shall make available appropriately trained personnel to provide Client additional training, program changes, analysis, consultation, recovery of data, conversion, non-coverage maintenance service, etc., which shall be billable at the current per diem rate plus expenses. ***Company employs many CPAs, but the Client acknowledges that it is not a board registered CPA firm.***

(f) COMPANY shall provide CLIENT with remote support through the use of secure connection over the Internet connection via Citrix GotoAssist. If CLIENT will not allow access through GotoAssist, COMPANY cannot guarantee support standards will be met.

4.6   **Support Terms for Clients Not Participating in the Annual Software Maintenance Agreement.** If Client elects not to participate in the Company Annual Software Maintenance Agreement, Client shall receive support on a "time and materials" basis in accordance with the following terms:

(a) Clients not on software support maintenance shall receive the lowest priority for Software Support;

(b) Clients not on software support maintenance shall be required to purchase new releases of the software, including, without limitation, fixes, enhancements and updates, such as Tax Tables, W-2 reporting formats, 1099 changes, etc.;

(c) Clients not on software support maintenance shall be charged $175 per hour with a one-hour minimum for all software support calls;

(d) Clients not on software support maintenance shall not be granted access to Company's software support web-site;

(e) Clients not on software support maintenance are subject to higher rates for training and continuing education performed by Company employees, which is due to the fact that the Client may not be utilizing the most current version of our software;

(f) Company will not guarantee a program fix to a documented bug for software versions that are not the currently released version (because every Client is on software support maintenance, often times, bug fixes are rolled into the latest release and then sites are upgraded to the latest release of the software); and

(g) If a Client decides to discontinue software support maintenance and later chooses to reinstate this Annual Software Maintenance Agreement, the Client shall be required to pay the portion of annual software support maintenance fees for the Enhancement and Software Updates (27%) dating back to the date when the Client discontinued software support maintenance.

4.7   Additional Services.   The services listed below are not included in this Annual Software Maintenance Agreement. These services shall be provided at Company's discretion and will be billed on a Time and Materials basis at Company's then current rates:

(a) Changes to print programs;

(b) Software modifications;

(c) Software Training;

(d) Responding to problems caused by bad data;

(e) Responding to problems caused by hardware;

(f) Responding to problems caused by operator error;

(g) Responding to problems caused by software that is not Company software;

(h) Responding to problems resulting from misuse, accidents, Client neglect, fire, or any other cause not within Company's reasonable control;

(i) Changes made to the Company software other than by Company personnel; and

(j) Any other services performed by Company not otherwise specifically provided for in this Agreement, including but not limited to, bank reconciliation, reconciling out of balance reports, balancing segments of the system, etc.

4.8   Limitations and Exclusions. The support and services of this Annual Software Maintenance Agreement do not include the following:

(a) Support service does not include the installation of the software products, onsite support, application design, and other consulting services, support of an operating system or hardware, or any support requested outside of standard support hours.

(b) Client shall be responsible for implementing, at its expense, all changes to the current version. Client understands that changes furnished by Company for the current version are for implementation in the current installed software products version, as it exists without customization or Client alteration.

(c) If Client has made modifications to the software products, Company will not support the modified software products, unless modifications were specifically authorized in writing by Company.

4.9   Client Responsibilities.

(a) Client shall provide, at no charge to Company, full and free access to the software programs covered hereunder, including the following: working space; adequate facilities within a reasonable distance from the equipment; and use of machines, attachments, features, or other equipment necessary to provide the specified support and maintenance service. Such environment includes, but is not limited to, use of the appropriate operating system at the version and release levels specified by Company and additionally specifies that the environment for any Company software application requires the Client to have e-mail and Internet access. Client shall provide telephone lines, communications software specified by Company, and all equipment necessary to use Company's on-line

support. Client shall be responsible for all additional costs incurred to the extent such hardware and software does not conform to Company's current specifications. The acquisitions of necessary hardware and software meeting the requirements then in effect shall be the sole responsibility of the Client.

(b) CLIENT shall maintain a high speed internet connection (DSL, Cable, or faster) and must be able to provide COMPANY with IP connection to CLIENT's network through Citrix GotoAssist, VPN, Citrix, or Microsoft Terminal Services. COMPANY shall use the connection to assist with problem diagnosis and resolution. COMPANY is not responsible for purchase of VPN client software license or configuration of CLIENT's firewall settings. If CLIENT will not allow access through GotoAssist, COMPANY cannot guarantee support standards will be met.

(c) Client must maintain an active e-mail address capable of receiving a 5 MB attachment. This e-mail account must be accessible from a PC connected to the server hosting the Company software applications.

(d) Client must open firewall ports to enable access to Company's FTP server for program updates via Live Update.

(e) CLIENT is responsible for reading and complying with COMPANY's Systems Requirements.

(f) CLIENT is responsible for ensuring that data and application backup processing is occurring, as well as, verifying the existence and accuracy of the data being backed up. For mission critical data, COMPANY highly recommends regularly scheduled off-site backup services, as well as, frequent local backups.

4.10 Limitation of Liability. UPON THE INITIATION OF MAINTENANCE AND SUPPORT SERVICES UNDER THIS ANNUAL SOFTWARE MAINTENANCE AGREEMENT, THE LIABILITY OF COMPANY, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILTY, SHALL BE LIMITED TO FIXING DEFECTS IN ACCORDANCE WITH THE TERMS HEREIN, AND IF THE COMPANY CANNOT FIX DEFECTS, TO THE MAINTENANCE AND SUPPORT FEES PAID BY CLIENT FOR THE SERVICES UNDER THIS ANNUAL SOFTWARE MAINTENANCE AGREEMENT. THE PRICES SET FORTH IN THE INVESTMENT SUMMARY REFLECT AND ARE SET IN RELIANCE UPON THIS ALLOCATION OF RISK AND EXCLUSION OF SUCH DAMAGES AS SET FORTH HEREIN.

5. Hardware and System Software Agreement

5.1 Agreement to License or Sell Hardware. For the price set forth in the Investment Summary (Hardware & System Software), Company agrees to license or sell and deliver to Client, and Client agrees to accept from Company, the hardware and system software products set forth in the Investment Summary.

5.2 License of Hardware.
Upon Client's payment for the hardware listed in the Investment Summary, for the license fees set forth in the Investment Summary, Company shall grant to Client, and Client shall accept from Company, a non-exclusive, nontransferable, non-assignable license to the hardware and system software products and accompanying documentation and related materials for internal business purposes of Client, subject to the conditions and limitations in this section.

5.3 Price and Costs.
(a) Client agrees to pay Company, and Company agrees to accept from Client as payment in full for the hardware and system software products, the price set forth in the Investment Summary in accordance, which shall be paid in accordance with the payment provisions set forth in Section 1.1.

(b) Unless otherwise indicated in the Investment Summary, the price includes costs for shipment of and insurance while in transit for the hardware and system software products from the supplier's place of manufacture to Client's site.

5.4   **F.O.B. Point.** Delivery of each hardware and system software product shall be F.O.B. Client's site.

5.5   **Schedule of Delivery.** Delivery of each hardware and system software product shall take place according to mutually agreeable schedule, but Company shall not be liable for failure to meet the agreed upon schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of Company.

5.6   **Client Delays.** If any act or failure to act by the Client delays Company's performance, Company shall be excused from performance for an amount of time commensurate with the delay caused by Client. Client acknowledges that its delay may excuse Company from performance for an amount of time greater than the delay caused by Client. Such delays by Client that may cause Company to delay performance include, but are not limited to, failure to have prepared any data in the form and format requested by Company, on or before the date specified by Company or to have verified such data for accuracy, submission of erroneous data to Company or Client's failure to have completely prepared the hardware's installation site prior to the hardware's actual delivery, including, but not limited to, failure to have all electrical work and cable installation completed.

5.7   **Installation and Verification.** If itemized in the Investment Summary, the price includes installation of the hardware and system software products. Upon the completion of installation, Client shall obtain from the installer a certification of completion, or similar document, which certification or similar document shall constitute Client's acceptance of the hardware and system software products. Such acceptance shall be final and conclusive except for latent defects, fraud, and such gross mistakes as amount to fraud.

5.8   **Site Requirements.** Client shall prepare the installation site prior to the delivery of the hardware and system software. Client is solely responsible for and shall furnish all necessary labor and material to install all associated electrical lines, CRT cables, and telephone lines for communication modems. Client is responsible for installing all required cables.

5.9   **Warranties.** ALL WARRANTIES RELATING TO THE HARDWARE AND SYSTEM SOFTWARE ARE PROVIDED DIRECTLY FROM THE HARDWARE MANUFACTURERS AND/OR SOFTWARE PUBLISHERS UNDER THE TERMS AND CONDITIONS OF THEIR RESPECTIVE WARRANTIES. THE WARRANTIES SET FORTH IN THIS HARDWARE AND SYSTEM SOFTWARE AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES REPRESENTATIONS OR WARRANTIES EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND SYSTEM INTEGRATION.

5.10   **Maintenance.** There is no hardware maintenance provided pursuant to this Agreement, unless otherwise set forth in the Investment Summary, in which event such hardware maintenance shall be governed by the terms of Company's Annual Hardware Maintenance Agreement.

5.11   **Limitation of Liability.** CLIENT EXPRESSLY ASSUMES FULL AND SOLE RESPONSIBILITY FOR THE SELECTION AND USE OF THE HARDWARE AND SYSTEM SOFTWARE. COMPANY'S LIABILITY FOR DAMAGES ARISING OUT OF THIS HARDWARE AND SYSTEM SOFTWARE AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO THE PRICE PAID FOR THE HARDWARE AND SYSTEM SOFTWARE PRODUCTS AS SET FORTH IN THE INVESTMENT SUMMARY. THE PRICES SET FORTH IN THE INVESTMENT SUMMARY REFLECT AND ARE SET IN RELIANCE UPON THIS ALLOCATION OF RISK AND THE EXCLUSION OF SUCH DAMAGES AS SET FORTH IN THIS HARDWARE AND SYSTEM SOFTWARE AGREEMENT.

6. **Annual Hardware Maintenance Agreement**

6.1 **Scope of Agreement.** For the prices set forth in the Investment Summary, Client agrees to purchase, and Company agrees to provide, services for the equipment specified therein in accordance with the following terms and conditions. Company requires all like-kind hardware to be covered (i.e., all cash drawers, all receipt printers, etc.).

6.2 **Price and Payment.** The Client agrees to pay the Annual Hardware Maintenance fee specified in the Investment Summary. Company guarantees this fee for the then current term of the Annual Hardware Maintenance Agreement; however, fees for subsequent years are subject to change. Client shall pay the annual hardware maintenance fees in accordance with the payment provisions set forth in Section 1.1.

6.3 **Equipment Maintenance Program Terms.** Company agrees to provide the maintenance on the equipment specified under this Annual Hardware Maintenance Agreement in accordance to the following terms:

(a) In the event of equipment failure, Company shall repair the defective equipment and provide the Client with "like or near like" equipment while the defective equipment is being repaired.

(b) Client shall notify Company of equipment failure. Upon notification, Company shall ship via over-night service to the Client the appropriate loaner equipment. The Client shall package the defective equipment in its original container and ship the equipment to Company.

(c) Once the equipment is repaired, it shall be shipped to the Client. Upon receipt of the repaired equipment, the Client shall ship the loaner equipment back to Company. The loaner equipment should be shipped back to Company within two days of receiving the repaired equipment. The Client agrees to pay daily rental fees to Company if the loaner equipment is not shipped back to Company within the time frame specified.

(d) The Client is responsible for shipping cost related to shipping equipment to Company. Company is responsible for shipping cost related to shipping equipment to the Client.

6.4 **Definitions.** The following definitions apply to the terms of this Annual Hardware Maintenance Agreement:

(a) Loaner Equipment: equipment loaned to the Client by Company for use while the Client's equipment is being repaired.

(b) Like or Near-Like Equipment: equipment compatible with the Client's computer system and capable of performing the tasks performed by the equipment being repaired.

6.5 **Limitation of Liability.** COMPANY'S LIABILITY FOR DAMAGES ARISING OUT OF THIS ANNUAL HARDWARE MAINTENANCE AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO THE ANNUAL HARDWARE MAINTENANCE FEE PAID HEREUNDER. THE PRICES SET FORTH IN THE INVESTMENT SUMMARY REFLECT AND ARE SET IN RELIANCE UPON THIS ALLOCATION OF RISK AND EXCLUSION OF SUCH DAMAGES AS SET FORTH IN THIS ANNUAL HARDWARE MAINTENANCE AGREEMENT

7. **Third Party Product Agreement**

7.1 **Agreement to License or Sell Third Party Products.** For the price set forth in the Investment Summary (Hardware & System Software), Company agrees to license or sell and deliver to Client, and Client agrees to accept from Company, the third party products set forth in the Investment Summary.

7.2 **License of Third Party Software Products.**

(a) Upon Client's payment for the third party software products listed in the Investment Summary, for the license fees set forth in the Investment Summary, Company shall grant to Client, and Client shall accept from Company, a non-exclusive, nontransferable, non-assignable license to use the third party software products and accompanying documentation and related materials for the internal business purposes of Client only, subject to the conditions and limitations in this section.

(b) Ownership of the third party software products, accompanying documentation, and related materials shall remain with the third party manufacturer or supplier.

(c) The right to transfer this license to a replacement hardware system is governed hereby. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to Client. Advance written notice of any such transfer shall be provided to Company.

(d) Client agrees that the third party software products are proprietary to the third party manufacturer or supplier and have been developed as a trade secret at the third-party's expense. To the extent permitted by law, Client agrees to keep the third party software products confidential and use its best efforts to prevent any misuse, unauthorized use, or unauthorized disclosures by any party of any or all of the third party software products or accompanying documentation.

(e) Client shall not perform de-compilation, disassembly, translation, or other reverse engineering on the third party software products.

(f) Client may make copies of the third party software products for archive purposes only. Client shall repeat any proprietary notice on the copy of the third party software products. The documentation accompanying the third party software products may not be copied except for internal use.

7.3 **Price and Payment; Costs.**

(a) Client agrees to pay Company, and Company agrees to accept from Client as payment in full for the third party products, the price set forth in the Investment Summary, which shall be paid in accordance with the payment provisions set forth in Section 1.1.

(b) Unless otherwise indicated in the Investment Summary, the price includes costs for shipment of and insurance while in transit for the third party products from the supplier's place of manufacture to Client's site.

7.4 **F.O.B. Point.** Delivery of each third party product shall be F.O.B. Client's site.

7.5 **Schedule of Delivery.** Delivery of each third party product shall take place according to mutually agreeable schedule, but Company shall not be liable for failure to meet the agreed upon schedule if, and to the extent, said failure is due to causes beyond the control and without the fault of Company.

7.6 **Installation and Verification.**

If itemized in the Investment Summary, the price includes installation of the third party products. Upon the completion of installation, Client shall obtain from the installer a certification of completion, or similar document, which certification or similar document shall constitute Client's acceptance of the third party products. Such acceptance shall be final and conclusive except for latent defects, fraud, and such gross mistakes as amount to fraud.

7.7 **Site Requirements.** Client shall provide:

(a) a suitable environment, location, and space for the installation and operation of the third party products;

(b) sufficient and adequate electrical circuits for the third party products; and

(c) installation of all required cables.

7.8 **Warranties.**

(a) Company is authorized by the manufacturer or supplier of all third party software products listed in the Investment Summary to grant licenses or sublicenses to such products.

(b) Unless otherwise noted in any attached addendum, Company warrants that each third party product shall be new and unused, and if Client fully and faithfully performs each and every obligation required of it under the Third Party Product Agreement, Client's title or license to each third party product shall be free and clear of all liens and encumbrances arising through Company.

(c) The parties understand and agree that Company is not the manufacturer of the third party products; therefore, the Company does not warrant or guarantee the condition of the third party products or the operation characteristics of the third party products.

(d) THE WARRANTIES SET FORTH IN THIS THIRD PARTY PRODUCT AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS AND REMEDIES REPRESENTATIONS OR WARRANTIES EXPRESSED, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND SYSTEM INTEGRATION.

7.9 **Maintenance.** It shall be the responsibility of Client to repair and maintain the third party products after acceptance. Support for Third Party Application Software is not provided by Company unless otherwise specified in this Agreement. Company's responsibility is limited to delivering the Third Party Application Software and installing the software if installation services are provided in this Agreement.

7.10 **Limitation of Liability.** CLIENT EXPRESSLY ASSUMES FULL AND SOLE RESPONSIBILITY FOR THE SELECTION AND USE OF THE THIRD PARTY APPLICATION SOFTWARE. COMPANY'S LIABILITY FOR DAMAGES ARISING OUT OF THIS THIRD PARTY PRODUCT AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO THE PRICE PAID FOR THE THIRD PARTY PRODUCTS SET FORTH IN THE INVESTMENT SUMMARY. THE PRICES SET FORTH IN THE INVESTMENT SUMMARY REFLECT AND ARE SET IN RELIANCE UPON THIS ALLOCATION OF RISK AND EXCLUSION OF SUCH DAMAGES AS SET FORTH IN THIS THIRD PARTY PRODUCT AGREEMENT.

8. **General Return Merchandise Authorization (RMA) Policy.**

(a) In order to return or replace any product ordered from Company, Client must request and obtain an RMA number from appropriate Company personnel. RMA numbers shall be issued at the discretion of Company and products returned without an RMA number may be refused by Company. Company reserves the right to refuse the return of any product or to refuse the issuance of an RMA number.

(b) Client shall be responsible for all shipping costs. Company recommends the use of a traceable and insurable shipping source. Company shall not be responsible for lost or damaged products as a result of the shipping process.

(c) Qualifying products must be returned unopened with original packaging and materials, unless otherwise agreed upon by Company in writing. The following situations will result in the refusal of an RMA number and credit will not be issued to Client: (i) opened inkjet or laser jet printers; (ii) opened third party software; or (iii) damaged products as a result of irregular use of mishandling by Client.

(d) Products may only be returned to Company for account credit after an RMA number has been issued by Company. All returns are subject to a restocking fee of 20% of original purchase price. Failure to comply with this policy will result in a refusal of credit and future product placement.

COMPANY WEB SERVICES - INTERNET BASED PRODUCTS SUBSCRIPTION AGREEMENT TERMS AND CONDITIONS

THIS AGREEMENT is effective as of the date of acceptance set forth at the end hereof, and is by and between Tyler Technologies,
Inc., hereinafter referred to as COMPANY and the party signing this agreement as the "SUBSCRIBER".

DEFINITIONS

> **COMPANY Web Services** COMPANY Web Services are designed to enable SUBSCRIBER to easily establish a presence on the Internet. COMPANY Web Hosting and Design is composed of the COMPANY Web Hosting and Design Publishing Component and other miscellaneous components. These components may be used independently or in conjunction with each other.

> **COMPANY Utility Billing On-Line** The COMPANY Utility Billing On-Line Component allows the SUBSCRIBER to make available certain information from their COMPANY Utility Billing System to citizens with Internet access. This information is posted to SUBSCRIBER's web site, which is hosted on COMPANY's web server. With the proper security clearance, citizens with Internet access have access to the data which can include: Consumption in formation, service level information, requests for service, accounting information and the opportunity to pay their Utility Bill over the Internet using a credit card.

> **COMPANY Court On-Line** The COMPANY Court On-Line Component provides the ability for municipal court fines to be paid by credit card via the Internet. Since it was designed by COMPANY, this system interfaces seamlessly with COMPANY's InCourt Municipal Court System.

> **COMPANY Building Projects On-Line** The COMPANY Building Projects On-Line Component allows the SUBSCRIBER to make available certain information from their COMPANY Building Projects System to citizens with Internet access. This information is posted to SUBSCRIBER's web site, which is hosted on COMPANY's web server. With the proper security clearance, citizens with Internet access have access to the data which can include: Building project status, inspection results, inspection scheduling and the opportunity to pay their Building Projects over the Internet using a credit card.

> **COMPANY Business License On-Line** The COMPANY Business License On-Line Component allows the SUBSCRIBER to make available certain information from their COMPANY Business License System to citizens with Internet access. This information is posted to SUBSCRIBER's web site, which is hosted on COMPANY's web server. With the proper security clearance, citizens with Internet access have access to the data which can include: Business License status, business license renewal and the opportunity to pay their Business License over the Internet using a credit card.

> **COMPANY Accounts Receivable On-Line** The COMPANY Accounts Receivable On-Line Component allows the SUBSCRIBER to make available certain information from their COMPANY Accounts Receivable System to citizens with Internet access. This information is posted to SUBSCRIBER's web site, which is hosted on COMPANY's web server. With the proper security clearance, citizens with Internet access have access to the data which can include: Current balance, contract status, and the opportunity to pay the Accounts Receivable over the Internet using a credit card.

> **COMPANY Call Center On-Line** The COMPANY Call Center On-Line Component allows the SUBSCRIBER to make available certain information from their COMPANY Call Center System to citizens with Internet access. This information is posted to SUBSCRIBER's web site, which is hosted on COMPANY's web server. With the proper security clearance, citizens with Internet access have access to the data which can include: current and past incidents, create a new incident and view status of incident.

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AGREEMENTS

1) TERM. SUBSCRIBER must return an executed copy of this Agreement to COMPANY within 90 days from the issue date. Thereafter, the Agreement will be voided and is subject to change. Subject to the limitations of this Section 1, and unless otherwise provided for in this Agreement, the term of this Agreement shall commence as of the effective date and shall continue for three (3) years. The term shall thereafter be automatically extended in separate consecutive periods of twelve (12) months duration unless either party gives written notice to terminate. Notice to terminate must provide at least sixty (60) days notice of said intent. In the event that the SUBSCRIBER fails to pay any amount payable to COMPANY hereunder, when due, or fails to comply with any other provision of this Agreement, COMPANY may terminate the SUBSCRIBER's rights by written notice to that effect to the SUBSCRIBER. COMPANY may, by written notice to the SUBSCRIBER, terminate its obligations under this Agreement in the event that COMPANY, for whatever reason, ceases to host SUBSCRIBER's Web Site. A termination of the SUBSCRIBER's rights under this Agreement shall not terminate any of the parties' rights under this Agreement to receive or hold amounts rightfully owing to the respective party pursuant to the terms of this agreement or to enforce the intellectual and proprietary rights in the COMPANY concept, web site, software, and technology. Upon termination or non-renewal of this agreement, the parties shall each promptly account for all due but unpaid amounts hereunder. If SUBSCRIBER wishes to terminate before the stated term expires, SUBSCRIBER must give sixty (60) days written notice in order not to incur termination costs of $300. Please also see section entitled "**TERMINATION**" in this Agreement.

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2) **NATURE OF WEB SITE.** COMPANY shall maintain a web site accessible over the Internet, for SUBSCRIBER. This web site shall contain both static information pages, non-static interactive pages as well as payment function pages. The web site shall allow a citizen with Internet access to view relevant data provided by SUBSCRIBER. This data may include certain data elements from SUBSCRIBER's Tyler Software System. This web site shall be equipped to accept payment of amounts owed to SUBSCRIBER, via Secured Socket Layer (SSL) encryption and credit card or debit card charge.

3) **DATA PROCUREMENT.** COMPANY must host the components and services listed in the Investment Summary of this Agreement. The SUBSCRIBER will be required to setup a merchant account with Electronic Transaction System Corporation or authorized.net for the sole use of COMPANY Web Service transactions. The merchant account must be setup to fund to the SUBSCRIBER bank account. All fees for the merchant account will be paid by SUBSCRIBER. SUBSCRIBER will be required to install and run Tyler Web Services in order for the COMPANY On-Line application to access and transfer the necessary data from the SUBSCRIBER's primary software system, to COMPANY's web server. The transfer will occur on a real time basis. Additionally, certain information, such as payment information, must be conveyed to SUBSCRIBER. COMPANY will assume responsibility for transferring such information back to SUBSCRIBER on a regular basis. Tyler Web Services requires a dedicated IP address. Assignment of dedicated IP address is the sole responsibility of SUBSCRIBER.

4) **LICENSED SOFTWARE OWNERSHIP.** SUBSCRIBER agrees that COMPANY possesses exclusive title to and ownership of the COMPANY Software.
   a. SUBSCRIBER agrees that SUBSCRIBER acquires neither ownership nor any other interest in the COMPANY Software, except for the right to use and possess the COMPANY Software in accordance with the terms and conditions of this Agreement.
   b. All rights not expressly granted to SUBSCRIBER in this agreement retained by COMPANY.
   c. SUBSCRIBER agrees that COMPANY Software including, but not limited to, systems designs, programs in source and/or object code format, applications, techniques, ideas, and/or know-how utilized and/or developed by COMPANY are and shall remain the exclusive property of COMPANY. SUBSCRIBER agrees that the COMPANY Software consists of COMPANY's trade secrets. COMPANY shall retain all
   copyrights in the COMPANY Software, whether published or unpublished.
   d. COMPANY agrees that all data provided to COMPANY for the purposes of generating the web site shall remain the property of SUBSCRIBER. Should SUBSCRIBER terminate the Internet Services in good standing and in accordance with the termination provisions of this Agreement, COMPANY agrees to return to SUBSCRIBER, all graphics, text documents, and data files held by COMPANY.

5) **SUBSCRIBER MEMBERSHIP FEES.** For establishing new COMPANY Web Services, the SUBSCRIBER shall pay to COMPANY the amounts as stated in the Investment Summary.

6) **NOT ASSIGNABLE.** The rights of the SUBSCRIBER under this Agreement are not assignable without the prior written consent of COMPANY. Any attempt to sublicense, assign, encumber or transfer any of the rights, duties or obligations under this Agreement by the SUBSCRIBER is void. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted assigns and successors.

7) **SOFTWARE MAINTENANCE.** This SUBSCRIPTION AGREEMENT includes unlimited telephone support, support by communication modem, and all software

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upgrades, enhancements and new releases. COMPANY reserves the right to change the functionality of future releases of its software and CLIENT understands that COMPANY is not obligated to include specific functionality in future releases unless provided for herein.

8) PARTIAL INVALIDITY. Should any provision or clause of this Agreement be held to be invalid, such invalidity shall not affect any other provision or clause hereof, which can be given effect without such invalid provision or clause.

9) RESPONSIBILITY OF DATA. COMPANY will assume responsibility for all data transfer, but not responsible for data accuracy.

10) SITE REQUIREMENTS.
   a. CLIENT shall maintain a high speed internet connection (1.5mbps download AND 512kbps upload) with a static IP address and must be able to provide COMPANY with IP connection to CLIENT's network through Citrix GotoAssist, VPN, Citrix, or Microsoft Terminal Services. COMPANY shall use the connection to assist with problem diagnosis and resolution. COMPANY is not responsible for purchase of VPN client software license or configuration of CLIENT's firewall settings. **No wireless Internet connections allowed.**

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    b.   COMPANY shall provide CLIENT with remote support through the use of secure connection over the Internet connection via Citrix GotoAssist. If CLIENT will not allow access through GotoAssist, COMPANY cannot guarantee support standards will be met.

11) PROPRIETARY INFORMATION.

    a.   Distribution of COMPANY Software. SUBSCRIBER may not sell, assign, transfer, disclose, or otherwise make available, either directly or indirectly, any object code, documentation or other material relating to the Software, in whole or in part, or any copy of the same in any form, to any other person or entity.

    b.   Software as Trade Secret. SUBSCRIBER shall maintain the confidentiality of the Software and unless specifically authorized by COMPANY or except for ordinary and necessary backup purposes, SUBSCRIBER may not make or have made any copies of the Software or any part thereof. SUBSCRIBER shall include COMPANY's proprietary notice or other legend on any copies made by SUBSCRIBER as permitted hereunder.

12) WARRANTY, DISCLAIMER, LIMITATION ON LIABILITY.
COMPANY warrants that the Software will substantially conform to current specifications delivered by COMPANY to SUBSCRIBER pursuant to this Agreement, including COMPANY's response to the Request for Proposal for six (6) months following installation; provided, however, that COMPANY's warranty hereunder shall not cover or apply to any software or part thereof that is not developed or designed by COMPANY. In the event that the Software is found to be defective in such respect and SUBSCRIBER notifies COMPANY in writing within six (6) months after its receipt of the Software of any substantial non-conformity of the Software with such specifications, COMPANY's sole obligation under this warranty is to remedy such defect within a reasonable time. THE FOREGOING WARRANTY IS EXCLUSIVE AND IS MADE IN LIEU OF ALL OTHER WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY SHALL IN NO EVENT BE LIABLE FOR DAMAGES THAT EXCEED THE AMOUNT OF THE CHARGES PAID BY SUBSCRIBER HEREUNDER FOR THE DEVELOPMENT AND LICENSE OF THE SOFTWARE. IN NO EVENT SHALL COMPANY BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF PROFITS, REVENUES OR DATA, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13) TERMINATION.
This Agreement or any license referenced hereunder may be terminated by COMPANY upon written notice to SUBSCRIBER if SUBSCRIBER performs any breach of the terms of this Agreement. At the date of termination of this Agreement, SUBSCRIBER shall promptly return to COMPANY any Software, related documentation, materials and other property of COMPANY then in its possession, and any copies thereof wherever located. Notwithstanding the foregoing, all provisions hereof relating to confidentiality of the Software shall survive the termination of this Agreement.

14) GENERAL.

    a.   This Agreement shall be governed by the laws of SUBSCRIBER's state of domicile and constitutes the entire Agreement between the parties hereto with respect to the Software described herein, and shall supersede all previous or contemporaneous negotiations, commitments and writings with respect to the matters set forth herein.

    b.   All acceptances by COMPANY of purchase orders and all sales by COMPANY are expressly limited to and made on the basis of the terms and conditions set forth herein, notwithstanding receipt or acknowledgment of SUBSCRIBER's order forms or specifications containing additional or different provisions, or conflicting oral representations by an agent, representative or employee of COMPANY. Any such additional or different terms are hereby objected to. All acceptances by

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COMPANY are expressly conditional on SUBSCRIBER's assent to the additional or different terms and conditions set forth in this Agreement. If these terms and conditions are not acceptable, SUBSCRIBER should notify COMPANY at once.