

**AGREEMENT**  
**BETWEEN**  
**THE CITY OF DELRAY BEACH**  
**AND**  
**TYLER TECHNOLOGIES, INC.**  
**FOR**  
**RFP NO. 2016-069L: ENTERPRISE RESOURCE**  
**PLANNING (ERP) SOLUTION**

This is an Agreement ("Agreement"), made and entered into by and between: Delray Beach, a municipal corporation of the State of Florida, hereinafter referred to as "City,"

And

Tyler Technologies, Inc., a Delaware corporation, hereinafter referred to as "Second Party," (collectively referred to as the "Parties").

WITNESSETH:

In consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

**ARTICLE 1**

**DEFINITIONS AND IDENTIFICATIONS**

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - This Agreement includes Articles 1 through 9, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Board** - The City Commission of Delray Beach, Florida.
- 1.3 **Contract Administrator** - The Delray Beach City Manager or the Director of the Delray Beach, Information Technology Department. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Second Party and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In

the administration of this Agreement, as contrasted with matters of policy, all Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

- 1.4 **City Manager** - The administrative head of City appointed by the Board.
- 1.5 **City Attorney** - The chief legal counsel for City appointed by the Board.
- 1.6 **Project** - The Project consists of the services described in Article 2.
- 1.7 **ERP**- Enterprise resource planning

## ARTICLE 2

### SCOPE OF SERVICES

- 2.1 Second Party shall provide and perform all professional services identified in this Agreement and Exhibits A and Schedule 7 to Exhibit C. Those Exhibits describe Second Party's obligations and responsibilities and are deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Second Party impractical, illogical, or unconscionable. Schedule 7 to Exhibit C is the statement of work
- 2.2 Second Party acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement. Any such increase, decrease or other modification must be mutually agreed to by the parties in writing and signed by the parties' authorized representatives.

## ARTICLE 3

### TERM AND TIME OF PERFORMANCE

- 3.1 This contract is in full force and effect upon full contract execution by the City (the "Effective Date"). The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 3.2 All duties, obligations, and responsibilities of Second Party required by this Agreement shall be completed in accordance with the parties' mutually agreed to implementation plan.

- 3.3 The parties' implementation plan may be modified upon mutual agreement of the parties. In the event the implementation timeframe is extended beyond twenty-four (24) months from the full contract execution by the City, the Second Party shall be compensated for the services at the rate in effect when the extension is invoked by the City upon the same terms and conditions as contained in this Agreement, as amended.

#### ARTICLE 4

#### COMPENSATION

- 4.1 Consistent with the Scope of Services herein referenced as Exhibit "A", the City shall pay Second Party, in the manner specified in Section 4.3, in the amount not to exceed One Million Six Hundred Sixty Thousand Seven Hundred Eighty (\$1,660,780) dollars in one-time fees for software delivered and work actually performed and delivered pursuant to this Agreement, which amounts shall be accepted by Second Party as full compensation for all such work, unless otherwise agreed by Section 2.2.

Second Party acknowledges that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Second Party for its services and expenses related to this Agreement for the scope set forth herein. This maximum amount, however, does not constitute a limitation, of any sort, upon Second Party's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

- 4.2 Second Party may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed, as applicable. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed, expenses incurred, and/or products delivered. Invoices will be submitted per the payment schedule set forth at Schedule 1 to Exhibit C.
- 4.3 City shall pay Second Party within thirty (30) calendar days of receipt of Second Party's proper invoice, or as required by Florida Law. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on a standard Second Party invoice with sufficient detail to identify the nature of the fees and expenses being invoiced. Payment may be withheld for failure of Second Party to comply with a term, condition, or requirement of this Agreement, including but not limited to the warranties for software and services set forth herein, as further detailed in the invoice dispute provision set forth in Exhibit C.

4.4 Reserved.

4.5 Payment shall be made to Second Party at:

Bank: Wells Fargo Bank, N.A.  
420 Montgomery  
San Francisco, CA 94104  
ABA: 121000248  
Account: 4124302472  
Beneficiary: Tyler Technologies, Inc. – Operating

#### ARTICLE 5

#### INDEMNIFICATION

Second Party shall at all times hereafter indemnify, hold harmless and defend the City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Second Party, its employees, agents, servants, or officers, or accruing, resulting from, or related to any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property during Second Party's performance under this Agreement. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Second Party shall, upon written notice from City, which notice shall be provided immediately, resist and defend such lawsuit or proceeding by counsel of Second Party's choosing, taking into consideration the City's reasonable input on such counsel. City agrees to provide Second Party with reasonable assistance, cooperation, and information in defending the claim at Second Party's expense. The obligations of this section shall survive the expiration or earlier termination of this Agreement.

Second Party shall also defend and indemnify the City against third-party claims of intellectual property infringement, as set forth in Exhibit C.

#### ARTICLE 6

#### INSURANCE

6.1 Second Party shall maintain at its sole expense, at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit "B" in accordance with the terms and conditions stated in this Article.



- 6.2 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be provided on a standard Acord form. Second Party shall name City as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is City of Delray Beach, Florida. This official title shall be used in all insurance documentation.
- 6.3 Within fifteen (15) days of notification of award, Second Party shall provide to City proof of insurance in the form of Certificate(s) of Insurance Coverage is not to cease and is to remain in force until the City determines all performance required of Second Party is completed. For Professional Liability Insurance, coverage shall remain in force for two (2) years after the completion of services unless a different time period is stated in Exhibit "B." City shall be notified of any restriction or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the work, proof of insurance renewal shall be provided to City upon expiration.
- 6.4 City reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements.

## ARTICLE 7

### TERMINATION

- 7.1 This Agreement may be terminated for cause by the aggrieved party if the party in material breach has not corrected the material breach, or provided a plan to correct the alleged material breach, within thirty (30) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience or non-appropriation, as set forth in Section 3.1, by the City Manager upon thirty (30) days' notice.
- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, Second Party's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement, so long as those reasons constitute a material breach. The Agreement may also be terminated for cause if the Second Party is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if the Second Party provides a false certification submitted pursuant to Section 287.135, Florida Statutes.

- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement.
- 7.4 In the event this Agreement is terminated for any reason, Second Party shall be paid for any services and/or products delivered, and allowable expenses incurred, under the Agreement through the termination date specified in the written notice of termination. In a termination for cause, any disputed fees will be subject to the dispute resolution process set forth in Exhibit C. In a termination for convenience or non-appropriation, any disputed fees and expenses must have been submitted to the invoice dispute process set forth in Exhibit C as of the time of termination in order to be withheld at termination, and City will not be entitled to a refund or offset of previously paid license and other fees.
- 7.5 Reserved.

## ARTICLE 8

### NON-DISCRIMINATION

- 8.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Failure by Second Party to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit the City, to terminate this Agreement or to exercise any other remedy provided under this Agreement, or under the Delray Beach Code of Ordinances or under applicable law, with all of such remedies being cumulative.

Second Party shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of any State or Federal law. Second Party shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any professional services funded by City under this Agreement, as further defined in the Investment Summary and the Statement of Work, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Second Party shall take affirmative steps to prevent discrimination in employment against disabled persons.

By execution of this Agreement, Second Party represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. City hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle City to terminate this Agreement and recover from Second Party all monies paid by City

pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

## ARTICLE 9

### MISCELLANEOUS

#### 9.1 RIGHTS IN DOCUMENTS AND WORK

Second Party retains all right, title and interest in and to its deliverables, and grants City a license to its intellectual property as set forth in this Agreement. Nothing herein shall constitute a "work for hire."

#### 9.2 PUBLIC RECORDS

City is a public agency subject to Chapter 119, Fla. Stat. Second Party shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, Purchaser agrees to:

9.2.1 Keep and maintain all records that ordinarily and necessarily would be required by the City in order to perform services hereunder.

9.2.2 Provide the public with access to public records on the same terms and conditions that the City would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.

9.2.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.

9.2.4 Meet all requirements for retaining public records and transfer, at no cost, to the City all records in possession of the Second Party at the termination of the contract and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

9.2.5 If Second Party does not comply with this section, the City shall enforce the contract provisions in accordance with the contract.

#### 9.3 INSPECTOR GENERAL.

Second Party is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and

performance of this contract, and may demand and obtain records and testimony from Second Party and its sub licensees and lower tier sub licensees. Second Party understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Second Party or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

#### 9.4 AUDIT RIGHTS, AND RETENTION OF RECORDS

City shall have the right to audit the books, records, and accounts of Second Party that are related to this Project. Second Party and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of Second Party and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Second Party or its subcontractor, as applicable, shall make same available at no cost to City in written form.

Second Party shall preserve and make available, at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Second Party shall ensure that the requirements of this Section 9.3 are included in all agreements with its subcontractor(s), if any.

#### 9.5 TRUTH-IN-NEGOTIATION REPRESENTATION

Second Party's compensation under this Agreement is based upon representations supplied to City by Second Party, and Second Party certifies that the information supplied is accurate, complete, and current at the time of contracting. City shall be entitled to recover any damages it incurs to the extent such representation is untrue, subject to the limitation of liability set forth in Exhibit C.

#### 9.6 PUBLIC ENTITY CRIME ACT

Second Party represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

In addition to the foregoing, Second Party further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Second Party has been placed on the convicted vendor list.

#### 9.7 INDEPENDENT CONTRACTOR

Second Party is an independent contractor under this Agreement. Services provided by Second Party pursuant to this Agreement shall be subject to the supervision of Second Party. In providing such services, neither Second Party nor its agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Second Party or Second Party's agents any authority of any kind to bind City in any respect whatsoever.

#### 9.8 THIRD PARTY BENEFICIARIES

Neither Second Party nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

#### 9.9 NOTICES

Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of

delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For City:

City  
Manager  
City Hall  
100 N.W. 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444

For Second Party:

Abby Diaz  
Vice President & Associate General Counsel  
One Tyler Drive  
Yarmouth, ME 04096  
abigail.diaz@tylertech.com  
Office: 207-518-4289

#### 9.10 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. In addition, Second Party shall not subcontract any portion of the work required by this Agreement, except as may specifically provided for herein or otherwise mutually agreed to. Notwithstanding the Termination provision of this Agreement, City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Second Party of this Agreement or any right or interest herein without City's written consent. Notwithstanding the foregoing, the City's written consent is not required for an assignment by Second Party as a result of a corporate reorganization, merger, acquisition, or purchase of substantially all of Second Party's assets.

Second Party represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Second Party shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Second Party's



performance shall be comparable to local and national industry standards.

#### 9.11 CONFLICTS

Neither Second Party nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Second Party's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

None of Second Party's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Second Party is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Second Party or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Second Party is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Second Party shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Second Party.

#### 9.12 MATERIALITY AND WAIVER OF BREACH

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof.

Either party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

#### 9.13 COMPLIANCE WITH LAWS

Second Party shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

#### 9.14 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Second Party elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days of final court action, including all available appeals.

#### 9.15 JOINT PREPARATION

The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

#### 9.16 INTERPRETATION

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

#### 9.17 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

#### 9.18 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights



hereunder, shall be exclusively in the federal or state courts in Palm Beach County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, SECOND PARTY AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

#### 9.19 AMENDMENTS

The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Second Party or others delegated authority to or otherwise authorized to execute same on their behalf.

#### 9.20 PRIOR AGREEMENTS

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

#### 9.21 PAYABLE INTEREST

9.21.1 Payment of Interest. Except as required by the Prompt Payment laws, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Second Party waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

9.21.2 Rate of Interest. In any instance where the prohibition or limitations

of Section 9.21.1 are determined to be invalid or unenforceable, the annual rate of interest payable by City under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

#### 9.22 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. All Exhibits, including but not limited to Exhibit C, containing terms relating to license, maintenance and support, and other general terms and conditions, are incorporated into and made a part of this Agreement.

#### 9.23 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

#### 9.25 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: City through its Board, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 15<sup>th</sup> day of July, 2016, and Second Party, signing by and through its Vice President and Associate General Counsel, duly authorized to execute same.

CITY OF DELRAY BEACH, a  
Florida Municipal Corporation

**ATTEST:**

*acting*  
Kimberly Hyna  
City Clerk

**CITY OF DELRAY BEACH, FLORIDA**

By [Signature]  
Cary D. Glickstein, Mayor

**APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:**

[Signature]  
City Attorney

**SECOND PARTY**

Tyler Technologies, Inc

By [Signature]  
Andy Diaz, Vice President

16<sup>th</sup> day of June, 20 16

**WITNESS:**

[Signature]  
Rob Kennedy-Jensen  
(print or type name and title)  
Senior Corporate Attorney

(SEAL)

**EXHIBIT A**

**SCOPE OF SERVICES**  
**AND CORRESPONDING COSTS**

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK



**Quoted By:** Eric Moorfoot  
**Date:** 1/29/2016  
**Quote Expiration:** 7/15/2016  
**Client/Prospect Name:** City of Delray Beach, FL  
**Quote Number:** 16L1F-051916  
**Quote Description:** RFP On Premise

**Sales Quotation for:**

**City of Delray Beach, FL**

100 NW 1st Avenue  
 Delray Beach, FL 33444  
 561.243.7149

**Software and Related Services**

Software and Related Services			Implementation		Data Conversion	Module Total
Description	License	Year 1 Maintenance	# of Days	Cost		
Financial Management Suite:						
Financial Management Base Suite - Includes GL, AP, Budget, Rev Collections	\$ 90,000	\$ 16,200	29	\$ 35,380	\$ 24,000	\$ 165,580
Fixed Assets	\$ 9,000	\$ 1,620	6	\$ 7,320		\$ 17,940
Project and Grant Accounting	\$ 18,000	\$ 3,240	10	\$ 12,200		\$ 33,440
Misc Billing & Receivables	\$ 9,000	\$ 1,620	1	\$ 1,220		\$ 11,840
GASB/CAFR Reporting	\$ 21,000	\$ 3,780	6	\$ 7,320		\$ 32,100
Bank Reconciliation	\$ 7,000	\$ 1,260	1	\$ 1,220		\$ 9,480
Work Orders	\$ 21,000	\$ 3,780	7	\$ 8,540		\$ 33,320
Purchasing (Combo of POs and Reqs)	\$ 30,000	\$ 5,400	7	\$ 8,540		\$ 43,940
Bid and Quote Management	\$ 9,000	\$ 1,620	2	\$ 2,440		\$ 13,060
Contract Management	\$ 9,000	\$ 1,620	5	\$ 6,100		\$ 16,720
Inventory	\$ 21,000	\$ 3,780	7	\$ 8,540		\$ 33,320
Financial Management Suite Subtotal:	\$ 244,000	\$ 43,920	81	\$ 98,820	\$ 24,000	\$ 410,740



**Quoted By:** Eric Moorfoot  
**Date:** 1/29/2016  
**Quote Expiration:** 7/15/2016  
**Client/Prospect Name:** City of Delray Beach, FL  
**Quote Number:** 16L1F-051916  
**Quote Description:** RFP On Premise

**Sales Quotation for:**

**City of Delray Beach, FL**

100 NW 1st Avenue  
 Delray Beach, FL 33444  
 561.243.7149

**Payroll & Human Resources Suite:**

Payroll Processing - includes Personnel Management, Position Control								
	\$	60,000	\$	10,800	28	\$	34,160	\$ 16,000 \$ 120,960
Employee Event Tracking	\$	12,000	\$	2,160	2	\$	2,440	\$ 16,600
Personnel Action Processing	\$	12,000	\$	2,160	1	\$	1,220	\$ 15,380
Benefits Administration	\$	10,000	\$	1,800	1	\$	1,220	\$ 13,020
COBRA Billing Administration	\$	10,000	\$	1,800	2	\$	2,440	\$ 14,240
Workers Compensation Admin	\$	15,000	\$	2,700	1	\$	1,220	\$ 18,920
Leave Management	\$	15,000	\$	2,700	1	\$	1,220	\$ 18,920
Applicant Tracking	\$	12,000	\$	2,160	2	\$	2,440	\$ 16,600
Position Budgeting	\$	12,000	\$	2,160	1	\$	1,220	\$ 15,380
Time and Attendance Interface	\$	12,000	\$	2,160	1	\$	1,220	\$ 15,380
<b>Payroll &amp; Human Resources Suite Subtotal:</b>	<b>\$</b>	<b>170,000</b>	<b>\$</b>	<b>30,600</b>	<b>40</b>	<b>\$</b>	<b>48,800</b>	<b>\$ 16,000 \$ 265,400</b>

**Utility Management Suite:**

Utility Billing (Water/Sewer/Refuse Base)								
	\$	40,000	\$	7,200	26	\$	31,720	\$ 12,000 \$ 90,920
Automatic Meter Read (AMR) Interface	\$	9,000	\$	1,620	1	\$	1,220	\$ 11,840
Meter and Device Inventory	\$	11,000	\$	1,980	2	\$	2,440	\$ 15,420
Service Order Processing	\$	22,000	\$	3,960	2	\$	2,440	\$ 28,400
IVR Interface for Acct Bal/Payments	\$	9,000	\$	1,620	1	\$	1,220	\$ 11,840
GIS Integration	\$	12,000	\$	2,160	1	\$	1,220	\$ 15,380
<b>Utility Management Suite Subtotal:</b>	<b>\$</b>	<b>103,000</b>	<b>\$</b>	<b>18,540</b>	<b>33</b>	<b>\$</b>	<b>40,260</b>	<b>\$ 12,000 \$ 173,800</b>



**Quoted By:** Eric Moorfoot  
**Date:** 1/29/2016  
**Quote Expiration:** 7/15/2016  
**Client/Prospect Name:** City of Delray Beach, FL  
**Quote Number:** 16L1F-051916  
**Quote Description:** RFP On Premise

**Sales Quotation for:**

**City of Delray Beach, FL**

100 NW 1st Avenue  
 Delray Beach, FL 33444  
 561.243.7149

**Decision Support Software:**

Decision Support Software	\$	21,000	\$	3,780	1	\$	1,220	\$	26,000
Financial Analytics	\$	26,000	\$	4,680	1	\$	1,220	\$	31,900
Human Resources/Payroll Analytics	\$	26,000	\$	4,680	1	\$	1,220	\$	31,900
<b>Decision Support Software Subtotal:</b>	<b>\$</b>	<b>73,000</b>	<b>\$</b>	<b>13,140</b>	<b>3</b>	<b>\$</b>	<b>3,660</b>	<b>\$</b>	<b>89,800</b>

**eSuite Applications:**

eSuite Base	\$	21,000	\$	3,780	2	\$	2,440	\$	27,220
eFinance Suite (Supplier, Bid, Misc Billing)	\$	30,000	\$	5,400	2	\$	2,440	\$	37,840
ePayments	\$	10,000	\$	1,800	2	\$	2,440	\$	14,240
ePersonnel Suite(Employee, Timesheets, Ben Admin, Recruit)	\$	75,000	\$	13,500	4	\$	4,880	\$	93,380
eUtilities	\$	10,000	\$	1,800	2	\$	2,440	\$	14,240
<b>eSuite Application Subtotal:</b>	<b>\$</b>	<b>146,000</b>	<b>\$</b>	<b>26,280</b>	<b>12</b>	<b>\$</b>	<b>14,640</b>	<b>\$</b>	<b>186,920</b>

<b>New World ERP Software Subtotal:</b>	<b>\$</b>	<b>736,000</b>	<b>\$</b>	<b>132,480</b>	<b>169</b>	<b>\$</b>	<b>206,180</b>	<b>\$</b>	<b>52,000</b>	<b>\$1,126,660</b>
<i>Discount Amount:</i>	<i>\$</i>	<i>73,600</i>	<i>\$</i>	<i>132,480</i>		<i>\$</i>	<i>-</i>	<i>\$</i>	<i>-</i>	<i>\$ 206,080</i>
<b>New World ERP TOTAL INITIAL COST:</b>	<b>\$</b>	<b>662,400</b>	<b>\$</b>	<b>-</b>	<b>169</b>	<b>\$</b>	<b>206,180</b>	<b>\$</b>	<b>52,000</b>	<b>\$ 920,580</b>



**Quoted By:** Eric Moorfoot  
**Date:** 1/29/2016  
**Quote Expiration:** 7/15/2016  
**Client/Prospect Name:** City of Delray Beach, FL  
**Quote Number:** 16L1F-051916  
**Quote Description:** RFP On Premise

**Sales Quotation for:**

**City of Delray Beach, FL**

100 NW 1st Avenue  
 Delray Beach, FL 33444  
 561.243.7149

**Additional Tyler Software and Related Services:**

Tyler Cashing	\$	46,000	\$	8,280	7	\$	8,925	\$	63,205
Tyler Content Manager SE	\$	45,000	\$	8,100	10	\$	12,750	\$	65,850

**Additional Tyler Software and Related Services:**

**Subtotal:** \$ 91,000 \$ 16,380 17 \$ 21,675 \$ 129,055

**EnerGov Suite Applications:**

EnerGov Permits & Inspections (PLM)	\$	68,750	\$	13,750	52	\$	66,300	\$	26,400	\$	148,800
EnerGov Professional Licensing	\$	27,500	\$	5,500	21	\$	26,775	\$	13,560	\$	59,775
EnerGov e-Reviews	\$	34,250	\$	6,850	13	\$	16,575	\$		\$	57,675
EnerGov ESRI Integration	\$	44,000	\$	8,800	1	\$	1,275	\$		\$	54,075
EnerGov iG Workforce Mobile	\$	34,250	\$	6,850	2	\$	2,550	\$		\$	43,650
EnerGov IVR	\$	24,000	\$	4,800	6	\$	7,650	\$		\$	36,450
EnerGov Citizen Access Portal	\$	27,500	\$	5,500	2	\$	2,550	\$		\$	35,550
EnerGov Intelligent Objects Automation	\$	10,665	\$	2,133	13	\$	16,575	\$		\$	29,373

**EnerGov Suite Application Subtotal:** \$ 270,915 \$ 54,183 110 \$ 140,250 \$ 39,960 \$ 465,348

**Overall Software Subtotal:** \$ 1,097,915 \$ 203,043 296 \$ 368,105 \$91,960 \$ 1,761,023

*Discount Amount:* \$ 73,600 \$ 203,043 \$ - \$ - \$ 276,643

**TOTAL INITIAL COST:** \$ 1,024,315 296 \$ 368,105 \$ 91,960 \$ 1,484,380





**Quoted By:** Eric Moorfoot  
**Date:** 1/29/2016  
**Quote Expiration:** 7/15/2016  
**Client/Prospect Name:** City of Delray Beach, FL  
**Quote Number:** 16L1F-051916  
**Quote Description:** RFP On Premise

**Sales Quotation for:**

**City of Delray Beach, FL**

100 NW 1st Avenue  
 Delray Beach, FL 33444  
 561.243.7149

**Additional Implementation Services**

Service	Qty	Description	Fee
25% Dedicated Project Management Services	1	Project Management Services include: a) a summary level Implementation Plan; b) a detail level Implementation Plan; c) revised Implementation Plans (if required); d) monthly project status reports; and e) project status meetings • a project review (kickoff) meeting at Customer's location • progress status meeting(s) will occur during implementation via telephone conference or at Customer's location; and • a project close-out meeting at Customer's location to conclude the project.	\$ 100,000
System Assurance	1	Windows Server 2012/Operating System Assurance and Software Installation: - Install and configure application servers - Consult on connectivity to new or existing Windows environment - Verify operating system and SQL configuration - Verify workstation configuration	\$ 7,000



**Quoted By:** Eric Moorfoot  
**Date:** 1/29/2016  
**Quote Expiration:** 7/15/2016  
**Client/Prospect Name:** City of Delray Beach, FL  
**Quote Number:** 16L1F-051916  
**Quote Description:** RFP On Premise

**Sales Quotation for:**

**City of Delray Beach, FL**

100 NW 1st Avenue  
 Delray Beach, FL 33444  
 561.243.7149

EnerGov Forms Library	1	Permits & Inspections - 4 Forms	\$	4,800
EnerGov Forms Library	1	Professional Licensing - 2 Forms	\$	2,400
Interface	1	Payment Processing Interface: includes 1 Positive Pay, 1 ACH/Direct Deposit Transmittal Export and 1 Payment (Check/EFT) Reconciliation Transmittal Import	\$	4,800
Interface	1	Time and Attendance Interface	\$	4,800
Interface	1	Automatic Meter Read (AMR) Interface	\$	2,700
Interface	1	RecTrac Interface	\$	1,300



**Quoted By:** Eric Moorfoot  
**Date:** 1/29/2016  
**Quote Expiration:** 7/15/2016  
**Client/Prospect Name:** City of Delray Beach, FL  
**Quote Number:** 16L1F-051916  
**Quote Description:** RFP On Premise

**Sales Quotation for:**

**City of Delray Beach, FL**

100 NW 1st Avenue  
 Delray Beach, FL 33444  
 561.243.7149

Optional Additional Implementation Days	30	Not-To-Exceed Implementation Days @ \$1220 Per Day. Only invoiced if used and delivered.		\$36,600
Import	1	Parcel Import	\$	12,000
<b>TOTAL:</b>				<b>\$ 176,400</b>

New World ERP Summary	One Time	
	Fees	Recurring
Total Software	\$ 1,024,315	\$ 203,043
Total Services	\$ 636,465	
<b>Summary Total</b>	<b>\$1,660,780</b>	<b>\$203,043</b>
<b>Contract Total (Excluding Estimated Travel Expenses)</b>	<b>\$1,863,823</b>	



**Quoted By:** Eric Moorfoot  
**Date:** 1/29/2016  
**Quote Expiration:** 7/15/2016  
**Client/Prospect Name:** City of Delray Beach, FL  
**Quote Number:** 16L1F-051916  
**Quote Description:** RFP On Premise

**Sales Quotation for:**

**City of Delray Beach, FL**

100 NW 1st Avenue  
Delray Beach, FL 33444  
561.243.7149

**Estimated Travel Expenses**

Trips @ \$2,000/each -Includes  
airfare, car rental, hotel  
accommodations and per diem

**50      Trips      \$100,000**

**Annual Source Code Escrow  
Fee**

**1500\***

\*Annual Fee as of  
Effective Date



**Quoted By:** Eric Moorfoot  
**Date:** 1/29/2016  
**Quote Expiration:** 7/15/2016  
**Client/Prospect Name:** City of Delray Beach, FL  
**Quote Number:** 16L1F-051916  
**Quote Description:** RFP On Premise

**Sales Quotation for:**

**City of Delray Beach, FL**

100 NW 1st Avenue  
Delray Beach, FL 33444  
561.243.7149

**Footnotes**

Assumes purchase of the proposed solution directly through Tyler Technologies and not through an RFP procurement procedure.

This proposal is budgetary and is being provided solely for planning purposes and does not constitute a firm offer. An extended review may determine that additional software or service components are necessary.

The costs provided in this proposal are based on all of the proposed products and services being obtained from Tyler Technologies. Should significant portions of the products or services be deleted, Tyler reserves the right to adjust its prices accordingly.

Personal Computers must meet the minimum hardware requirements for the New World ERP product. Microsoft Windows 7 or greater with Internet Explorer (IE) 8 or greater is the required operating system and browser for all client machines.

Servers must meet the minimum hardware requirements for the New World ERP product. Windows Server 2008 (R2) or greater is required for the Application Server(s), Web Server(s) and Database Server. Microsoft SQL Server 2008 (R2) or greater is required for the Database Server. Customers must also license the appropriate number of Microsoft Client Access Licenses (CALs) for license compliance.

Suggested minimum: 100MB Ethernet Network. 10MB CAT5 Ethernet Network may have less than adequate response time. Further consultation would be required to assess your network.

Travel and expenses are not included under *Total Services* as they are billed at actual cost. A separate line item above "*Estimated Travel Expenses*", shows Tyler's estimate for travel and living expenses for the scope of this project. That estimate is based upon \$2,000 per trip, which may include airfare, hotel, per diem, car rental, and gas). All travel and living expenses will be billed on a weekly basis, but only as incurred.



**Quoted By:** Eric Moorfoot  
**Date:** 1/29/2016  
**Quote Expiration:** 7/15/2016  
**Client/Prospect Name:** City of Delray Beach, FL  
**Quote Number:** 16L1F-051916  
**Quote Description:** RFP On Premise

**Sales Quotation for:**

**City of Delray Beach, FL**

100 NW 1st Avenue  
Delray Beach, FL 33444  
561.243.7149

Tyler supports SQL Server Reporting Services (SSRS) for server-based report generation and ad hoc reporting. SSRS utilizes a web services interface to support the development of custom reporting applications. SSRS is included in the Express, Workgroup, Standard, and Enterprise editions of Microsoft SQL Server. Customers may elect to use other third-party report generation tools including Crystal Reports however Tyler does not provide support for these tools and cannot guarantee compatibility.

Prices assumes that all software proposed is licensed.

Licensed Software, and third party software embedded therein, if any, will be delivered in a machine-readable form to Customer via an agreed upon network connection. Any taxes or fees imposed are the responsibility of the purchaser and will be remitted when imposed.

An unlimited Site License is included for the above-proposed software. The Site License is available to only the affiliated Public Administration agencies within the Prospect listed on this Price Quotation.

Annual maintenance will be a recurring software cost that will begin at Year 2 and will include a price increase each subsequent year.

Custom interface will be operational with existing third party software. Any subsequent changes to third party applications may require additional services.

Supports Epson TM-H6000IV Receipt/Validation/Slip Printer

Time & Attendance interface is a two-way interface. Additional support may be required for third-party changes; not included in annual maintenance.

Currently supports interfaces to Sensus/Rockwell, Neptune, Itron, Radix, Syscon and Schlumberger devices. Technical assurance must be obtained to verify the Business Partner's software/hardware release level interface requirements.



**Sales Quotation for:**

**City of Delray Beach, FL**

100 NW 1st Avenue  
Delray Beach, FL 33444  
561.243.7149

GIS integration currently supports either ESRI's ArcIMS or ArcGIS Server software; the ArcIMS and ArcGIS Server software and any services related to the installation and set up of ArcIMS or ArcGIS are not included in this proposal. The ArcIMS or ArcGIS Server software must be purchased, installed, and set up separately.

**Quoted By:** Eric Moorfoot  
**Date:** 1/29/2016  
**Quote Expiration:** 7/15/2016  
**Client/Prospect Name:** City of Delray Beach, FL  
**Quote Number:** 16L1F-051916  
**Quote Description:** RFP On Premise

## **EXHIBIT B**

### **INSURANCE REQUIREMENTS OF THE CITY OF DELRAY BEACH**

Second Party shall not commence operations under the terms of this Agreement until certification or proof of insurance, detailing terms and provisions of coverage, has been received by the City of Delray Beach Risk Manager. If you have any questions call (561) 243-7150.

The following insurance coverage shall be required.

- A. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute 440 and including Employers Liability coverage, regardless of the size of your firm. Second Party further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course and scope of their employment.
- B. General liability insurance with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually, providing coverage for Premises and Operations, Products and Completed Operations, and Personal and Advertising Injury Liability. Insurance Policies must be obtained through insurance companies that are authorized to transact business in the State of Florida by the Department of Financial Services, and they must carry a minimum rating of A.M. Best of A- as to management and VII as to financial size.
- C. Motor Vehicle Liability Insurance covering all vehicles associated with Second Party operations to include all owned, non-owned and hired vehicles.

The coverage will be written on an occurrence basis with limits of liability not less than \$1,000,000.00 combined single limit per each occurrence.

Second Party shall furnish to the City, Certificate(s) of Insurance evidencing insurance required by the provisions set forth above. If any of the above coverages expire during the term of this Agreement, Second Party will provide a renewal certificate no more than ten (10) days after expiration.

Mail to: City of Delray Beach, Attn. Risk Manager, 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, Florida 33444 with a copy to Assistant City Manager, 100 N.W. 1<sup>st</sup> Avenue, Delray Beach, FL 33444



## Exhibit C Addendum

### SECTION A – DEFINITIONS

For the purposes of this Addendum, the following defined terms will apply. All other defined terms will have the meaning set forth in the Agreement.

- **“Business Travel Policy”** means our business travel policy. A copy of our current Business Travel Policy is attached as Schedule 2.
- **“Defect”** means a failure of the Tyler Software to substantially conform to the functional descriptions set forth in our written proposal to you, or their functional equivalent. Future functionality may be updated, modified, or otherwise enhanced through our maintenance and support services, and the governing functional descriptions for such future functionality will be set forth in our then-current Documentation
- **“Documentation”** means any online or written documentation related to the use or functionality of the Tyler Software that we provide or otherwise make available to you, including instructions, user guides, manuals and other training or self-help documentation.
- **“Force Majeure”** means an event beyond the reasonable control of you or us, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, or any other cause that could not with reasonable diligence be foreseen or prevented by you or us.
- **“Investment Summary”** means the agreed upon cost proposal for the software, products, and services attached to the Agreement as Exhibit A.
- **“Invoicing and Payment Policy”** means the invoicing and payment policy. A copy of our current Invoicing and Payment Policy is attached as Schedule 1.
- **“Maintenance and Support Agreement”** means the terms and conditions governing the provision of maintenance and support services to all of our customers. A copy of our current Maintenance and Support Agreement is attached as Schedule 3.
- **“Statement of Work”** means the industry standard implementation plan describing how our professional services will be provided to implement the Tyler Software, and outlining your and our roles and responsibilities in connection with that implementation. The Statement of Work is provided at Schedule 7.
- **“Support Call Process”** means the support call process applicable to all of our customers who have licensed the Tyler Software. The New World Software Support Call Process is attached as Schedule 4 and the EnerGov/Tyler Software Support Call Process is attached as Schedule 5.
- **“Tyler Software”** means our proprietary software, including any integrations, custom modifications, and/or other related interfaces identified in the Investment Summary and licensed by us to you through this Agreement.
- **“we”, “us”, “our”** and similar terms mean Tyler.

- “you” and similar terms mean the City.

## SECTION B – SOFTWARE LICENSE

### 1. License Grant and Restrictions.

- 1.1 We grant to you a license to use the Tyler Software for your internal business purposes only, in the scope of the internal business purposes disclosed to us as of the Effective Date. You may make copies of the Tyler Software for backup and testing purposes, so long as such copies are not used in production and the testing is for internal use only. Your rights to use the Tyler Software are perpetual but may be revoked if you do not comply with the terms of this Agreement.
- 1.2 The Documentation is licensed to you and may be used and copied by your employees for internal, non-commercial reference purposes only.
- 1.3 You may not: (a) transfer or assign the Tyler Software to a third party; (b) reverse engineer, decompile, or disassemble the Tyler Software; (c) rent, lease, lend, or provide commercial hosting services with the Tyler Software; or (d) publish or otherwise disclose the Tyler Software or Documentation to third parties.
- 1.4 These license terms apply to updates and enhancements we may provide to you or make available to you through your Maintenance and Support Agreement.
- 1.5 The right to transfer the Tyler Software to a replacement hardware system is included in your license. You will give us advance written notice of any such transfer and will pay us for any required or requested technical assistance from us associated with such transfer.
- 1.6 We reserve all rights not expressly granted to you in the Agreement. The Tyler Software and Documentation are protected by copyright and other intellectual property laws and treaties. We own the title, copyright, and other intellectual property rights in the Tyler Software and the Documentation. **The Tyler Software is licensed, not sold.**

2. License Fees. You agree to pay us the license fees in the amounts set forth in the Investment Summary. Those amounts are payable in accordance with the Invoicing and Payment Policy.
3. Escrow. We maintain an escrow agreement with a third party under which we place the source code for each major release of the Tyler Software. You may be added as a beneficiary to the escrow agreement by completing a standard beneficiary enrollment form and paying the annual beneficiary fee. You will be responsible for maintaining your ongoing status as a beneficiary, including payment of the then-current annual beneficiary fees. Release of source code for the Tyler Software is strictly governed by the terms of

the escrow agreement.

4. Limited Warranty. We warrant that the Tyler Software will be without Defect(s) as long as you have a Maintenance and Support Agreement in effect. If the Tyler Software does not perform as warranted, we will use all reasonable efforts, consistent with industry standards, to cure the Defect as set forth in the Maintenance and Support Agreement.

## **SECTION C – PROFESSIONAL SERVICES**

1. Additional Services. The Investment Summary contains, and the Statement of Work describes, the scope of services and related costs (including programming and/or interface estimates) required for the project based on our understanding of the specifications you supplied. If additional work is required, or if you use or request additional services, we will provide you with an addendum or change order, as applicable, outlining the costs for the additional work, and Section 2.2 of the Agreement will apply. The price quotes in the addendum or change order will be valid for thirty (30) days from the date of the quote.
2. Cancellation. We make all reasonable efforts to schedule our personnel for travel, including arranging travel reservations, at least two (2) weeks in advance of commitments. Therefore, if you cancel services less than two (2) weeks in advance (other than for Force Majeure or breach by us), you will be liable for all (a) non-refundable expenses incurred by us on your behalf, and (b) daily fees associated with cancelled professional services if we are unable to reassign our personnel. We will make all reasonable efforts to reassign personnel in the event you cancel within two (2) weeks of scheduled commitments.
3. Site Access and Requirements. At no cost to us, you agree to provide us with full and free access to your personnel, facilities, and equipment as may be reasonably necessary for us to provide implementation services, subject to any reasonable security protocols or other written policies provided to us as of the Effective Date, and thereafter as mutually agreed to by you and us. You further agree to provide a reasonably suitable environment, location, and space for the installation of the Tyler Software including, without limitation, sufficient electrical circuits, cables, and other reasonably necessary items required for the installation and operation of the Tyler Software.
4. Client Assistance. You acknowledge that the implementation of the Tyler Software is a cooperative process requiring the time and resources of your personnel. You agree to use all reasonable efforts to cooperate with and assist us as may be reasonably required to meet the agreed upon project deadlines and other milestones for implementation. This cooperation includes at least working with us to schedule the implementation-related services outlined in this Agreement. We will not be liable for failure to meet any deadlines and milestones when such failure is due to Force Majeure or to the failure by your personnel to provide such cooperation and assistance (either through action or omission).

## **SECTION D – MAINTENANCE AND SUPPORT**

This Agreement includes the period of free maintenance and support services identified in the Invoicing and Payment Policy. If you have purchased ongoing maintenance and support services, and continue to make timely payments for them according to our Invoicing and Payment Policy, we will provide you with maintenance and support services for the Tyler Software under the terms of our standard Maintenance and Support Agreement.

If you have opted not to purchase ongoing maintenance and support services for the Tyler Software, the Maintenance and Support Agreement does not apply to you. Instead, you will only receive ongoing maintenance and support on the Tyler Software on a time and materials basis. In addition, you will:

- (i) receive the lowest priority under our Support Call Process;
- (ii) be required to purchase new releases of the Tyler Software, including fixes, enhancements and patches;
- (iii) be charged our then-current rates for support services, or such other rates that we may consider necessary to account for your lack of ongoing training on the Tyler Software;
- (iv) be charged for a minimum of two (2) hours of support services for every support call; and
- (v) not be granted access to the support website for the Tyler Software or the Tyler Community Forum.

## **SECTION E – THIRD PARTY PRODUCTS**

To the extent you enable the MyGovPay/Virtual Pay payment processing functionality made available as part of your license to the EnerGov modules identified in the Investment Summary, the terms set forth in Schedule 6 will apply.

## **SECTION F – INVOICE DISPUTES**

If you believe any delivered software or service does not conform to the warranties in this Agreement, you will provide us with written notice within thirty (30) days of your receipt of the applicable invoice. The written notice must contain reasonable detail of the issues you contend are in dispute so that we can confirm the issue and respond to your notice with either a justification of the invoice, an adjustment to the invoice, or a proposal addressing the issues presented in your notice. We will work with you as may be necessary to develop an action plan that outlines reasonable steps to be taken by each of us to resolve any issues presented in your notice. You may withhold payment of the amount(s) actually in dispute, and only those amounts, until we complete the action items outlined in the plan. If we are unable to complete the action items outlined in the action plan because of your failure to complete the items agreed to be done by you, then you will

remit full payment of the invoice. We reserve the right to suspend delivery of all services, including maintenance and support services, if you fail to pay an invoice not disputed as described above within fifteen (15) days of notice of our intent to do so.

## **SECTION H – INTELLECTUAL PROPERTY INDEMNIFICATION, DISCLAIMER AND LIMITATION OF LIABILITY**

### **1. Intellectual Property Infringement Indemnification.**

- 1.1 We will defend you against any third party claim(s) that the Tyler Software or Documentation infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.
- 1.2 Our obligations under this Section H(1) will not apply to the extent the claim or adverse final judgment is based on your: (a) use of a previous version of the Tyler Software and the claim would have been avoided had you installed and used the current version of the Tyler Software, and we provided notice of that requirement to you; (b) combining the Tyler Software with any product or device not provided, contemplated, or approved by us; (c) altering or modifying the Tyler Software, including any modification by third parties at your direction or otherwise permitted by you; (d) use of the Tyler Software in contradiction of this Agreement, including with non-licensed third parties; or (e) willful infringement, including use of the Tyler Software after we notify you to discontinue use due to such a claim.
- 1.3 If we receive information concerning an infringement or misappropriation claim related to the Tyler Software, we may, at our expense and without obligation to do so, either: (a) procure for you the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent, in which case you will stop running the allegedly infringing Tyler Software immediately. Alternatively, we may decide to litigate the claim to judgment, in which case you may continue to use the Tyler Software consistent with the terms of this Agreement.
- 1.4 If an infringement or misappropriation claim is fully litigated and your use of the Tyler Software is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement to which we consent), we will, at our option, either: (a) procure the right to continue its use; (b) modify it to make it non-infringing; (c) replace it with a functional equivalent; or (d) terminate your license and refund the license fees paid for the infringing Tyler Software, as depreciated on a straight-line basis measured over seven (7) years from the Effective Date. We will pursue those options in the order listed herein. This section provides your exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation

claims.

2. **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
3. **LIMITATION OF LIABILITY.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, OUR LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO YOUR ACTUAL DIRECT DAMAGES, NOT TO EXCEED THE TOTAL ONE-TIME FEES SET FORTH IN THE INVESTMENT SUMMARY. THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTION H(1).
4. **EXCLUSION OF CERTAIN DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **SECTION I – GENERAL TERMS AND CONDITIONS**

1. **Additional Products and Services.** You may purchase additional products and services at the rates set forth in the Investment Summary for twenty-four (24) months from the Effective Date, and thereafter at our then-current list price, by executing a mutually agreed addendum. The terms of this Agreement will control any such additional purchase(s), unless otherwise specifically provided in the addendum.
2. **Optional Items.** Pricing for any listed optional products and services in the Investment Summary will be valid for twelve (12) months from the Effective Date.
3. **Dispute Resolution.** You agree to provide us with written notice within thirty (30) days of becoming aware of a dispute. You agree to cooperate with us in trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative to meet and engage in good faith negotiations with our appointed senior representative. Senior representatives will convene within thirty (30) days of the written dispute notice, unless otherwise agreed. All meetings and discussions between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If we fail to resolve the dispute, either of us may assert our respective rights and remedies in a



court of competent jurisdiction. Nothing in this section shall prevent you or us from seeking necessary injunctive relief during the dispute resolution procedures.

4. Taxes. The fees in the Investment Summary do not include any taxes, including, without limitation, sales, use, or excise tax. If you are a tax-exempt entity, you agree to provide us with a tax-exempt certificate. Otherwise, we will pay all applicable taxes to the proper authorities and you will reimburse us for such taxes. If you have a valid direct-pay permit, you agree to provide us with a copy. For clarity, we are responsible for paying our income taxes, both federal and state, as applicable, arising from our performance of this Agreement.
5. E-Verify. We have complied, and will comply, with the E-Verify procedures administered by the U.S. Citizenship and Immigration Services Verification Division for all of our employees assigned to your project.
6. Force Majeure. Except for your payment obligations, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure; provided, however, that within ten (10) business days of the Force Majeure event, the party whose performance is delayed provides the other party with written notice explaining the cause and extent thereof, as well as a request for a reasonable time extension equal to the estimated duration of the Force Majeure event.
7. Client Lists. You agree that we may identify you by name in client lists, marketing presentations, and promotional materials.
8. Confidentiality. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities, including the parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (e.g., social security numbers) and trade secrets, each as defined by applicable state law. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement. This obligation of confidentiality will not apply to information that:
  - (a) is in the public domain, either at the time of disclosure or afterwards, except by breach of this Agreement by a party or its employees or agents;
  - (b) a party can establish by reasonable proof was in that party's possession at the time of initial disclosure;
  - (c) a party receives from a third party who has a right to disclose it to the receiving party; or

(d) is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws governing this Agreement; provided, however, that in the event you receive an open records or other similar applicable request, you will give us prompt notice and otherwise perform the functions required by applicable law.

9. Schedules to Addendum. This Addendum includes the following schedules:

- Schedule 1 Invoicing and Payment Policy
- Schedule 2 Business Travel Policy
- Schedule 3 Maintenance and Support Agreement
- Schedule 4 New World Software Support Call Process
- Schedule 5 EnerGov and Tyler Software Support Call Process
- Schedule 6 MyGovPay/Virtual Pay
- Schedule 7 Statement of Work



## Schedule 1 Invoicing and Payment Policy

**Invoicing:** We will invoice you for the applicable license and services fees in the Investment Summary as set forth below. Your rights to dispute any invoice are set forth in Exhibit C.

### 1. Tyler Software.

1.1 *License Fees:* License fees are invoiced as follows: (a) 25% on the Effective Date; (b) 60% on the date when we make the applicable Tyler Software available to you for downloading (the “Available Download Date”); and (c) 15% on the earlier of use of the Tyler Software in live production or 180 days after the Available Download Date.

1.2 *Maintenance and Support Fees:* Year 1 maintenance and support fees are waived through the earlier of (a) availability of the Tyler Software for use in a live production environment; or (b) one (1) year from the Effective Date. Year 2 maintenance and support fees are payable on that earlier-of date, and subsequent maintenance and support fees are invoiced annually in advance of each anniversary thereof through Year 5, as further described in Schedule 3 to this Exhibit C. We agree that your fees for Year 2 will not increase over the rate set forth in the Investment Summary, and that your fees for Years 3 through 5 will increase by three (3) percent each year, year-over-year. For any renewal after Year 5, your fees will be at our then-current rates.

### 2. Professional Services.

2.1 *Implementation, Consulting and Other Professional Services (including training):* Any fixed-price services are invoiced 50% upon initial delivery of the fixed price service, and 50% upon deployment of the fixed priced service within your live/production environment. Where services are quoted as estimated, we will bill you the actual services, as delivered, on a time and materials basis.

2.2 *Requested Modifications to the Tyler Software:* Requested modifications to Tyler Software are invoiced 50% upon delivery of specifications and 50% upon delivery of the applicable modification. You must report any failure of the modification to conform to the specifications within thirty (30) days of delivery; otherwise, the modifications will be deemed to be in compliance with the specifications after the 30-day window has passed. You may still report Defects to us as set forth in the Maintenance and Support Agreement.

### 3. Other Services and Fees.

3.1 *Disaster Recovery Services:* Disaster Recovery Services are invoiced annually in advance upon our receipt of your data. Disaster Recovery services will renew

automatically for additional one (1) year terms at our then-current Disaster Recovery fee, unless terminated in writing by either party at least thirty (30) days prior to the end of the then-current term.

4. Expenses. The service rates in the Investment Summary do not include travel expenses. Expenses will be billed as incurred and only in accordance with our then-current Business Travel Policy, plus a 10% travel agency processing fee. Our current Business Travel Policy is attached at Schedule 2. Copies of receipts will be provided upon request; we reserve the right to charge you an administrative fee depending on the extent of your requests. Receipts for miscellaneous items less than twenty-five dollars and mileage logs are not available.

## **Schedule 2 Business Travel Policy**

### **1. Air Travel**

#### **A. Reservations & Tickets**

Tyler's Travel Management Company (TMC) will provide an employee with a direct flight within two hours before or after the requested departure time, assuming that flight does not add more than three hours to the employee's total trip duration and the fare is within \$100 (each way) of the lowest logical fare. If a net savings of \$200 or more (each way) is possible through a connecting flight that is within two hours before or after the requested departure time and that does not add more than three hours to the employee's total trip duration, the connecting flight should be accepted.

Employees are encouraged to make advanced reservations to take full advantage of discount opportunities. Employees should use all reasonable efforts to make travel arrangements at least two (2) weeks in advance of commitments. A seven day advance booking requirement is mandatory. When booking less than seven days in advance, management approval will be required.

Except in the case of international travel where a segment of continuous air travel is scheduled to exceed six hours, only economy or coach class seating is reimbursable.

#### **B. Baggage Fees**

Reimbursement of personal baggage charges are based on trip duration as follows:

- Up to five days = one checked bag
- Six or more days = two checked bags

Baggage fees for sports equipment are not reimbursable.

### **2. Ground Transportation**

#### **A. Private Automobile**

Mileage Allowance – Business use of an employee's private automobile will be reimbursed at the current IRS allowable rate, plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee's office as the starting and ending point, in compliance with IRS regulations. Employees who have been designated a home office should calculate miles from their home.

#### **B. Rental Car**

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience, and the specific situation reasonably require their use. When renting a car for Tyler business, employees should select a “mid-size” or “intermediate” car. “Full” size cars may be rented when three or more employees are traveling together. Tyler carries leased vehicle coverage for business car rentals; additional insurance on the rental agreement should be declined.

#### C. Public Transportation

Taxi or airport limousine services may be considered when traveling in and around cities or to and from airports when less expensive means of transportation are unavailable or impractical. The actual fare plus a reasonable tip (15-18%) are reimbursable. In the case of a free hotel shuttle to the airport, tips are included in the per diem rates and will not be reimbursed separately.

#### D. Parking & Tolls

When parking at the airport, employees must use longer term parking areas that are measured in days as opposed to hours. Park and fly options located near some airports may also be used. For extended trips that would result in excessive parking charges, public transportation to/from the airport should be considered. Tolls will be reimbursed when receipts are presented.

### 3. Lodging

Tyler’s TMC will select hotel chains that are well established, reasonable in price, and conveniently located in relation to the traveler’s work assignment. Typical hotel chains include Courtyard, Fairfield Inn, Hampton Inn, and Holiday Inn Express. If the employee has a discount rate with a local hotel, the hotel reservation should note that discount and the employee should confirm the lower rate with the hotel upon arrival. Employee memberships in travel clubs such as AAA should be noted in their travel profiles so that the employee can take advantage of any lower club rates.

“No shows” or cancellation fees are not reimbursable if the employee does not comply with the hotel’s cancellation policy.

Tips for maids and other hotel staff are included in the per diem rate and are not reimbursed separately.

### 4. Meals and Incidental Expenses

Employee meals and incidental expenses while on travel status are in accordance with the federal per diem rates published by the General Services Administration. Incidental expenses include tips to maids, hotel staff, and shuttle drivers and other minor travel expenses. Per diem rates are available at [www.gsa.gov/perdiem](http://www.gsa.gov/perdiem).

#### A. Overnight Travel

For each full day of travel, all three meals are reimbursable. Per diems on the first and last day of a trip are governed as set forth below.

##### Departure Day

Depart before 12:00 noon	Lunch and dinner
Depart after 12:00 noon	Dinner

##### Return Day

Return before 12:00 noon	Breakfast
Return between 12:00 noon & 7:00 p.m.	Breakfast and lunch
Return after 7:00 p.m.*	Breakfast, lunch and dinner

\*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner

The reimbursement rates for individual meals are calculated as a percentage of the full day per diem as follows:

- Breakfast 15%
- Lunch 25%
- Dinner 60%

#### B. Same Day Travel

Employees traveling at least 100 miles to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 7:00 p.m.\*

\*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner

#### 5. Internet Access – Hotels and Airports

Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If an employee's hotel charges for internet access it is reimbursable up to \$10.00 per day. Charges for internet access at airports are not reimbursable.

### **Schedule 3**

#### **Maintenance and Support Agreement**

We will provide you with the following maintenance and support services for the Tyler Software. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

1. Term. We provide maintenance and support services on an annual basis. The initial term commences on the Effective Date, and remains in effect for one (1) year. The term will renew automatically for additional one (1) year terms through the fifth anniversary of the term (ie. through completion of Year 5) unless terminated in writing by either party at least thirty (30) days prior to the end of the then-current term. No later than ninety (90) days prior to the expiration of Year 5, the parties will mutually agree on whether the parties will enter into an additional renewal term for maintenance and support of five (5) one (1)-year terms. Any such renewal will be on our then current terms, including but not limited to pricing, except as otherwise agreed by the parties.
2. Maintenance and Support Fees. We reserve the right to suspend maintenance and support services if you fail to pay undisputed maintenance and support fees within thirty (30) days of our written notice. We will reinstate maintenance and support services only if you pay all past due maintenance and support fees, including all fees for the periods during which services were suspended.
3. Maintenance and Support Services. As long as you are not using the Help Desk as a substitute for our training services on the Tyler Software, and you timely pay your maintenance and support fees, we will, consistent with our then-current Support Call Process:
  - 3.1 perform our maintenance and support obligations in a professional, good, and workmanlike manner, consistent with industry standards, to resolve Defects in the Tyler Software (limited to the then-current version and the immediately prior version); provided, however, that if you modify the Tyler Software without our consent, our obligation to provide maintenance and support services on and warrant the Tyler Software will be void;
  - 3.2 provide telephone support during our established support hours;
  - 3.3 maintain personnel that are sufficiently trained to be familiar with the Tyler Software and Third Party Software, if any, in order to provide maintenance and support services;
  - 3.4 provide you with a copy of all major and minor releases to the Tyler Software (including updates and enhancements) that we make generally available without additional charge to customers who have a maintenance and support agreement in effect; and

3.5 provide non-Defect resolution support of prior releases of the Tyler Software in accordance with our then-current release life cycle policy.

4. Client Responsibilities. We will use all reasonable efforts to perform any maintenance and support services remotely. Therefore, you agree to maintain a high-speed internet connection capable of connecting us to your PCs and server(s). You agree to provide us with a login account and local administrative privileges as we may reasonably require to perform remote services. We will, at our option, use the secure connection to assist with proper diagnosis and resolution, subject to any reasonably applicable security protocols. If we cannot resolve a support issue remotely, we may be required to provide onsite services. In such event, we will be responsible for our travel expenses, unless it is determined that the reason onsite support was required was a reason outside our control. Either way, you agree to provide us with full and free access to the Tyler Software, working space, adequate facilities within a reasonable distance from the equipment, and use of machines, attachments, features, or other equipment reasonably necessary for us to provide the maintenance and support services, all at no charge to us. We strongly recommend that you also maintain a VPN for backup connectivity purposes.
5. Hardware and Other Systems. If in the process of diagnosing a software support issue it is discovered that one of your peripheral systems or other software is the cause of the issue, we will notify you so that you may contact the support agency for that peripheral system. We cannot support or maintain Third Party Products except as expressly set forth in the Agreement.

In order for us to provide the highest level of software support, you bear the following responsibility related to hardware and software:

- (a) All infrastructure executing Tyler Software shall be managed by you;
  - (b) You will maintain support contracts for all non-Tyler software associated with Tyler Software (including operating systems and database management systems, but excluding Third-Party Software, if any); and
  - (c) You will perform daily database backups and verify that those backups are successful.
6. Other Excluded Services. Maintenance and support fees do not include fees for the following services: (a) initial installation or implementation of the Tyler Software; (b) onsite maintenance and support (unless Tyler cannot remotely correct a Defect in the Tyler Software, as set forth above); (c) application design; (d) other consulting services; (e) maintenance and support of an operating system or hardware; (f) support outside our normal business hours as listed in our then-current Support Call Process; or (g) installation, training services, or third party product costs related to a new release. Requested maintenance and support services such as those outlined in this section will be billed to you on a time and materials basis at our then current rates. You must request those services with at least one (1) weeks' advance notice.

7. Current Support Call Process. Our current Support Call Process for the New World software is provided at Schedule 4. Our current Support Call Process for the EnerGov/Tyler Software is provided at Schedule 5.



## Schedule 4

### Support Call Process – New World Software Modules

If, after you have cut over to live production use of the Tyler Software, you believe that the New World Software modules are Defective, as “Defect” is defined in Exhibit C, then you will notify us by phone, in writing, by email, or through the support website. Please reference <http://www.tylertech.com/client-support> for information on how to use these various means of contact.

Documented examples of the claimed Defect must accompany each notice. We will review the documented notice and when there is a Defect, we shall resolve it at no additional cost to you beyond your then-current maintenance and support fees.

In receiving and responding to Defect notices and other support calls, we will follow the priority categorizations below. These categories are assigned based on your determination of the severity of the Defect and our reasonable analysis. If you believe a priority categorization needs to be updated, you may contact us again, via the same methods outlined above, to request the change.

In each instance of a Priority 1 or 2 Defect, prior to final Defect correction, the support team may offer you workaround solutions, including patches, configuration changes, and operational adjustments, or may recommend that you revert back to the prior version the Tyler Software pending Defect correction.

- (a) **Priority 1:** *An Defect that renders the Tyler Software inoperative; or causes the Tyler Software to fail catastrophically.*

After initial assessment of the Priority 1 Defect, if required, we shall assign a qualified product technical specialist(s) within one business (1) hour. The technical specialist(s) will then work to diagnose the Defect and to correct the Defect, providing ongoing communication to you concerning the status of the correction until the Tyler Software is operational without Priority 1 defect.

The goal for correcting a Priority 1 Defect is 24 hours or less.

- (b) **Priority 2:** *A Defect that substantially degrades the performance of the Tyler Software, but does not prohibit your use of the Tyler Software.*

We shall assign a qualified product technical specialist(s) within four (4) business hours of our receipt of your notice. The product technical specialist will then work to diagnose and correct the Defect. We shall work diligently to make the correction, and shall provide ongoing communication to you concerning the status of the correction until the Tyler Software is operational without Priority 2 Defect.

The goal for correcting a Priority 2 event is to include a correction in the next Tyler

Software release.

- (c) **Priority 3:** *A Defect which causes only a minor impact on the use of the Tyler Software.*

We may include a correction in subsequent Tyler Software releases.

## Schedule 5

### Support Call Process – EnerGov/Tyler Software

#### **Support Channels**

Tyler Technologies, Inc. provides the following channels of software support:

- (1) Tyler Community – an on-line resource, Tyler Community provides a venue for all Tyler clients with current maintenance agreements to collaborate with one another, share best practices and resources, and access documentation.
- (2) On-line submission (portal) – for less urgent and functionality-based questions, users may create unlimited support incidents through the customer relationship management portal available at the Tyler Technologies website.
- (3) Email – for less urgent situations, users may submit unlimited emails directly to the software support group.
- (4) Telephone – for urgent or complex questions, users receive toll-free, unlimited telephone software support.

#### **Support Resources**

A number of additional resources are available to provide a comprehensive and complete support experience:

- (1) Tyler Website – [www.tylertech.com](http://www.tylertech.com) – for accessing client tools and other information including support contact information.
- (2) Tyler Community – available through login, Tyler Community provides a venue for clients to support one another and share best practices and resources.
- (3) Knowledgebase – A fully searchable depository of thousands of documents related to procedures, best practices, release information, and job aides.
- (4) Program Updates – where development activity is made available for client consumption

#### **Support Availability**

Tyler Technologies support is available during the local business hours of 8 AM to 5 PM (Monday – Friday) across four US time zones (Pacific, Mountain, Central and Eastern). Clients may receive coverage across these time zones. Tyler's holiday schedule is outlined below. There will be no support coverage on these days.

New Year's Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Day
Labor Day	

#### **Issue Handling**

##### **Incident Tracking**

Every support incident is logged into Tyler's Customer Relationship Management System and given a unique incident number. This system tracks the history of each incident. The incident

tracking number is used to track and reference open issues when clients contact support. Clients may track incidents, using the incident number, through the portal at Tyler's website or by calling software support directly.

#### *Incident Priority*

Each incident is assigned a priority number, which corresponds to the client's needs and deadlines. The client is responsible for reasonably setting the priority of the incident per the chart below. The goal of this structure is to help the client clearly understand and communicate the importance of the issue and to describe expected responses and resolutions.

Priority Level	Characteristics of Support Incident	Resolution Targets
1 Critical	Support incident that causes (a) complete application failure or application unavailability; (b) application failure or unavailability in one or more of the client's remote location; or (c) systemic loss of multiple essential system functions.	Tyler shall provide an initial response to Priority Level 1 incidents within one (1) business hour of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within one (1) business day. Tyler's responsibility for lost or corrupted data is limited to assisting the client in restoring its last available database.
2 High	Support incident that causes (a) repeated, consistent failure of essential functionality affecting more than one user or (b) loss or corruption of data.	Tyler shall provide an initial response to Priority Level 2 incidents within four (4) business hours of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within ten (10) business days. Tyler's responsibility for loss or corrupted data is limited to assisting the client in restoring its last available database.

Priority Level	Characteristics of Support Incident	Resolution Targets
3 Medium	Priority Level 1 incident with an existing circumvention procedure, or a Priority Level 2 incident that affects only one user or for which there is an existing circumvention procedure.	Tyler shall provide an initial response to Priority Level 3 incidents within one (1) business day of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents without the need for a circumvention procedure with the next published maintenance update or service pack. Tyler's responsibility for lost or corrupted data is limited to assisting the client in restoring its last available database.
4 Non-critical	Support incident that causes failure of non-essential functionality or a cosmetic or other issue that does not qualify as any other Priority Level.	Tyler shall provide an initial response to Priority Level 4 incidents within two (2) business days. Tyler shall use commercially reasonable efforts to resolve such support incidents, as well as cosmetic issues, with a future version release.

#### *Incident Escalation*

Tyler Technology's software support consists of four levels of personnel:

- (1) Level 1: front-line representatives
- (2) Level 2: more senior in their support role, they assist front-line representatives and take on escalated issues
- (3) Level 3: assist in incident escalations and specialized client issues
- (4) Level 4: responsible for the management of support teams for either a single product or a product group

If a client feels they are not receiving the service needed, they may contact the appropriate Software Support Manager. After receiving the incident tracking number, the manager will follow up on the open issue and determine the necessary action to meet the client's needs. On occasion, the priority or immediacy of a software support incident may change after initiation. Tyler encourages clients to communicate the level of urgency or priority of software support issues so that we can respond appropriately. A software support incident can be escalated by any of the following methods:

- (1) Telephone – for immediate response, call toll-free to either escalate an incident's priority or to escalate an issue through management channels as described above.
- (2) Email – clients can send an email to software support in order to escalate the priority of an issue

- (3) On-line Support Incident Portal – clients can also escalate the priority of an issue by logging into the client incident portal and referencing the appropriate incident tracking number.

#### *Remote Support Tool*

Some support calls require further analysis of the client's database, process or setup to diagnose a problem or to assist with a question. Tyler will, at its discretion, use an industry-standard remote support tool. Support is able to quickly connect to the client's desktop and view the site's setup, diagnose problems, or assist with screen navigation. More information about the remote support tool Tyler uses is available upon request.

## Schedule 6 MYGOVPAY/VIRTUAL PAY

1. MyGovPay/VirtualPay Licensing. Access to MyGovPay and/or Virtual Pay is hereby granted if the City elects to use MyGovPay or VirtualPay, products of Tyler Technologies (*Powered by Persolvent*), designed for Citizen Users to use for processing online payments in connection with the EnerGov software set forth in the Investment Summary. That access will be provided on the following terms and conditions.

(a) Special MyGovPay/VirtualPay Definitions.

**“Merchant Agreement”** means the agreement between the City and Persolvent that provides for the Merchant Fees.

**“Merchant Fees”** means direct costs levied by Visa/Mastercard/Discover or other payment card companies for Interchange Fees, Dues, Assessments and Occurrence Fees, over which Tyler Technologies has no authority.

**“MyGovPay”** means the Product of Tyler Technologies that allows members of the public to pay for the City’s services with a credit or other payment card on the City’s citizen-facing web portal.

**“Persolvent”** means a Payment Card Industry (PCI) compliant processing agent through which the EnerGov Software passes credit card transactions.

**“Use Fees”** means the fees listed in Use Fees Table in Section 2, titled *MyGovPay/VirtualPay*.

**“VirtualPay”** means the Product of Tyler Technologies that allows the City to accept and process citizen user’s credit or other payment card using the EnerGov Software.

(b) Conditions of Use. If customer elects to use MyGovPay and/or VirtualPay the following terms apply:

- (1) City must apply for and agree to a Merchant Agreement with Persolvent.
- (2) City agrees that Citizen Users will be subject to Use Fees as listed in Use Fees table in Section 2.
- (3) City agrees that Use Fees are separate from and independent of Merchant Fees.
- (4) City agrees that this Agreement does not represent any modification to City’s Merchant Agreement with Persolvent.
- (5) City agrees that Use Fees are for use on the MyGovPay/VirtualPay online system and will not be deposited or owed to City in any way.
- (6) City agrees that MyGovPay’s and VirtualPay’s ability to assess Use Fees is dictated by the Card Associations whose rules may change at any time and for any reason. If MyGovPay and/or VirtualPay, for any reason, are unable to process payments using Use Fees, City agrees that MyGovPay/VirtualPay reserves the right to negotiate a new pricing model with City for the continued use of MyGovPay and/or VirtualPay.

2. MyGovPay/VirtualPay Fees. City agrees that the Use Fees set forth below shall apply if City elects to use MyGovPay/Virtual Pay.

### 3. Use Fees

#### EnerGov's MyGovPay (Online / card-not-present payments)\*\*

	MyGovPay (Online Payments)	MyGovPay (Online Payments)
	Percentage Based Fee	+ Transaction Fee
<b>Option 1: Government Entity Paid</b>	2.79%	\$0.20
<b>Option 2: Patron Paid</b>	3.29%	N/A

*\*\*ACH processing is available for a fee of \$20 per month and \$0.30 per transaction.*

#### 4. EnerGov's VirtualPay (retail card present)

	VirtualPay (Retail Payments)	Virtual Pay (Retail Payments)
	Percentage Based Fee	+ Transaction Fee
<b>Option 1: Government Entity Paid</b>	2.59%	\$0.15
<b>Option 2: Patron Paid</b>	2.99%	N/A

*Patron Paid fees will be communicated as "Service Fees" to the cardholder, at the time of transaction. In the event that the average transaction amount is below \$30, we reserve the right to apply an additional \$0.20 service fee above the quoted rates above.*

5. Interactive Voice Response ("IVR"). If IVR is selected by the City and included in the pricing, the following additional terms and conditions shall apply of this Agreement:

- (a) Network Security. City acknowledges that a third-party is used by Tyler Technologies to process IVR data. City's content will pass through and be stored on the third-party servers and will not be segregated or in a separate physical location from servers on which other customers' content is or will be transmitted or stored.
- (b) Content. City is responsible for the creation, editorial content, control, and all other aspects of content to be used solely in conjunction with the EnerGov Software.
- (c) Lawful Purposes. City shall not use the IVR system for any unlawful purpose.
- (d) Critical Application. City will not use the IVR system for any life-support application or other critical application where failure or potential failure of the IVR system can cause injury, harm, death, or other grave problems, including, without limitation, loss of aircraft



control, hospital life-support system, and delays in getting medicate care or other emergency services.

(e) No Harmful Code. City represents and warrants that no content designed to delete, disable, deactivate, interfere with or otherwise harm any aspect of the IVR system now or in the future, shall be knowingly transmitted by City or Users.

(f) IVR WARRANTY. Except as expressly set forth in this Agreement, TYLER TECHNOLOGIES MAKES NO REPRESENTATION AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE FOR IVR.