

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

AUTHORIZE THE EXECUTION OF THE SOFTWARE AGREEMENT FOR THE PURCHASE, INSTALLATION, DATA CONVERSION AND TRAINING BETWEEN TYLER TECHNOLOGIES AND THE TOWN OF APPLE VALLEY.

Summary Statement:

The 2007-2008 fiscal year budget for the Finance Department included a request to upgrade the Town's central accounting system. Currently the Town processes all accounting functions on Fund Balance software. Tyler Technologies currently supports this software however there are limitations with budget, encumbrance accounting and purchase orders that Eden Software will remedy. This item was authorized by Town Council and included in the FY 07-08 budget.

This project will upgrade the following modules of the accounting software used by the Town by function: Financial Applications: general ledger/accounts payable; budget preparation; inventory; fixed assets; accounts receivable; GASB 34 report writer. Personnel Application: human resources; payroll; position budgeting. Other Tyler Software Products: cashier system; crystal reports; Eden reports and forms.

Tyler's Eden division has been developing software, exclusively for local government for the past twenty-five years. Currently Tyler has over 60 California local governments using its software and over 3,500 nationwide. Tyler is a publicly traded company known as an industry leader of end-to-end information management solutions and services for the public sector. The software is fully Microsoft compatible and interfaces with Microsoft Outlook.

Recommended Action:

Approve the software agreement for the purchase, installation, data conversion and training, between Tyler Technologies and the Town of Apple Valley in the amount of \$307,639. The software agreement is subject to approval as to form by the Town Attorney and approval as to content by the Town Manager.

Proposed by: William Pattison, Finance Director/Treasurer Item Number _____

T. M. Approval: _____ Budgeted Item Yes No N/A

AGREEMENT

This agreement (“Agreement”) is made this ____ day of _____, 2008 by and between **Tyler Technologies, Inc.** with offices at 1100 Oakesdale Avenue SW, Renton, Washington 98057 (“Tyler”) and the **Town of Apple Valley** with offices at Town of Apple Valley, 14955 Dale Evans Parkway, Apple Valley, CA 92307 (“Client”).

Tyler and Client agree as follows:

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

2. This Agreement consists of this cover and the following attachments and exhibits:
 - 2.1. Section A. - Software License Agreement
 - 2.2. Section B. - Professional Services Agreement
 - 2.3. Section C. - Maintenance Agreement
 - 2.4. Section D. - Third Party Product Agreement
 - 2.5. Section E. - General Terms and Conditions
 - 2.6. Exhibit 1 – Investment Summary
 - 2.7. Exhibit 2 – Verification Tests
 - 2.8. Exhibit 3 – Business Travel Policy
 - 2.9. Exhibit 4 – Data Conversion Process

IN WITNESS WHEREOF, persons having been duly authorized and empowered enter into this Agreement.

Tyler Technologies, Inc.

Town of Apple Valley, California

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Section A - Software License Agreement

1. License Grant.

a) Upon the effective date of this Agreement, Tyler hereby grants to Client a non-exclusive, non-transferable, royalty-free, revocable license to use the Tyler software products and related interfaces (collectively, the “Tyler Software Products”) and Tyler user manuals for Client's internal business purposes only and otherwise subject to the terms and conditions of this Agreement. This license is revocable by Tyler if Client fails to comply with the terms and conditions of this Agreement, including without limitation, Client's failure to timely pay the Application Software License Fees in full. Upon Client's payment in full for the Tyler Software

Products, this license shall become irrevocable, subject to the restrictions on use and other terms set forth in this Agreement.

- b) Tyler shall retain ownership of the Tyler Software Products and user manuals.
- c) The Tyler Software Products are not licensed to perform functions or processing for subdivisions or entities that were not disclosed to Tyler prior to the effective date of this Agreement.
- d) The right to transfer the Tyler Software Products to a replacement hardware system is included in this Agreement. Client shall pay Tyler for the cost of new media or any required technical assistance to accommodate the transfer. Client shall provide advance written notice to Tyler of any such transfer.
- e) Client acknowledges and agrees that the Tyler Software Products and user manuals are proprietary to Tyler and have been developed as trade secrets at Tyler's expense. Client shall use best efforts to keep the Tyler Software Products and user manuals confidential and to prevent any misuse, unauthorized use or unauthorized disclosure of the Tyler Software Products or user manuals by any party.
- f) The Tyler Software Products may not be modified. Client shall not perform decompilation, disassembly, translation or other reverse engineering on the Tyler Software Products. If Client modifies the Tyler Software Products, Tyler's obligations to provide maintenance services on and warranty the Tyler Software Products shall be void.
- g) Client may make copies of the Tyler Software Products for archive purposes only. Client will repeat any and all proprietary notices on any copy of the Tyler Software Products. Client may make copies of the Tyler user manuals for internal use only.
- h) Tyler maintains an escrow agreement with an escrow services company under which Tyler places the source code of each major release of the Tyler Software Products. At Client's request, Tyler will add Client as a beneficiary to such escrow agreement. Client shall pay the annual beneficiary fee directly to the escrow services company and is solely responsible for maintaining its status as a beneficiary.

2. License Fees. Client agrees to pay Tyler, and Tyler agrees to accept from Client as payment in full for the license granted herein, the Application Software License Fees set forth in Exhibit 1 - Investment Summary

3. Verification of the Tyler Software Products.

Client will select one (1) of the following two (2) options within thirty (30) days of installation by providing written notice to Tyler in accordance with Article 15 of Section F:

- a) Within sixty (60) days after the Tyler Software Products have been installed on Client's hardware, Tyler will verify the Tyler Software Products by demonstrating to Client that the Tyler Software Products perform all of the functions set forth in Exhibit 2 - Verification Test, which demonstration shall constitute verification that the Tyler Software Products substantially conform to the then-current Tyler user manuals and the functional descriptions of the Tyler Software Products in Tyler's written proposal to Client; or
- b) Within sixty (60) days after the Tyler Software Products have been installed on Client's hardware, Client may use its own process to verify that the Tyler Software Products perform all of the functions set forth in Exhibit 2 - Verification Test, which shall constitute verification that the Tyler Software Products substantially conform to the then-current Tyler user manuals and the functional descriptions of the Tyler Software Products in Tyler's written proposal to Client.
- c) Verification as described herein shall be final and conclusive except for latent defect, fraud, and a gross mistake that amounts to fraud. In the event verification is not final and conclusive, pursuant to this paragraph, Tyler shall correct the cause thereof. In the event Tyler cannot correct the cause thereof, Client may invoke its rights under Article 4 of Section A.

d) Tyler shall promptly correct any functions of the Tyler Software Products that failed verification.

4. Limited Warranty. For as long as a current Maintenance Agreement is in place, Tyler warrants that the Tyler Software Products will substantially conform to the then-current Tyler user manuals and the functional descriptions of the Tyler Software Products in Tyler's written proposal to Client, if applicable. In the event of conflict between the afore-mentioned documents, the then-current Tyler user manuals shall control. If the Tyler Software Products do not perform as warranted, Tyler will use reasonable efforts, consistent with industry standards, to cure the defect. Should Tyler be unable to cure the defect or provide a replacement product, Client shall be entitled to a refund of the Application Software License Fee paid for the defective Tyler Software Product, as depreciated on a straight-line basis over a seven (7) year period commencing on the effective date of this Agreement.

5. Intellectual Property Infringement Indemnification. Tyler will defend and indemnify Client against any claim by an unaffiliated third party of this Agreement that a Tyler Software Product infringes that party's patent, copyright or other intellectual property right issued and existing as of the effective date of this Agreement or as of the distribution date of a release to the Tyler Software Product, and will pay the amount of any resulting adverse final judgment issued by a court of competent jurisdiction or of any settlement that Tyler pre-approves in writing, provided that Client promptly notifies Tyler in writing of any such claim, gives Tyler reasonable cooperation, information, and assistance in connection with it, and consent to Tyler's sole control and authority with respect to the defense, settlement or compromise of the claim. Tyler will not be obligated under this section if the infringement results from: (i) Client's use of a previous version of a Tyler Software Product and the claim would have been avoided had Client used the current version of the Tyler Software Product; (ii) Client's combining the Tyler Software Product with devices or products not provided by Tyler, (iii) use of a Tyler Software Product in applications, business environments or processes for which the Tyler Software Product was not designed or contemplated, and where use of the Tyler Software Product outside such application, environment or business process would not have given rise to the claim, (iv) corrections, modifications, alterations or enhancements that Client made to the Tyler Software Product; (v) use of the Tyler Software Product by any person or entity other than Client or Client's employees; or (vi) Client's willful infringement. In the event a Tyler Software Product is finally determined to be infringing and its use by Client is enjoined, Tyler shall, at its election (i) procure for Client the right to continue using the infringing Tyler Software Product; (ii) modify or replace the infringing Tyler Software Product so that it becomes non-infringing; or (iii) terminate Client's license for the infringing Tyler Software Product and refund to Client the Application Software License Fee paid for the infringing Tyler Software Product, as depreciated on a straight-line basis over a seven (7) year period commencing on the effective date of this Agreement. Tyler shall have no liability hereunder if (i) Client modified a Tyler Software Product and such modification is determined by a court of competent jurisdiction to be a contributing cause of the infringement, (ii) Client continues using the infringing Tyler Software Product after Client becomes aware that such infringing Tyler Software Product is or is likely to become the subject of a claim hereunder, or (iii) the infringement would have been avoided by Client's use of the most current version of the Tyler Software Product. The foregoing states Tyler's entire liability and Client's sole and exclusive remedy with respect to the subject matter hereof.

6. Limitation of Liability. In no event shall Tyler be liable for special, indirect, incidental, consequential, or exemplary damages, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with the use of the Tyler Software Products. Tyler's liability for damages and

expenses arising out of this Software License Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the Application Software License Fees set forth in Exhibit 1 - Investment Summary. Such Application Software License Fees reflect and are set in reliance upon this limitation of liability.

Section B - Professional Services Agreement

1. **Services.** Tyler shall provide the services set forth in Exhibit 1 - Investment Summary at Client's election. As the amount of such services is an estimate, Client shall be liable to Tyler for the services actually provided to Client.

2. Professional Services Fees.

- a) All Training & Installation and Data Conversion services shall be invoiced on a weekly basis.
- b) Upon the completion of each service day or group of days performed on-site, Tyler will present a Customer Service Report to Client. Client shall either sign the report indicating acceptance of the service day and its subsequent billing, or not sign the report and note reasons for Client's non-acceptance of the service day. This acceptance is final.
- c) Verification in accordance with Article 3 of Section A shall be billable to Client at the rate for Training & Installation services set forth in Exhibit 1 - Investment Summary.
- d) Payment is due within thirty (30) calendar days of invoice receipt.
- e) Expenses shall be billed in accordance with the then-current Tyler Business Travel Policy, based on Tyler's usual and customary practices. Tyler's current Business Travel Policy is attached hereto as Exhibit 3. Copies of receipts shall be provided on an exception basis at no charge. Should all receipts for non per diem expenses be requested, an administrative fee shall be incurred. Receipts for mileage and miscellaneous items less than five dollars (\$5) are not available.

3. **Additional Services.** Services utilized in excess of those set forth in Exhibit 1 - Investment Summary and additional related services not set forth in Exhibit 1 - Investment Summary shall be billed at Tyler's then current rates.

4. **Limitation of Liability.** In no event shall Tyler be liable for special, indirect, incidental, consequential, or exemplary damages, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with the provision or quality of the services or the use of the Tyler Software Products. Tyler's liability for damages and expenses arising out of this Professional Services Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the service fees set forth in Exhibit 1 - Investment Summary. Such fees reflect and are set in reliance upon this limitation of liability.

5. **Cancellation.** In the event Client cancels services less than two (2) weeks in advance, Client is liable to Tyler for (i) all non-refundable expenses incurred by Tyler on Client's behalf; and (ii) daily fees associated with the canceled services if Tyler is unable to re-assign its personnel.

Section C - Maintenance Agreement

1. **Scope of Agreement.** Client agrees to purchase and Tyler agrees to provide maintenance services for the Tyler Software Products in accordance with the following terms and conditions.

2. **Term of Agreement.** This Maintenance Agreement is effective on the first day of training and shall remain in force for a one (1) year term. Upon expiration of this Maintenance Agreement,

Client may renew the Maintenance Agreement for subsequent one (1) year periods at the then-current Application Software Maintenance Fees.

3. Payment.

a) **Additional Charges.** Any maintenance services performed by Tyler for Client which are not covered by this Maintenance Agreement, as set forth in Article 5 of Section C, including materials and expenses, shall be billed to Client at Tyler's then current rates.

b) Tyler reserves the right to suspend maintenance services if Client fails to pay undisputed Application Software Maintenance Fees within sixty (60) calendar days of the due date. Tyler will reinstate maintenance services upon Client's payment of the overdue Application Software Maintenance Fees.

4. Maintenance Services Terms and Conditions.

a) For as long as a current Maintenance Agreement is in place, Tyler shall, in a professional, good and workmanlike manner, perform its obligations set forth in this Maintenance Agreement in order to conform the Tyler Software Products to the applicable warranty under this Agreement. If Client modifies the Tyler Software Products, Tyler's obligations to provide maintenance services on and warrant the Tyler Software Products shall be void.

b) Tyler shall provide telephone support on the Tyler Software Products. Tyler personnel will accept telephone calls during the hours of 5 AM PST and 6 PM PST, Monday through Friday, excluding holidays.

c) Tyler shall continuously maintain a master set of the Tyler Software Products on appropriate media, a hardcopy printout of source code to the Tyler Software Products, and Tyler user manuals.

d) Tyler shall maintain personnel appropriately trained to be familiar with the Tyler Software Products in order to provide maintenance services.

e) Tyler shall provide Client with all releases Tyler makes to the Tyler Software Products. Client acknowledges and agrees that a new release of the Tyler Software Products is for implementation in the Tyler Software Products as they exist without Client customization or modification.

f) Client acknowledges and agrees that Tyler reserves the right to cease supporting a prior release of the Tyler Software Products six (6) months after shipping a new release of the Tyler Software Products.

5. Limitations and Exclusions. Application Software Maintenance Fees do not include installation or implementation of the Tyler Software Products, onsite support (unless Tyler cannot remotely correct a defect in a Tyler Software Product), application design, other consulting services, support of an operating system or hardware, or support outside Tyler's normal business hours.

6. Client Responsibilities.

a) Client shall provide, at no charge to Tyler, full and free access to the Tyler Software Products; working space; adequate facilities within a reasonable distance from the equipment; and use of machines, attachments, features, or other equipment necessary to provide maintenance services set forth herein.

b) Client shall maintain for the duration of the Maintenance Agreement a VPN connection through Citrix or Microsoft Terminal Services. Tyler, at its option, shall use the connection to assist with problem diagnosis and resolution.

7. Limitation of Liability. In no event shall Tyler be liable for special, indirect, incidental, consequential, or exemplary damages, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out

of or in connection with the provision or quality of maintenance services or use of the Tyler Software Products. Tyler's liability for damages and expenses arising out of this Maintenance Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the Application Software Maintenance Fees paid to Tyler during the twelve (12) months prior to the claim. Such Application Software Maintenance Fees reflect and are set in reliance upon this limitation of liability.

Section D - Third Party Product Agreement

1. Agreement to License or Sell Third Party Products. For the price set forth in Exhibit 1 - Investment Summary, Tyler agrees to license or sell and deliver to Client, and Client agrees to accept from Tyler the Third Party Products set forth in Exhibit 1 - Investment Summary ("Third Party Products").

2. License of Third Party Software Products.

- a) Upon Client's payment in full of the Third Party Product Fees, Tyler shall grant to Client and Client shall accept from Tyler a non-exclusive, nontransferable, non-assignable license to use the Third Party Software Products and related documentation for Client's internal business purposes, subject to the terms and conditions set forth herein.
- b) The developer of the Third Party Software Products (each a "Developer", collectively "Developers") shall retain ownership of the Third Party Software Products.
- c) The right to transfer the Third Party Software Products to a replacement hardware system is governed by the Developer. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to Client. Client shall provide advance written notice to Tyler of any such transfer.
- d) Client acknowledges and agrees that the Third Party Software Products and related documentation are proprietary to the Developer and have been developed as trade secrets at the Developer's expense. Client shall use best efforts to keep the Third Party Software Products and related documentation confidential and to prevent any misuse, unauthorized use, or unauthorized disclosure of the Third Party Software Products and related documentation by any party.
- e) Client shall not perform decompilation, disassembly, translation or other reverse engineering on the Third Party Software Products.
- f) Client may make copies of the Third Party Software Products for archive purposes only. Client will repeat any and all proprietary notices on any copy of the Third Party Software Products. Client may make copies of the documentation accompanying the Third Party Software Products for internal use only.

3. Delivery. Unless otherwise indicated in Exhibit 1 - Investment Summary, the prices for Third Party Products include costs for shipment while in transit from the Developer or supplier to Client.

4. Installation and Acceptance. Unless otherwise noted in Exhibit 1 - Investment Summary, the Tyler Software Product installation fee includes installation of the Third Party Products. Verification of the Tyler Software Products in accordance with Article 3 of Section A shall constitute Client's acceptance of the Third Party Products. Such acceptance shall be final and conclusive except for latent defect, fraud, and a gross mistake as amount to fraud.

5. Site Requirements. Client shall provide a suitable environment, location and space for the installation and operation of the Third Party Products; sufficient and adequate electrical circuits for the Third Party Products; and installation of all required cables.

6. Warranties.

- a) Tyler is authorized by each Developer to grant licenses or sublicenses to the Third Party Products.
- b) Tyler warrants that each Third Party Product shall be new and unused, and if Client fully and faithfully performs each and every obligation required of it under this Third Party Product Agreement, Client's title or license to each Third Party Product shall be free and clear of all liens and encumbrances arising through Tyler.
- c) Client acknowledges and agrees that Tyler is not the manufacturer of the Third Party Products. As such, Tyler does not warrant or guarantee the condition or operating characteristics of the Third Party Products. Tyler hereby grants and passes through to Client any warranty adjustments that Tyler may receive from the Developer or supplier of the Third Party Products.

7. Maintenance.

- a) In the event Client elects not to purchase through Tyler maintenance services on the Third Party Products, or such maintenance services are unavailable, it shall be the responsibility of Client to repair and maintain the Third Party Products and purchase enhancements as necessary after acceptance as set forth in Article 4 of Section D.
- b) In the event Client elects to purchase through Tyler maintenance services on the Third Party Products, Tyler will facilitate resolution of a defect in a Third Party Product with the Developer.
- c) In the event the Developer charges a fee for future Third Party Software Product release(s), Client shall be required to pay such fee.

8. Limitation of Liability. In no event shall Tyler be liable for special, indirect, incidental, consequential, or exemplary damages, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with the use of the Third Party Products. Tyler's liability for damages and expenses arising out of this Third Party Product Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to the Third Party Product Fees set forth in Exhibit 1 - Investment Summary. Such prices are set in reliance upon this limitation of liability.

Section E - General Terms and Conditions

1. Taxes. The fees set forth in Exhibit 1 – Investment Summary do not include any taxes, including, without limitation, sales, use or excise tax. All applicable taxes shall be paid by Tyler to the proper authorities and shall be reimbursed by Client to Tyler. In the event Client possesses a valid direct-pay permit, Client will forward such permit to Tyler on the Effective Date of this Agreement, in accordance with Article 15 of Section F General Terms and Conditions. In such event, Client shall be responsible for remitting all applicable taxes to the proper authorities. If tax-exempt, Client shall provide Tyler with Client's tax-exempt certificate.

2. Invoice Dispute.

a) In the event Client believes products or services do not conform to warranties in this Agreement, Client shall provide written notice to Tyler within fifteen (15) calendar days of receipt of the applicable invoice. Client is allowed an additional fifteen (15) calendar days to provide written clarification and details. Tyler shall provide a written response to Client that shall include either a justification of the invoice or an adjustment to the invoice. Tyler and Client shall develop a plan to outline the reasonable steps to be taken by Tyler and Client to resolve any issues presented in Client's notice to Tyler. Client may only withhold payment of the amount actually in dispute until Tyler completes its action items outlined in the plan. Notwithstanding

the foregoing, if Tyler is unable to complete its actions outlined in the plan because Client has not completed its action items outlined in the plan, Client shall remit full payment of the invoice.

b) Any invoice not disputed as described above shall be deemed accepted by Client. Tyler reserves the right to suspend delivery of all services in the event Client fails to pay an invoice not disputed as described above within sixty (60) calendar days of receipt of invoice.

3. **Force Majeure.** Neither party shall be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by force majeure.

Force majeure shall not be allowed unless:

a) Within five (5) business days of the occurrence of force majeure, the party whose performance is delayed thereby shall provide the other party or parties with written notice explaining the cause and extent thereof, as well as a request for a time extension equal to the estimated duration of the force majeure events.

b) Within ten (10) business days after the cessation of the force majeure event, the party whose performance was delayed shall provide the other party written notice of the time at which force majeure ceased and a complete explanation of all pertinent events pertaining to the entire force majeure situation.

Either party shall have the right to terminate this Agreement if Force Majeure suspends performance of scheduled tasks by one or more parties for a period of one hundred-twenty (120) or more days from the scheduled date of the task. This paragraph shall not relieve Client of its responsibility to pay for services and goods provided to Client and expenses incurred on behalf of Client prior to the effective date of termination.

4. **Indemnification.**

a) Subject to the limitation of liability set forth herein, Tyler shall indemnify and hold harmless Client and its agents, officials and employees from and against any and all claims, losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) arising from Tyler's negligence or willful misconduct. Tyler shall not be liable to the degree or extent of damages, loss, or expense determined to be the fault of the Client.

b) Subject to the limitation of liability set forth herein, Client shall indemnify and hold harmless Tyler and its agents, officials and employees from and against any and all claims, losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) arising from Client's negligence or willful misconduct. Client shall not be liable to the degree or extent of damages, loss, or expense determined to be the fault of Tyler.

5. **Disclaimer.** THE RIGHTS, REMEDIES, AND WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS, REMEDIES, AND WARRANTIES EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND SYSTEM INTEGRATION, WHICH ARE HEREBY DISCLAIMED BY TYLER.

6. **Dispute Resolution.** Should a dispute arise with respect to this Agreement, Client will notify Tyler immediately in writing. If Tyler and Client cannot resolve a dispute within thirty (30) calendar days following notification in writing by either party of the existence of said dispute, then the following procedure shall apply:

a) Each party shall appoint one (1) person to act as an impartial representative. The appointed individual shall be of sufficient knowledge and experience to understand and deal with the dispute but shall not be a person assigned to the project. The set of four (4) individuals consisting

of Tyler's Project Manager for this project, Client's Project Manager for this project, and the two (2) appointees is called a Dispute Resolution Group.

b) The Dispute Resolution Group shall convene no later than twenty-one (21) calendar days after the expiration of the thirty (30) calendar day period referenced above and shall meet for a minimum of four (4) four (4) hour sessions during the subsequent four (4) business days, unless otherwise mutually agreed. Any resolution shall be in writing and signed by both parties. Such resolution shall constitute a binding amendment to the Agreement.

In the event the Dispute Resolution Group fails to resolve the dispute as set forth above, the dispute will be referred to non-binding mediation. Thereafter, either party may assert its other rights and remedies under this Agreement within a court of competent jurisdiction.

Nothing in this Section shall prevent a party from applying to a federal or state court of competent jurisdiction to obtain injunctive relief pending resolution of the dispute through the dispute resolution procedures set forth herein.

7. No Intended Third Party Beneficiaries. This Agreement is entered into solely for the benefit of Tyler and Client. No third party shall be deemed a beneficiary of this Agreement, and no third party shall have the right to make any claim or assert any right under this Agreement.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Client's state of domicile.

9. Entire Agreement. This Agreement represents the entire agreement of Client and Tyler with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Client hereby acknowledges that in entering into this Agreement it did not rely on any information not explicitly set forth in this Agreement.

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

11. Modification. This Agreement may only be modified by written amendment signed by authorized representatives of both parties.

12. Termination.

a) Termination for Convenience. In the event of Client's termination of this Agreement for convenience, Client shall provide Tyler with thirty (30) days' advance written notice of Client's intent to terminate this Agreement. Client shall pay Tyler for products, services and expenses delivered or incurred prior to the date Tyler received Client's notice of termination.

b) Termination for Cause. In the event of Tyler's failure to perform under this Agreement, Client shall immediately notify Tyler in writing of such failure and allow Tyler a thirty (30) day period in which to cure such failure. If, at the end of the cure period, Tyler has not cured such failure, Client will have the right to terminate this Agreement. Upon such termination, Client shall pay Tyler for all products, services, and expenses not in dispute which were delivered or incurred prior to the date Tyler received Client's notice of termination. Payment for products, services, and expenses in dispute will be determined in accordance with the dispute resolution process.

13. **Approval of Governing Body.** Client represents and warrants to Tyler that this Agreement has been approved by its governing body and is a binding obligation upon Client.

14. **No Assignment.** Client may not assign its rights and responsibilities under this Agreement without Tyler's prior written permission, not to be unreasonably withheld.

15. **Notices.** All notices or communications required or permitted as a part of this Agreement shall be in writing (unless another verifiable medium is expressly authorized) and shall be deemed delivered when:

- a) Actually received,
- b) Upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the party,
- c) Upon receipt by sender of proof of email delivery, or
- d) If not actually received, ten (10) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the respective other party at the address set forth in this Agreement or such other address as the party may have designated by notice or Agreement amendment to the other party.

Consequences to be borne due to failure to receive a notice due to improper notification by the intended receiving party of a new address will be borne by the intended receiving party. The addresses of the parties to this Agreement are as follows:

Tyler Technologies, Inc.
370 U.S. Route 1
Falmouth, ME 04105
Attention: Contracts Department

Client:

16. **Independent Contractor.** This is not an Agreement of partnership or employment of Tyler or any of Tyler's employees by Client. Tyler is an independent contractor for all purposes under this Agreement.

17. **Insurance.** Prior to performing services under this Agreement, Tyler shall provide Client with certificates of insurance evidencing the following insurance coverage:

- a) Commercial general liability of at least \$1,000,000;
- b) Automobile liability of at least \$1,000,000;
- c) Professional liability of at least \$1,000,000; and
- d) Workers compensation complying with statutory requirements.

18. **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. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein shall survive the termination or cancellation of this Agreement for a period of two (2) years. This obligation of confidentiality shall not apply to information that:

- a) At the time of the disclosure is in the public domain;
- b) After disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement by a party;
- c) A party can establish by reasonable proof was in that party's possession at the time of disclosure;
- d) A party receives from a third party who has a right to disclose it to that party; or
- e) Is subject to Freedom of Information Act requests, only to the extent disclosure is based on the good faith written opinion of the receiving party's legal counsel that disclosure is required by law: provided, however, that that receiving party shall give prompt notice of the service of process or other documentation that underlies such requirement and use its best efforts to assist the disclosing party if the disclosing party wishes to obtain a protective order or otherwise protect the confidentiality of such confidential information. The disclosing party reserves the right to obtain protective order or otherwise protect the confidentiality of its confidential information.

19. **Nondiscrimination.** Tyler shall not discriminate against any person employed or applying for employment concerning the performance of Tyler's responsibilities under this Agreement. This discrimination prohibition shall apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation.

20. **Subcontractors.** Tyler shall not subcontract any services under this Agreement without Client's prior written permission, not to be unreasonably withheld.

21. **Non-appropriation.** If Client should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, Client may unilaterally terminate this Agreement only upon thirty (30) days written notice to Tyler. Upon termination, Client shall remit payment for all products and services delivered to Client and all expenses incurred by Tyler prior to Tyler's receipt of the termination notice.

22. **Shipping.** Delivery shall be F.O.B. shipping point.

23. **Payment Terms.**

- a) Client will pay \$35,775 upon execution of this Agreement that equals 25% of the Application Software License Fees.
- b) Client will pay \$100,339 upon delivery of the software products that equals 50% of the Application Software License Fees (\$71,550) and 100% of the Third Party Product Fees (\$28,789).
- c) Client will pay \$35,775 that equals 25% of the Application Software License Fees upon verification of the Tyler Software Products in accordance with Article 3 of Section A. Unless the Tyler Software Products fail verification, this period shall not exceed ninety (90) days after delivery.
- d) The Investment Summary includes estimated travel expenses, to be incurred in accordance with Tyler's Business Travel Policy, attached hereto as Exhibit 3.
- e) Training & Installation, Data Conversion, Project Management, and Other Professional Services, plus expenses, are billed, if provided/incurred, on a weekly basis, and are due and payable thirty (30) days after receipt of invoice.
- f) The Year 1 Maintenance Fees of \$34,959 are due on the first day of training. Tyler will invoice Client such fees prorated through December 31, 2008.

EXHIBIT 1 – INVESTMENT SUMMARY

Products and Services	Application Software License Fee	Third Party Product Fees	Training & Installation Hours	Data Conversion Hours	Professional Service Fees	Travel Expenses	Total One Time Fees	Year 1 Application Software Maintenance Fees
TYLER (EDEN) SOFTWARE PRODUCTS								
EDEN - Financial Applications								
General Ledger / Accounts Payable	\$33,200		112.0	56.0	\$21,000	\$4,900	\$59,100	\$6,640
Budget Preparation	\$7,200		16.0		\$2,000	\$850	\$10,050	\$1,440
Inventory	\$21,100		32.0	48.0	\$10,000	\$1,350	\$32,450	\$4,220
Fixed Assets	\$13,000		32.0	32.0	\$8,000	\$1,350	\$22,350	\$2,600
Accounts Receivable	\$13,000		32.0	32.0	\$8,000	\$1,350	\$22,350	\$2,600
GASB 34 Reporter	\$6,800		32.0		\$4,000	\$1,350	\$12,150	\$1,360
EDEN - Personnel Applications								
Human Resources	\$8,900		32.0	24.0	\$7,000	\$1,350	\$17,250	\$1,780
Payroll	\$20,300		136.0	56.0	\$24,000	\$6,000	\$50,300	\$4,060
Position Budgeting	\$3,600		8.0		\$1,000	\$250	\$4,850	\$720
OTHER TYLER (EDEN) SOFTWARE PRODUCTS								
Report Views (SQL) Data Dictionaries	\$5,000						\$5,000	\$1,000
California State Package	\$5,000						\$5,000	\$1,000
Tyler Standard Forms	\$6,000						\$6,000	\$1,200
OTHER EDEN PROFESSIONAL SERVICES								
System Administration			24.0		\$3,000		\$3,000	
Cashiering Setup Including Verisign			8.0		\$1,000		\$1,000	
Chart of Accounts Consultation			40.0		\$5,000	\$1,600	\$6,600	
Sub-Total Tyler (EDEN)	\$143,100		504	248	\$94,000	\$43,910	\$257,450	\$28,620
THIRD PARTY PRODUCTS								
EDEN Integrated Cashiering IMAGING Included		\$19,000	32.0		\$4,000	\$1,350	\$24,350	\$3,800
1 Epson Check Imager/MICR Reader (includes 2-year maint.)**		\$1,710					\$1,710	
1 Electronic Cash Drawer with cable		\$250					\$250	
1 Magnetic Strip Reader (Credit Card Swipe)		\$125					\$125	
1 Barcode Scanner		\$450					\$450	
Crystal Reports (site License)		\$7,254					\$7,254	\$1,451
Crystal Beginner Classes			32.0		\$4,000	\$1,350	\$5,350	
Crystal Reports - Intermediate Class Financials			32.0		\$4,000	\$1,350	\$5,350	
Crystal Reports - Intermediate Class Personnel			32.0		\$4,000	\$1,350	\$5,350	
Crystal Reports Software Assurance								\$1,088
Sub-Total Third Party	\$0	\$28,789	\$128	\$0	\$16,000	\$5,400	\$50,189	\$6,339
Totals	\$143,100	\$28,789	632	248	\$110,000	\$49,310	\$307,639	\$34,959

Exhibit 2 – Verification Test

The Verification Test will be conducted after the Tyler Software Products are installed and before they are implemented. The Verification Test is performed using the Tyler sample database. Such database contains general information applicable to all Tyler clients. As such, the Verification Test will not demonstrate Client-specific functionality. Rather, the Verification Test will confirm that the Tyler Software Products are installed and performing baseline functions.

Client: Town of Apple Valley, California

Contact:

Date:

Financial Products

1. View general ledger accounts form (Initial) _____
2. View budget documents
3. View accounts payable vendor form
4. Find purchase orders in purchase order inquiry
5. View inventory item form
6. View fixed assets form
7. View projects form
8. View accounts receivable customers form

Customer Information System Products

1. View fee schedule with rate tables (Initial) _____
2. View utility billing account form
3. View utility billing customer form
4. View parcels form
5. View license form
6. View permits form

Personnel Products

1. View employee form (Initial) _____
2. View position form
3. View deduction codes
4. View pay type codes
5. View shift calendars

Exhibit 3 – Business Travel Policy

Airfare

All airfare will be booked Economy Class, with best efforts to make reservations 2 – 4 weeks in advance for best pricing. All air tickets will be booked “non refundable” to minimize ticket costs. If change fees or other additional charges are incurred as a result of Client rescheduling, cancellations, or other factors that impact the planned dates for a trip, the Client will be billed for those charges.

Airport Parking

Client is billed for the cost of on-airport long term parking costs incurred while staff is traveling to client site.

Mileage

Federal Government Rate

Tyler employee mileage to the airport, train terminal, etc. for the client trip will be billed at the IRS designated reimbursement rate per mile. Actual mileage for the employee travel to the site will be billed at the IRS rate if not traveling by air, rail, etc.

Airport Shuttle

If Tyler employee uses the service of an airport shuttle, this amount will not exceed the standard rate for airport parking (as noted above) plus mileage to and from the airport.

Car Rental

Tyler has negotiated rates with national automobile rental companies to minimize car rental fees. Actual cost of car rental, taxes, refueling costs etc. will be billed to the Client.

Hotel/Motel

Tyler employees will stay at medium-class hotels/motels (less than 4 stars) when available. 4 or 5 Star hotels/motels may be selected if, during promotional times, prices can be negotiated at rates similar to 3 star facilities.

Meals

Federal daily per diem rate for Client location will apply. Per diem will include travel time to and from the Client location.

Miscellaneous

All direct expenses not included above will be billed to the Client. This includes but is not limited to such items as internet connectivity (if not included free in the cost of hotel) and any other incidentals such as copies, supplies, road tolls, local parking fees, etc. directly related to time spent on site.

Exhibit 4 – Data Conversion Process

Conversion Assistance

Tyler will generally convert relevant and useful data from a client's legacy system as a part of the conversion/installation process. The Investment Summary contains an estimated cost for the project. This estimate is based on Tyler's experience in performing similar successful data conversions over the past twenty years. Client will be billed for actual conversion services provided by Tyler.

Tyler has developed the following proven strategy for converting data from legacy systems into Tyler's database structure.

- A project coordinator is assigned to Client once the Agreement is executed.
- The project coordinator works with Client to schedule consultation meetings (or site visits if necessary) in accordance with the data conversions for each module.
- Tyler provides detailed conversion data specification documents to Client's technical staff.
- Tyler's conversion specialists consult with Client's technical staff and provide file specifications to enable Client's technical staff to prepare and provide the conversion data in the necessary format. If requested by Client, Tyler will determine if Tyler can gather the data itself and assist in converting it into Tyler's data specifications (referred to as a start-to-finish conversion for an additional fee). Otherwise, Tyler's standard conversion method requires Client to provide Tyler with the extract of the required data in accordance with Tyler's data specifications and in the technical format specified below. Data must be "in balance" in order to proceed with the conversion process.
- Client provides Tyler with the first instance of data on or before a scheduled date. Tyler inspects and verifies the accuracy of the data. Data may require additional "clean-up" by Tyler's technical staff or Tyler may require Client to provide Tyler with new data files. Once the data is considered accurate, Tyler converts the data into Tyler's database schema. This is typically done using conversion programs written and maintained by Tyler's technical staff.

- Depending on the accuracy and conformance of the data provided by Client, Tyler may repeat the conversion process up to two times, in order to provide accurate and balanced data before Client uses the Tyler Software Products in live production. On the more complicated Tyler Software Products, Tyler typically plan for an initial conversion to be aligned with the “set up” of the Tyler Software Product, refinement of the conversion during system testing, and then a final conversion for parallel processing and use of the Tyler Software Product in live production.
- During the entire process, a Tyler conversion specialist is assigned to each Tyler Software Product that is receiving converted data. This person will be responsible for working with Client to analyze and convert data, support Tyler’s Implementation Consultant while on-site, and fix data problems using the available tools. Once Client uses the Tyler Software Products in live production, Client is officially transitioned to Tyler’s Technical Support organization.

File Formats

There will typically be multiple conversion files for each module. Conversion import files may be provided in one of the following formats: 1) ASCII pipe “|” delimited text file, 2) Non Formatted Microsoft Excel Worksheet, or 3) Microsoft Access database.

The import files must adhere to the following characteristics:

- ASCII character content: The data must contain only printable ASCII characters. Control characters, non-printable characters, or “packed” data fields are not allowed.
- One record per line or row: Each line or row constitutes a single record or row of data.

ASCII Pipe Delimited Text File:

Data may be provided as ASCII pipe delimited text files with variable length data separated by a “|” (“pipe”) character. Variable length records contain fields that are only as wide as the data requires (there are no leading or trailing spaces between data in each field). Files should be stored using the “.txt” file extension. Fields containing a Null value should have two adjacent pipe delimiter characters “||” representing the start of the current field and the start of the next field; it is not necessary to fill the field with spaces.

Microsoft Excel Worksheet:

Data may be provided as a Microsoft Excel Worksheet with one worksheet representing one conversion file. All conversion files may be stored in one Microsoft Excel file as separate worksheets in the same “.xls” file extension. Worksheets cannot contain macros or data links. Each worksheet must adhere to the file specifications with the first row containing the header column information and each subsequent row representing one record of data.

Microsoft Access Database:

Data may be provided as a Microsoft Access Database with each conversion file defined as a separate table. Table names should adhere to the file names minus the “.txt” extension. Upon request, a Microsoft Access Database may be supplied with all conversion tables pre-defined.

Assumptions

The conversion service fees listed in the Investment Summary are based upon the following assumptions:

- The conversion estimate includes conversion of financial data for one client. The conversion includes the current and previous fiscal year for each Tyler Software Product, unless otherwise noted.
- Client is responsible for extracting the “convert-from” data files from its systems, formatting it into Tyler’s provided data specifications, and providing it in one of the acceptable technical formats.
- Tyler will convert the chart of accounts, organization titles, funds, account balances, account activity on both an annual and per-period basis for every fiscal year converted, including budgets.
- For the accounts payable/purchasing conversion, Tyler will convert vendor and vendor balance information, and outstanding check history
- Purchase orders, outstanding invoices, security setups, requisition queues, requisitions, vendor ship-to, and vendor bill-to addresses are not included in the standard general ledger/accounts payable/purchasing conversion.
- The conversion estimate for accounts receivable includes conversion of accounts receivable customer identifying information (customer number, name, addresses, and billing codes) and current accounts receivable open items (customer number, account number, due date, amount owed). The accounts receivable conversion does not include history.
- The conversion estimate for project/grant accounting includes conversion of the project strings, materials history, labor history, and project balances. This conversion includes up to five fiscal years of project accounting data.
- The conversion estimate for fixed assets includes conversion of fixed asset number and type, depreciation information, distribution information, asset class information, and improvement information.
- The payroll/position control conversion estimate includes conversion of payroll data for one client. For the payroll conversion, Tyler will convert employee and position information, grade and step tables, employee benefit and deduction information, direct deposit accounts, employee leave balances, and the current year’s employee paycheck history. Previous year’s payroll check history, job costing numbers, and job costing history, are not included in the standard payroll/position control conversion.