

MEMO TO: City Council
FROM: John Marchione, Mayor
DATE: March 1, 2011
SUBJECT: **CONTRACT WITH TYLER TECHNOLOGIES FOR A CASH RECEIPTING SYSTEM**

I. RECOMMENDED ACTION:

Authorize the Mayor to enter into a contract with Tyler Technologies for licenses and services related to a cash receipting system.

II. DEPARTMENT CONTACTS:

Michael E. Bailey, Finance and Information Services Director	425-556-2160
Sheila Colyer, Accounting Manager	425-556-2186
Helen Howard, Revenue Manager	425-556-2182

III. DESCRIPTION:

The current cash receipting system, Quadrant, has been in service for over 20 years. There has been concern recently of continuing support for this product. The vendor has no plan to upgrade this system to run on Windows 7. There is also a lack of integration to the current financial system.

In 2009 the City Council approved a partnership with Microsoft and Tyler Technologies to develop and implement a Financial, Budget, and HR/Payroll system based on Microsoft's existing Dynamics AX product. The implementation of the Financials module is targeted for July 5, 2011.

As a Microsoft partner, Tyler is creating integration between their existing Tyler Cash Receipting system and the AX Financial system. Tyler's Cash Receipting system will use the same numbering scheme for the general ledger account numbers as AX Financials.

1. The Tyler system will be fully integrated with Dynamics AX eliminating the time lag between cash receipts and posting to Dynamics AX.
2. The new technology will provide additional functionality and can coexist with other Windows 7 products.

3. The system will be supported locally by the same vendor, Tyler Technologies, as Dynamics AX.

Staff reviewed the advantages and disadvantages of implementing the Tyler Technologies solution by reviewing a business case within the Information Technology Governance Team (GT), the typical scrutiny of any IT project anticipated to require more than 40 hours of IS support effort. The GT recommended proceeding with this project.

It is staff's recommendation to proceed with a contract with Tyler Technologies to implement their cash receipting system.

This matter has been brought to the Public Administration and Finance Committee in previous IS Strategic Plan reports, and as recently as February 8, 2011.

IV. IMPACT:

The cost of the software licenses is \$39,100 and implementation services are \$7,200, which total \$46,300 with annual maintenance costs of \$8,280. This represents a discount of 15% of the licensing fees.

Resources are available for this project within the IT Strategic Plan budget.

	Full Fare	Discount	Net Cost
Licensing	\$ 46,000	(\$ 6,900)	\$ 39,100
Implementation	\$ 7,200	-	\$ 7,200
	<hr/>	<hr/>	<hr/>
	\$ 53,200	(\$ 6,900)	\$ 46,300
On-going maintenance	\$ 8,280	-	\$ 8,280

V. ALTERNATIVES:

The City Council could choose not to authorize the contract and we would work to run Quadrant in a virtualized Windows 7 environment and manually integrate the data into the Dynamics AX system.

VI. TIME CONSTRAINTS:

Our goal is to have the Tyler Cash Receipting system ready and operational simultaneously with the Dynamics AX system on July 5, 2011. Approval of the contract is a first step.

VI. LIST OF ATTACHMENTS:

A. Agreement

/s/
Mike E. Bailey, Finance Director

02/18/2011
Date

Approved for Council Agenda /s/
John Marchione, Mayor

02/18/2011
Date

ATTACHMENT A

AGREEMENT

This agreement ("Agreement") is made this _____ day of _____ 2011 ("Effective Date") by and between Tyler Technologies, Inc., a Delaware corporation with offices at 1100 Oakesdale Avenue SW, Renton, Washington 98057 ("Tyler") and the City of Redmond, with offices at 15670 NE 85th Street, Redmond, Washington 98052 ("Client").

WHEREAS Client selected Tyler to furnish, deliver, install, and implement the products set forth in the Investment Summary attached hereto as Exhibit 1;

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

SECTION A – SOFTWARE LICENSE AGREEMENT

1. License Grant.

- a) Upon the Effective Date, 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 Software fees in full. Upon Client's payment in full for the Tyler Software Products, this license will become irrevocable, subject to the restrictions on use and other terms set forth in this Agreement.
- b) Tyler shall retain ownership of, including all intellectual property rights in and to, 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.
- 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 by anyone other than Tyler. If Client modifies the Tyler Software Products without Tyler's prior written consent, Tyler's obligations to provide maintenance services on, and the warranty for, the Tyler Software Products will be void. Client shall not perform decompilation, disassembly, translation or other reverse engineering on the Tyler Software Products.
- g) Client may make copies of the Tyler Software Products for archive purposes only. Client shall 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 will pay the annual beneficiary fee (currently \$683) 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 Software fees set forth in Exhibit 1 - Investment Summary.

ATTACHMENT A

3. Limited Warranty. For the purposes of this Agreement, a “Defect” is defined as a failure of the Tyler Software Products to 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. In the event of conflict between the aforementioned documents, the then-current Tyler user manuals will control. A Tyler Software Product is “Defective” if it contains a Defect. For as long as a current Maintenance Agreement is in place, Tyler warrants that the Tyler Software Products will not contain Defects. 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 will be entitled to a refund of the Software 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, which will be Client’s sole remedy should Tyler be unable to cure the Defect or provide a replacement product.

4. Intellectual Property Infringement Indemnification.

a) Tyler’s Obligations. Tyler shall defend and indemnify Client against any claim by an unaffiliated third party of this Agreement that a Tyler Software Product, if used within the scope of this Agreement, directly infringes that party's registered United States patent, copyright or trademark issued and existing as of the Effective Date 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.

b) Client’s Obligations. Tyler obligations in this section are contingent on the Client performing all of the following in connection with any claim as described herein:

- i. Promptly notifies Tyler in writing of any such claim;
- ii. Gives Tyler reasonable cooperation, information, and assistance in connection with the claim; and
- iii. Consents to Tyler's sole control and authority with respect to the defense, settlement or compromise of the claim.

c) Exceptions to Tyler’s Obligations. Tyler will have no liability hereunder if the claim of infringement or an adverse final judgment rendered by a court of competent jurisdiction 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 and such correction, modification, alteration or enhancement is determined by a court of competent jurisdiction to be a contributing cause of the infringement;
- 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, including Client’s continued use of 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.

d) Remedy.

i. In the event a Tyler Software Product is, by a court of competent jurisdiction, finally determined to be infringing and its use by Client is enjoined, Tyler will, at its election:

- (a) Procure for Client the right to continue using the infringing Tyler Software Products;
- (b) Modify or replace the infringing Tyler Software Products so that it becomes non-infringing; or
- (c) Terminate Client's license for the infringing Tyler Software Product and refund to Client the Software 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.

ii. The foregoing states Tyler's entire liability and Client's sole and exclusive remedy with respect to the subject matter hereof.

ATTACHMENT A

5. Limitation of Liability. In no event will 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. Except as otherwise expressly set forth in this Software License Agreement, 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, will be limited to the amount of Software fees set forth in Exhibit 1 - Investment Summary and paid by Client. Such 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 up to the amount 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 monthly basis.
- b) Payment is due within thirty (30) calendar days of invoice receipt.
- c) Expenses will 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 will be provided on an exception basis at no charge. Should all receipts for non per diem expenses be requested, an administrative fee will be incurred. Receipts for mileage and miscellaneous items less than five dollars (\$5) are not available. No other items shall be reimbursed without a corresponding receipt.

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 will be billed at Tyler's then current rates and upon mutual agreement by both parties.

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, will be limited to the amount of service fees set forth in Exhibit 1 - Investment Summary and paid by Client. 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 on Client's behalf; and (ii) daily fees associated with the canceled services if personnel cannot be reassigned.

SECTION C – MAINTENANCE AGREEMENT

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

2. Term of Agreement. This Support Agreement is effective on the first day of training of the Tyler Software Products and will remain in force until the end of the calendar year in which training is commenced. The Support Agreement renews automatically for one (1) year terms at Tyler's then-current support fees unless terminated in writing by either party at least fifteen (15) days prior to the end of the term.

3. Payment.

- a) Maintenance fees will be invoiced by Tyler annually in advance. Tyler shall provide Client with not less than

ATTACHMENT A

forty-five (45) days written notice of any change in annual maintenance fees.

b) **Additional Charges.** Any support services performed by Tyler for Client which are not covered by this Support Agreement, as set forth in Article 5 of Section C, including materials and expenses, will be billed to Client at Tyler's then current rates upon mutual agreement by both parties prior to commencing services.

c) Tyler reserves the right to suspend support services if Client fails to pay undisputed maintenance fees within sixty (60) calendar days of the due date. Tyler will reinstate support services upon Client's payment of all past due maintenance fees, including all such fees for the periods during which services were suspended.

4. Support Services Terms and Conditions.

a) For as long as a current Support Agreement is in place, Tyler shall:

i. In a professional, good and workmanlike manner, perform its obligations set forth in this Support 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 support services on and warrant the Tyler Software Products will be void.

ii. Provide telephone support on the Tyler Software Products. Tyler personnel will accept telephone calls during the hours of 5 AM PT and 6 PM PT, Monday through Friday, excluding Tyler holidays.

iii. 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.

iv. Maintain personnel that are appropriately trained to be familiar with the Tyler Software Products in order to provide support services.

v. Provide Client with all releases Tyler makes to the Tyler Software Products that Tyler makes generally available without additional charge to customers possessing a current Tyler annual Support Agreement. Third Party Products; and Installation, Consulting and Training services related to the new releases will be provided to Client at Tyler's then-current rates. 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.

b) 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. Maintenance fees do not include installation or implementation of the Tyler Software Products, onsite support, application design, other consulting services, support of an operating system or hardware, and 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 support services set forth herein.

b) Client shall maintain for the duration of the Support Agreement a VPN connection through Citrix or Microsoft Terminal Services, or other product as agreed to by both parties. Tyler, at its option, will 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 support services or use of the Tyler Software Products. Tyler's liability for damages and expenses arising out of this Support Agreement, whether based on a theory of contract or tort, including negligence and strict liability, will be limited to the maintenance fees paid to Tyler during the twelve (12) months prior to the claim. Such maintenance fees reflect and are set in reliance upon this limitation of liability.

SECTION D – THIRD PARTY PRODUCT AGREEMENT

ATTACHMENT A

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 the Investment Summary (collectively, the “Third Party Products”).

2. License of Third Party Software.

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 shall 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 will 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 support services on the Third Party Products, or such

ATTACHMENT A

support 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 support 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 will 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, will be limited to the License Fees of the Third Party Products paid by Client. 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, in accordance with Article 15 of Section E General Terms and Conditions. In such event, Client will be responsible for remitting all applicable taxes to the proper authorities. If tax-exempt, Client will 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 will 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 will provide a written response to Client that will include either a justification of the invoice or an adjustment to the invoice. Tyler and Client will 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 will remit full payment of the invoice.

b) Any invoice not disputed as described above will 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; Client Assistance. "Force Majeure" is defined as an event beyond the reasonable control of a party, including governmental action, war, riot or civil commotion, fire, natural disaster, labor disputes, restraints affecting shipping or credit, delay of carriers, inadequate supply of suitable materials or any other cause which could not with reasonable diligence be foreseen, controlled or prevented by the party. 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 will not be allowed unless:

a) Within ten (10) business days of the occurrence of Force Majeure, the party whose performance is delayed thereby provides 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 provides 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.

ATTACHMENT A

Either party will 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 will 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.

In addition, Client acknowledges that the implementation of the Tyler Software Products is a cooperative process requiring the time and resources of Client personnel. Client shall, and shall cause Client personnel to, use all reasonable efforts to cooperate with and assist Tyler as may be reasonably required to meet the project deadlines and other milestones agreed to by the parties for implementation. Tyler shall not be liable for failure to meet such deadlines and milestones when such failure is due to Force Majeure (as defined above) or to the failure by Client personnel to provide such cooperation and assistance (either through action or omission).

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 direct 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 direct 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 the 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 will apply:

a) Each party shall appoint one (1) person to act as an impartial representative. The appointed individual will be of sufficient knowledge and experience to understand and deal with the dispute but will 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 maximum of four (4) four (4) hour sessions during the subsequent four (4) business days, unless otherwise mutually agreed. Any resolution will be in writing and signed by both parties. Such resolution will 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.

All meetings and discussions of the Dispute Resolution Group will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Civil Procedure 408 or any similar applicable state rule.

Nothing in this Article will 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

ATTACHMENT A

herein.

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

8. Governing Law. This Agreement will be governed by and construed in accordance with the laws of 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, to any extent, be held 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 will not be affected thereby, and each term and provision of this Agreement will 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. It is the intent of the parties to fully and faithfully perform the terms and conditions for the life of this Agreement.

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 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 will be in writing (unless another verifiable medium is expressly authorized) and will be deemed delivered when:

- 1) Actually received,
- 2) Upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the party,
- 3) Upon receipt by sender of proof of email delivery, or
- 4) 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

ATTACHMENT A

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 US Route 1
Falmouth, ME 04105
Attention: Contracts Manager

City of Redmond
Mailstop: 3NFN
PO Box 97010
Redmond, WA 98073-9710
Attention: Michael Bailey, Director Finance and
Information Systems

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, along with an endorsement naming the City of Redmond as an additional insured party:

- 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 shall 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 will survive the termination or cancellation of this Agreement for a period of two (2) years. This obligation of confidentiality will 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 will 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,

ATTACHMENT A

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 will be F.O.B. destination.

23. Payment Terms.

a) Tyler shall invoice Client \$39,100 upon the Effective Date. Such amount equals 100% of the Software License Fees.

b) Tyler shall invoice Client \$4,890 when Tyler has made the Tyler Software Products available to Client for downloading. Such amount equals 100% of the Third Party Product fees.

c) Tyler shall invoice Client fees for services, plus expenses, if provided/incurred, on a monthly basis.

d) Prices do not include travel expenses, subject to Article 2(c) of Section B.

e) The year 1 Support and Maintenance fees will begin upon the earlier of 1) initial use of Tyler Cashiering for productive purposes or 2) preparedness (configuration and training) of Tyler Cashiering for productive purposes. Tyler and Client shall mutually determine scheduling for configuration and training. The year 1 support term for the Tyler Cashiering module will be prorated to end at the end of the then-current calendar year. Annual support will be invoiced on an annual basis thereafter with annual fee increases not to exceed five percent (5%) per year between year one (1) and year five (5) of this Agreement.

24. This Agreement includes the following exhibits:

- Exhibit 1 – Investment Summary
- Exhibit 2 – Support Call Process
- Exhibit 3 – Business Travel Policy

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

Tyler Technologies, Inc.
ERP and School Division

City of Redmond

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT A

Exhibit 1 – Investment Summary

1 Software

Model #	Description	Quantity	Price	Extended Price	Discount	Software Total
RB-TC-SW-F	Tyler Cashiering - Software - F	1.00	\$46,000.00	\$46,000.00	\$6,900.00	\$39,100.00
					Total:	Total:
					\$6,900.00	\$39,100.00

2 Services

Training

Model #	Description	Quantity	Price	Extended Price	Discount	Training Total
RB-TC-TR-F	Tyler Cashiering - Training - F	6.00	\$1,200.00	\$7,200.00	\$0.00	\$7,200.00
					Total:	Total:
						\$7,200.00
		Total	Total	Total	Total	Total
		Other	Consulting:	Training:	Conversion	Services:
		Services:			Services:	
		\$0.00	\$0.00	\$7,200.00	\$0.00	\$7,200.00
					Total	Total
					Training	Consulting
					Days: 6	Days: 0

3 Maintenance

Model #	Description	Quantity	Price	Extended Price	Discount	Maintenance Total
RB-TC-SP-F	Tyler Cashiering - Support - F	1.00	\$8,280.00	\$8,280.00	\$0.00	\$8,280.00
					Total:	Total:
					\$0.00	\$8,280.00

ATTACHMENT A

4 Hardware

Model #	Description	Quantity	Price	Extended Price	Discount	Hardware Total
VAR-CASH-HDW-3606	Printer-(EPSON TM-H6000iii)	3.00	\$1,400.00	\$4,200.00	\$0.00	\$4,200.00
VAR-CASH-HDW-3607	Cash Drawer	3.00	\$230.00	\$690.00	\$0.00	\$690.00
					Total:	Total:
					\$0.00	\$4,890.00

Summary	Fees	Maintenance
Total Software	\$39,100.00	\$8,280.00
Total Services	\$7,200.00	
Total Hardware	\$4,890.00	
Summary Total	\$51,190.00	\$8,280.00

All primary values quoted in US Dollars

ATTACHMENT A

Exhibit 2 – Support Call Process

The TYLER support solution includes the following services, described in detail in the sections that follow:

TYLER Help Desk	Included with Annual Support
Software Development and Updates	Included with Annual Support
OSDBA Help Desk	Optional
Customer Care	Included with Annual Support
Disaster Recovery	Optional
Consulting Group	Optional
Web Page Customer Tools/Information Access	Included with Annual Support
Local Group Training	Optional
Local User Groups	Included with Annual Support
Annual Users Conference	Optional

TYLER Help Desk

Customer Support averages a less than 1 hour response time on all priority 1 calls and a less than 3 hour response time on the remaining calls, unless received at the end of the day; those calls are returned the next morning.

Focused by Application

TYLER Customer Support is divided into application-specific teams, plus a separate team for OSDBA (Operating System / Database Administration) contract clients. Application-specific teams allow a technician to focus on a group of applications and therefore offer more detailed support to our clients.

Call Tracking and Priorities

Tyler records all client contacts in a Customer Response Management (CRM) system. This system tracks the history of each incident, including the person calling, time of the call, priority of the call, problem description, support recommendations, client feedback, FERs (Fix or Enhancement Requests) to Development, and resolution.

A priority is assigned to each call logged:

#	Description	Average Response Time
1	Critical issue – system is down	< 1 Hour
2	Severe issue, but there is a work around	< 2 Hours
3	Important issue – not severe	< 4 Hours
4	Lowest priority issues	1 Business Day

ATTACHMENT A

For system applications, standard phone support coverage is from 5:00 AM to 6:00 PM (Pacific Standard Time) Monday through Friday. OSDBA Support is available from 5:00 AM to 6:00 PM (PST) Monday through Friday. The client can also contract with Tyler for support service outside of standard hours.

Call Escalation Process

Each day, Senior Technicians, Team Leaders, and Senior Analysts review open calls in their focus area to monitor progress.

Calls still open are reviewed periodically and escalated as required. The priority of a given call may be modified as Tyler becomes more informed about the circumstances surrounding an issue. For example, a lower priority call may become Priority 1 if research discovers a more critical issue or a previously unknown deadline or penalty.

Remote Diagnostic Tool

Should Tyler need to access a client's server to diagnose a problem, GoToAssist is used to share the client's desktop via the Internet. TYLER Support can temporarily assume control of the client's desktop to show them how to use a program or how to find information in a report. In addition, the client can show the TYLER Help Desk how they are using TYLER and what they are experiencing. GoToAssist also supports the transfers of files, if necessary. TYLER Support also utilizes VPN connections working with SQL tools directly against database servers in the event of data issues.

Web / E-mail Support

Support is available from the TYLER Client Support section of www.tylertech.com. Using our website, a client can enter new support issues, manage existing issues and contact Support personnel. TYLER offers the alternative of email support; however, because response time may be longer, Tyler recommends that clients use e-mail for non-urgent support issues only.

OSDBA Help Desk

The TYLER OSDBA (Operating System / Database Administration) Department is configured as a separately billable service to Tyler clients on a contract basis.

If the client opts for this service, a one-day analysis performed remotely by an OSDBA technician is included. This analysis performs recommended TYLER and RDBMS (Relational Database Management System) tasks, including consistency checking, space evaluations, data space recovery, hard disk re-configuration, backup recovery verification, and system table updates. This establishes a stable base from which further system support can be provided.

The primary areas of provided services include:

Operating System Support

Basic OS System Administration

Cleaning up file systems

Printer installation & configuration assistance

Cash Station (POS) installation & configuration assistance

ATTACHMENT A

System backup configuration assistance

System recovery assistance

System transfer services

RDBMS Database Software Support

RDBMS (Relational Database Management System) Administration assistance 14

RDBMS software upgrade installation assistance

Data recovery assistance

Connectivity software installation & configuration assistance

RDBMS tuning assistance

TYLER Software Support

Maintenance Release/Upgrade installation assistance

Additional OSDBA Services

Some of these services are available at no charge or for a minimal fee with your OSDBA contract:

TYLER Server System Maintenance

Remote System Administrator Training

Server Transfer Service every two years

Customer Care

Customer Care is a hands-on role dedicated to maximizing the customer satisfaction of Tyler Clients using the TYLER software solution. The customer care team is chartered with the responsibility of staying in touch with the client base and understanding the generic and specific customer satisfaction issues. This will include organizing and making recommendations to Tyler Management regarding product improvements, and recommending business process or delivery practices improvement. The team will identify and provide services/methods that will enhance the product knowledge and use of the Product by the installed base so that our Clients maximize their product leverage with minimal intervention required by Support or Training departments. This team also provides the focal point for organizing local/regional user groups and will facilitate the inter-agency communication of TYLER clients.

Web Page Customer Tools / Information Access

Like most Web sites, www.tylertech.com is designed to provide information to clients, employees, and prospects.

ATTACHMENT A

One aspect that stands apart is a section called Customer Tools within EDEN Client Support. This section provides valuable information of specific interest to the client base. For example, clients can:

Research server requirements and hardware installation instructions

Review and register to attend regional Group Training Seminars, the Annual User Conference, or regional User Group Meetings

Download information about EDEN Releases, Online Manuals, Trouble Saving Tips, and Crystal Report templates

Log issues with the Support Department

Register for e-mail notification of support issues

Attend scheduled electronic meetings for training and product demonstrations

ATTACHMENT A

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

Employee meals while on travel status are reimbursable in the form of a flat per diem rate. The reimbursement rates for individual meals are as follows:

Breakfast	\$ 7.00
Lunch	12.00
<u>Dinner</u>	<u>30.00</u>
Total	\$49.00

A. Overnight Travel

Employees on overnight travel status are eligible to claim all three meals on their expense report except as follows:

Departure Day

Depart before 12:00 noon

Depart after 12:00 noon

Lunch and dinner

Dinner

ATTACHMENT A

Return Day

Return before 12:00 noon	Breakfast
Return between 12:00 noon & 8:00 p.m.	Breakfast and lunch
Return after 8:00* p.m.	Breakfast, lunch and dinner

*8:00 is defined as direct travel time and does not include time taken to stop for dinner

B. Same Day Travel

Employees traveling at least 2 hours 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 8:00* p.m.

*8:00 is defined as direct travel time and does not include time taken to stop for dinner

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.