



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Date of Award: **FEB 16 2021**

Tyler Technologies, Inc.
5101 Tennyson Parkway
Plano, TX 75320-3556

Attention: Robert Kennedy-Jensen, Director of Contracts

Reference: Brazos eCitation Software

Acceptance Agreement

Contract Number: 4400010140

This Acceptance Agreement signifies a contract for license, maintenance and support and related services for Brazos eCitation Software. The period of the contract shall be from January 1, 2021 through December 31, 2025.

The contract award shall be in accordance with:

- 1) This Acceptance Agreement;
- 2) The Attached Tyler Technologies License and Services Agreement.

Note that this is not an order to proceed. A Purchase Order constituting your notice to proceed will be issued to your firm. Provide your Insurance Certificate according to Tyler Technologies License and Services Agreement, Section I(6) within 10 days after receipt of this letter. All questions in regards to this contract shall be directed to the Contract Specialist, Yong Kim, CPPB at 703-324-3217 or via e-mail at yong.kim@fairfaxcounty.gov.

DocuSigned by:

Cathy A. Muse

055A0FDC6634D3...

Cathy A. Muse, CPPO
Director/County Purchasing Agent

Department of Procurement & Material Management

12000 Government Center Parkway, Suite 427

Fairfax, VA 22035-0013

Website: www.fairfaxcounty.gov/procurement/

Phone 703-324-3201, TTY: 711, Fax: 703-324-3228



LICENSE AND SERVICES AGREEMENT

This License and Services Agreement is made between Tyler Technologies, Inc. and Client.

WHEREAS, Client selected Tyler to license the software products and perform the services set forth in the Investment Summary and Tyler desires to perform such actions under the terms of this Agreement;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth in this Agreement, Tyler and Client agree as follows:

SECTION A – DEFINITIONS

- **"Agreement"** means this License and Services Agreement (County Contract 4400010140).
- **"Business Travel Policy"** means our business travel policy. A copy of our current Business Travel Policy is attached as Schedule 1 to Exhibit B.
- **"Client"** means the County of Fairfax, VA ("Client" or "County").
- **"Defect"** means a failure of the Tyler Software to substantially conform to the functional descriptions set forth in our written proposal to you, or their functional equivalent. Future functionality may be updated, modified, or otherwise enhanced through our maintenance and support services, and the governing functional descriptions for such future functionality will be set forth in our then-current Documentation.
- **"Developer"** means a third party who owns the intellectual property rights to Third Party Software.
- **"Documentation"** means any online or written documentation related to the use or functionality of the Tyler Software that we provide or otherwise make available to you, including instructions, user guides, manuals and other training or self-help documentation.
- **"Period of Agreement"** means five (5) years from the Effective Date.
- **"Effective Date"** means January 1, 2021.
- **"Force Majeure"** means an event beyond the reasonable control of you or us, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, or any other cause that could not with reasonable diligence be foreseen or prevented by you or us.
- **"Hosting Services"** means the hosting services we will provide for the Tyler Software as set forth in the Investment Summary, for the fees set forth therein.
- **"Investment Summary"** means the agreed upon cost proposal for the software, products, and services attached as Exhibit A.
- **"Invoicing and Payment Policy"** means the Invoicing and Payment Policy attached as Exhibit B.
- **"Maintenance and Support Agreement"** means the terms and conditions governing the provision of our maintenance and support services, attached as Exhibit C.
- **"SLA"** means the service level agreement, attached as Schedule 1 to Exhibit C.
- **"Support Call Process"** means the support call process applicable to you, attached as Schedule 2 to Exhibit C.
- **"Third Party End User License Agreement(s)"** means the end user license agreement(s), if any, for the Third Party Software.

- **"Third Party Hardware"** means the Third party hardware, if any, purchased under this Agreement.
- **"Third Party Products"** means the Third Party Software, Third Party Hardware, and Third Party Services.
- **"Third Party Services"** means the services provided by third parties, if any, purchased under this Agreement.
- **"Third Party Software"** means the Third party software, if any, purchased under this Agreement.
- **"Tyler"** means Tyler Technologies, Inc., a Delaware corporation.
- **"Tyler Software"** means our proprietary Brazos e-Citation software and related interfaces identified in the Investment Summary and licensed to you through this Agreement.
- **"we", "us", "our"** and similar terms mean Tyler.
- **"you"** and similar terms mean Client.

SECTION B – SOFTWARE LICENSE

1. License Grant and Restrictions.

- 1.1 We grant to you a license to use the Tyler Software, for the number of licenses identified in the Investment Summary, for your internal business purposes only, in the scope of the internal business purposes disclosed to us as of the Effective Date. You may make copies of the Tyler Software for backup and testing purposes, so long as such copies are not used in production and the testing is for internal use only. Your rights to use the Tyler Software are perpetual but may be revoked if you do not comply with the terms of this Agreement. You may add additional licenses at the rates set forth in the Investment Summary for twelve (12) months from the Effective Date by executing a mutually agreed contract amendment. If no rate is provided in the Investment Summary, or those twelve (12) months have expired, you may purchase additional licenses at our then-current list price, also by executing a mutually agreed amendment.
- 1.2 The Documentation is licensed to you and may be used and copied by your employees for internal, non-commercial reference purposes only.
- 1.3 You may not: (a) transfer or assign the Tyler Software to a third party; (b) reverse engineer, decompile, or disassemble the Tyler Software; (c) rent, lease, lend, or provide commercial hosting services with the Tyler Software; or (d) publish or otherwise disclose the Tyler Software or Documentation to third parties, subject to the Confidentiality and public records disclosure provisions of Paragraph J(16).
- 1.4 The license terms in this Agreement apply to updates and enhancements we may provide to you or make available to you through your Maintenance and Support Agreement.
- 1.5 The right to transfer the Tyler Software to a replacement hardware system is included in your license. You will give us advance written notice of any such transfer and will pay us for any required or requested technical assistance associated with such transfer, with any such payment subject to your approval and all terms and conditions of this Agreement.
- 1.6 We reserve all rights not expressly granted to you in this Agreement. The Tyler Software and Documentation are protected by copyright and other intellectual property laws and treaties. We own the title, copyright, and other intellectual property rights in the Tyler Software and the Documentation. **The Tyler Software is licensed, not sold.**

2. License Fees. You agree to pay us the license fees in the amounts set forth in the Investment Summary, subject to all terms and conditions of this Agreement. Those amounts are payable in accordance with the

Invoicing and Payment Policy.

3. Escrow. We maintain an escrow agreement with a third party under which we place the source code for each major release of the Tyler Software. You may be added as a beneficiary to the escrow agreement. We will maintain your beneficiary status under our escrow agreement throughout the term of this Agreement so long as you pay us the annual escrow fee that we invoice you. We will provide you with 60 days' notice of any increase in the annual fee. Release of source code for the Tyler Software is strictly governed by the terms of the escrow agreement, which does and shall continue to authorize release in cases of our bankruptcy, when required by a court order, or by written instruction from us.
4. Limited Warranty. We warrant that the Tyler Software will be without Defect(s) as long as you have a Maintenance and Support Agreement in effect. If the Tyler Software does not perform as warranted, we will use all reasonable efforts, consistent with industry standards, to cure the Defect as set forth in the Maintenance and Support Agreement.

SECTION C – PROFESSIONAL SERVICES

1. Services. We will provide you the services, if any, itemized in the Investment Summary. You will receive those services according to our industry-standard implementation plan, which outlines roles and responsibilities in calendar and project documentation. We will finalize that documentation with you upon execution of this Agreement.
2. Professional Services Fees. You agree to pay us the professional services fees in the amounts set forth in the Investment Summary, if any, subject to all terms and conditions of this Agreement. Those amounts are payable in accordance with the Invoicing and Payment Policy. You acknowledge that the fees stated in the Investment Summary are good-faith estimates of the amount of time and materials required for the requested services. We will bill you the actual fees incurred based on the in-scope services provided to you. If you request additional professional services, the parties will agree to an addendum pursuant to Paragraph G(1.3) of this Agreement, as applicable, outlining the costs for the additional professional services.
3. Additional Services. The Investment Summary contains the scope of services and related costs (including programming and/or interface estimates), if any, required for the project. If you request additional services, the parties will agree to a contract amendment pursuant to Paragraph G(1.3) of this Agreement, as applicable, outlining the costs for the additional work.
4. Cancellation. When onsite services are requested by you and payment for travel expenses relating to those services is approved by you in accordance with the Invoicing and Payment Policy, we will make all reasonable efforts to schedule our personnel for travel, including arranging travel reservations, at least two (2) weeks in advance of commitments. Therefore, if you cancel requested and approved services less than two (2) weeks in advance (other than for Force Majeure or breach by us), you will be liable for all (a) non-refundable expenses incurred by us on your behalf, and (b) daily fees associated with cancelled professional services if we are unable to reassign our personnel; provided, however, that this Paragraph C(4) will not apply on the first instance of your cancellation less than two (2) weeks in advance of commitments. We will make all reasonable efforts to reassign personnel in the event you cancel within two (2) weeks of scheduled commitments.
5. Services Warranty. We will perform the services in a professional, workmanlike manner, consistent with industry standard best practices. In the event we provide services that do not conform to this warranty, we will re-perform such services at no additional cost to you.

6. Client Assistance. You acknowledge that the provision of services for the Tyler Software is a cooperative process that may require the time and resources of your personnel. You agree to use all reasonable efforts to cooperate with and assist us as may be reasonably required. This cooperation includes at least working with us to schedule the services outlined in this Agreement. We will not be liable for failure to meet any deadlines and milestones when such failure is due to Force Majeure or to the failure by your personnel to provide such reasonable cooperation and assistance (either through action or omission).

SECTION D – MAINTENANCE AND SUPPORT

1. This Agreement includes a period of included maintenance and support services for the first annual term as identified in the Invoicing and Payment Policy. If you have purchased ongoing maintenance and support services, and continue to make timely payments for them according to the Invoicing and Payment Policy, we will provide you with maintenance and support services for the Tyler Software under the terms of our standard Maintenance and Support Agreement.
2. If you have opted not to purchase ongoing maintenance and support services or fail to fulfill your payment obligations under Section G and the Invoicing and Payment Policy, the Maintenance and Support Agreement does not apply to you. Instead, you will only receive ongoing maintenance and support on the Tyler Software Products on a time and materials basis. In addition, you will:
 - (i) receive the lowest priority under our Support Call Process;
 - (ii) be required to purchase new releases of the Tyler Software Products, including fixes, enhancements and patches;
 - (iii) be charged our then-current rates for support services, or such other rates that we may consider necessary to account for your lack of ongoing training on the Tyler Software Products;
 - (iv) be charged for a minimum of two (2) hours of support services for every support call; and
 - (v) not be granted access to the support website for the Tyler Software Products or the Tyler Community Forum.

SECTION E – THIRD PARTY PRODUCTS

Tyler and Fairfax County recognize that there are no Third Party Products set forth in the Investment Summary.

Third Party Hardware and Software. To the extent this Agreement is amended pursuant to Paragraph G(1.3) to include Third Party Hardware or Software, Tyler and the County agree that if any additional licenses are required or warranties are offered by a Developer or Third Party Hardware manufacturer, such licenses shall be subject to prior review, approval, and execution of a written agreement in advance and in writing by the Fairfax County Purchasing Agent. All Third Party Products shall be subject to the terms of this Agreement, including but not limited to inspection and acceptance provisions of Section G(4.1) of this Agreement.

To the extent this Agreement is amended by the parties to include any Third Party Products, the following additional terms and conditions will apply:

1. Third Party Hardware. We will sell, deliver, and install onsite the Third Party Hardware, if you have purchased any, for the price separately agreed to by you at the time of such purchase. Those amounts are payable in accordance with the Invoicing and Payment Policy, subject to all terms and conditions of this Agreement.

2. Third Party Software. Upon payment in full of the Third Party Software license fees and subject to prior review, approval, and execution of a written agreement by the Fairfax County Purchasing Agent, you will receive a license to use the Third Party Software and related documentation. If applicable, your license rights to the Third Party Software will be governed by Third Party terms approved and executed by the Fairfax County Purchasing Agent.

- 2.1 After any applicable Third Party terms have been fully executed, we will install onsite the Third Party Software. The installation cost will be included in the installation fee separately agreed to by you at the time of such purchase.

- 2.2 If the Developer charges a fee for future updates, releases, or other enhancements to the Third Party Software, you will be required to pay such additional future fee, provided that such fees are set forth in an agreement executed by the Fairfax County Purchasing Agent and, further, subject to your prior approval and all terms and conditions of this Agreement.

- 2.3 The right to transfer the Third Party Software to a replacement hardware system may be governed by the Developer or any Third Party terms approved and executed as provided in this Section E(2). You will give us advance written notice of any such transfer and, subject to prior written approval of the Fairfax County Purchasing Agent of any additional costs and all terms and conditions of this Agreement, will pay us such agreed upon costs for any required or requested technical assistance from us associated with such transfer.

3. Third Party Products Warranties.

1. We are authorized by each Developer to grant or transfer the licenses to the Third Party Software.
 2. The Third Party Hardware will be new and unused, and upon payment in full, you will receive free and clear title to the Third Party Hardware.
 3. You acknowledge that we are not the manufacturer of the Third Party Products. We do not warrant or guarantee the performance of the Third Party Products. However, pending review and approval by the Fairfax County Purchasing Agent we may grant and pass through to you any warranty that we may receive from the Developer or supplier of the Third Party Products. Third Party Products and any executed and agreed to Third Party terms shall not relieve us from our obligations under this Agreement.

4. Maintenance. If you have a Maintenance and Support Agreement in effect, you may report defects and other issues related to the Third Party Software directly to us, and we will (a) directly address the defect or issue, to the extent it relates to our interface with the Third Party Software; and/or (b) facilitate resolution with the Developer, unless you and the Developer execute an agreement whereby you agree to have a separate, direct maintenance agreement in effect with that Developer. In all events, if you do not have a Maintenance and Support Agreement in effect with us, you will be responsible for resolving defects and other issues related to the Third Party Software directly with the Developer.

SECTION F – HOSTING SERVICES

1. We will engage a third-party service provider in order to host the Tyler Software set forth in the Investment Summary for the fees set forth therein. Hosting Fees are included in the Brazos Site License annual Maintenance and Support amount in the Investment Summary. You agree to pay those fees according to the Invoicing and Payment Policy. The fees contained in the Investment Summary are subject to annual increases as provided therein. In exchange for those fees, we agree to provide the Hosting

Services according to the terms and conditions set forth in this Section F, and the other applicable terms of this Agreement. If you fail to pay those fees, after 30 days advance written notice to you and a sixty (60) day opportunity to cure, we reserve the right to suspend delivery of our applicable Hosting Services. Tyler shall submit a completed Fairfax County Cyber Security Matrix Form to verify that the Third Party Service provider maintains a dedicated security and compliance function to design, maintain, and operate security in support of its "trust platform" in accordance with ISO 27001, an industry wide cyber security management system. All Hosting Services shall be subject to the applicable provisions of this Agreement, including but not limited to the Confidentiality provisions of Section J(16).

2. You acknowledge and agree that, in our sole discretion but subject to the provision of a Cyber Security Matrix Form as required in Paragraph (F)1, we may migrate the Hosting Services to a replacement system (including our own) and will undertake reasonable efforts to complete such transfer during maintenance windows as set forth in the SLA. We will undertake reasonable efforts to provide you with advance written notice of any such transfer. You agree to provide all reasonable assistance and access in connection with any such transfer. In the event the Tyler Software is transferred to our data center and we provide hosting services directly to you, the terms of the SLA will also apply.
3. Where applicable, we will perform or cause to have performed upgrades of the applications, hardware, and operating systems that support your Hosting Services. These upgrades are performed in commercially reasonable timeframes and in coordination with third-party releases and certifications. We will make available information on industry-standard minimum requirements and supported browsers for accessing the Hosting Services.

SECTION G – AUTHORITY, INVOICING AND PAYMENT; INVOICES

1. Authority.
 - 1.1 The Fairfax County Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every contract and purchase order (except for capital construction projects) issued by Fairfax County. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned contract administrators. Specifically delegated employees are authorized to order supplies or services, and obligate the government of Fairfax County for an indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall be of no effect and void and shall not be binding on the County.
 - 1.2 Your obligation to pay compensation due to us under this Agreement or any other payment obligations under any contract awarded pursuant to this Agreement is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. Your obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, this Agreement shall terminate effective at the end of the fiscal year for which funds were appropriated and you will not be obligated to make any payments under this Agreement beyond the amount appropriated for payment obligations under this Agreement. You will provide us with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, your failure to provide such notice will not extend this Agreement into a fiscal year in which sufficient funds have not been appropriated. If you terminate this Agreement under this provision, you shall pay us for all services and products delivered through the date of termination if funds have been appropriated by the Fairfax County Board of Supervisors for such services and products.

1.3 You reserve the right to add similar items/services or delete items/services specified in this Agreement as requirements change during the term of the Agreement. The parties will mutually agree in a written amendment to prices for items/services to be added to the Agreement. You will not be entitled to a refund or offset of previously paid license and other fees for deleted items/services, except for Dedicated Account Manager fees, which we will, if deleted or cancelled for any reason, refund to you on a pro-rata share basis of the then current Dedicated Account Manager term.

2. Method of Ordering.

2.1 Regardless of the method of ordering used, this Agreement and any subsequent modifications determine performance time and dates. Performance of professional services under this Agreement is not to begin until receipt of the purchase order, Procurement Card order, or other notification to proceed by the Fairfax County Purchasing Agent and/or Fairfax County agency to proceed.

2.2 You may use two (2) different methods of placing orders from the Agreement: Purchase Orders (PO) and approved Fairfax County procurement cards.

2.3 A Purchase Order may be issued to us on behalf of the Fairfax County agency ordering the items/services covered under this Agreement.

2.4 Credit card orders and payments may also be made by the use of a Fairfax County or Fairfax County Public Schools "Procurement" Card. The Procurement card is currently under contract with JP Morgan Chase/Master Card. We accept payments via credit or procurement cards of only \$5,000.00 or less.

3. Cancellation of Orders. Purchases made under this Agreement are for readily available services and supplies. We agree to provide the goods and services in accordance with mutually agreed upon schedules. You reserve the right to cancel the order and/or to refuse delivery if the items ordered are not furnished within the period of time mutually agreed upon.

4. Inspection and Acceptance. For determining acceptance of hardware or services, inspection and acceptance shall be accomplished only after examination (including testing) to determine conformance with the contract requirements.

4.1 If you order additional hardware or products, including but not limited to Third Party Products, through a contract amendment pursuant to Paragraph G(1.3) of this Agreement, inspection and acceptance of any such hardware or products will be made after delivery to you. You will bear the expense of inspection except for the value of samples used in case of rejection. Inspection and acceptance or rejection of the hardware or products will be made within thirty (30) business days of delivery, but failure to inspect and accept or reject hardware or products shall not impose liability on you for such hardware or products not in accordance with the specifications agreed upon between the parties.

4.2 Inspection and acceptance of the Tyler Software identified in the Investment Summary, as well as any revisions, upgrades, updates, or other changes to the Tyler Software identified in the Investment Summary, will be made after delivery to you. You will bear the expense of inspection. Inspection and acceptance or rejection of the Tyler Software identified in the Investment Summary, as well as any updates thereto, will be made within thirty (30) days of installation. Any Defects identified by you relating to the Tyler Software will be governed by the Maintenance and Support Agreement.

5. Invoicing. We will invoice you the fees for the license(s), products, and services in the Investment Summary

per the Invoicing and Payment Policy, and for any authorized expenses. We shall submit an invoice for each Purchase Order and submit to the BILL TO address shown on the order. The invoice shall contain the applicable Purchase Order number and the name of the department receiving the services. As we are not a bonafide County employee the parties agree that no deductions for withholding taxes, workman's compensation, insurance, or other fringe benefits will be made and will be our sole responsibility.

6. Payment. Payment shall be made after performance in accordance with the applicable provisions of this Agreement, and thirty (30) days after receipt of a properly completed invoice, subject to all terms and conditions of this Agreement. You reserve the right to withhold any or all payments or portions due to our failure to perform in accordance with the provisions of the Agreement.
7. Invoices. If you believe any delivered software or service does not conform to the warranties in this Agreement, you will provide us with written notice within thirty (30) days of your receipt of the applicable invoice. The written notice must contain reasonable detail of the issues you contend are in dispute so that we can confirm the issue and respond to your notice with either a justification of the invoice, an adjustment to the invoice, or a proposal addressing the issues presented in your notice. We will work with you as may be necessary to develop an action plan that outlines reasonable steps to be taken by each of us to resolve any issues presented in your notice by mutual agreement. You may withhold payment of the amount(s) actually in dispute under this Section G(7) until we complete the action items outlined in the plan. If we are unable to complete the action items outlined in the action plan because of your failure to complete the items agreed to be done by you, then you will remit full payment of amounts withheld under this Section G(7) and related to that action plan. We reserve the right to suspend delivery of all services, including maintenance and support services, if you fail to pay an invoice not disputed as described above within sixty (60) days of notice of our intent to suspend service delivery. Any matters not resolved under this provision remain subject to Paragraph J(3) of this Agreement.

SECTION H – TERMINATION

1. For Cause. If, through any cause, either party fails to fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of the covenants, agreements, or stipulations of this Agreement, in addition to the parties' remedies under this Agreement and all other rights available at law or in equity, subject to a thirty (30) day opportunity to cure, each party shall have the right to immediately terminate this Agreement. Such termination shall be effected by delivering a notice of termination to the non-terminating party at any time specifying the effective date of such termination. In such event, all finished or unfinished documents, data, and reports prepared by us under the Agreement shall, at your option, become your property and we shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

Notwithstanding the above, neither party shall be relieved of liability to the other for damages sustained by virtue of any breach of this Agreement for the purpose of set off until such time as the exact amount of damages due is determined.

2. For Convenience. This Agreement may be terminated in whole or in part by you whenever the County Purchasing Agent shall determine that such a termination is in the best interest of the County. Any such termination shall be effected by delivery of a Notice of Termination to us at least thirty (30) days prior to the termination date specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. In the event of a termination for convenience, you will pay us for all undisputed fees and expenses related to the software and/or services you have received, or we have

incurred or delivered, prior to the effective date of termination for which funds have been appropriated. Any disputed fees and expenses must have been submitted to the Invoice Dispute process set forth in Section G(7) or the Contract Disputes process set forth in Paragraph J(3) at the time of termination in order to be withheld at termination.

3. Lack of Appropriations. If the Fairfax County Board of Supervisors should not appropriate funds sufficient to purchase, lease, operate, or maintain the software or services set forth in this Agreement, this agreement shall terminate effective on the final day of the fiscal year through which funds were appropriated as set forth in Section G(1.2). In the event of termination due to a lack of appropriations, you will pay us for all undisputed fees and expenses as set forth in the Agreement related to the software and/or services you have received, or we have incurred or delivered, prior to the effective date of termination and for which funds have been appropriated. Any disputed fees and expenses must have been submitted to the process set forth in Section G(7) or the Contract Disputes process set forth in Section J(3) at the time of termination in order to be withheld at termination.
4. Force Majeure. Except for your payment obligations, either you or we may terminate this Agreement if a Force Majeure event suspends performance of scheduled tasks for a period of forty-five (45) days or more. In the event that you terminate this Agreement due to Force Majeure, you will pay us for all undisputed fees and expenses for or related to the software and/or services due under the terms of the Agreement that you have received, or we have incurred or delivered, prior to the effective date of termination, subject to all terms and conditions of this Agreement. Any disputed fees and expenses must have been submitted to the process set forth in Section G(7) or the Contract Dispute process set forth in Section J(3) at the time of termination in order to be withheld at termination.
5. Refunds. If you terminate this Agreement under this Section H, you will not be entitled to a refund or offset of previously paid license or other fees.

SECTION I – INDEMNIFICATION, LIMITATION OF LIABILITY AND INSURANCE

1. Intellectual Property Infringement Indemnification.

- 1.1 We will defend you against any third party claim(s) that the Tyler Software infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement, provided that you retain the right to arrange for your own counsel, and further provided that we must obtain your prior written consent for a settlement involving an admission of guilt or liability by you, or imposing any type of payment obligation or other type of obligation upon you. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.
- 1.2 Our obligations under this Section I(1) will not apply to the extent the claim or adverse final judgment is based on your: (a) use of a previous version of the Tyler Software and the claim would have been avoided had you installed and used the current version of the Tyler Software that Tyler had previously made available to you; (b) combining the Tyler Software with any product or device not provided, contemplated, or approved by us; (c) altering or modifying the Tyler Software, including any modification by third parties at your direction or otherwise permitted by you; (d) use of the Tyler Software in violation of this Agreement, including with third parties not licensed under Section B(1) of this Agreement; or (e) willful infringement, including use of the Tyler Software after we notify you to discontinue use due to such a claim.

1.3 If we receive information concerning an infringement or misappropriation claim related to the Tyler Software, we may, at our expense and without obligation to do so, either: (a) procure for you the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent, in which case you will stop running the allegedly infringing Tyler Software immediately.

1.4 If an infringement or misappropriation claim is fully litigated and your use of the Tyler Software is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement to which we consent), we will, at our option, either: (a) procure the right to continue its use; (b) modify it to make it non-infringing; (c) replace it with a functional equivalent; or (d) terminate your license and refund the license fees paid for the infringing Tyler Software, as depreciated on a straight-line basis measured over seven (7) years from the Effective Date. We will pursue those options in the order listed herein. This section provides your exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation claims.

2. General Indemnification.

2.1 We will indemnify and hold harmless you and your agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) death, personal injury, or property damage to the extent caused by our negligence or willful misconduct; (b) breach of our confidentiality obligations under Section J(16) below; or (c) our violation of a law applicable to our performance under this Agreement. You must notify us promptly in writing of the claim and give us sole control over its defense or settlement, provided that you at your option may arrange for your own legal representation, and that we must obtain your prior written consent to settle a claim involving an admission of guilt or liability by you, or imposing any type of payment obligation or other type of obligation upon you. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.

3. DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4. LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, OUR LIABILITY TO YOU FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO YOUR ACTUAL DIRECT DAMAGES, NOT TO EXCEED (A) PRIOR TO FORMAL TRANSITION TO MAINTENANCE AND SUPPORT, THE TOTAL ONE-TIME FEES SET FORTH IN THE INVESTMENT SUMMARY; OR (B) AFTER FORMAL TRANSITION TO MAINTENANCE AND SUPPORT, THE THEN-CURRENT ANNUAL MAINTENANCE AND SUPPORT FEE. THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTIONS I(1) AND I(2).

5. EXCLUSION OF CERTAIN DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE TO YOU FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6. Insurance. During the course of performing services under this Agreement, we agree to maintain the

following levels of insurance: (a) Commercial General Liability of at least \$1,000,000; (b) Automobile Liability of at least \$1,000,000; (c) Professional Liability, including cyber liability coverage for security and privacy liability, crisis management and customer notification, and data extortion on a claims-made basis with limits of at least \$5,000,000; (d) Workers Compensation complying with applicable statutory requirements; and (e) Excess/Umbrella Liability of at least \$5,000,000. We will add you as an additional insured to our Commercial General Liability and Automobile Liability policies, which will automatically add you as an additional insured to our Excess/Umbrella Liability policy as well. We will provide you with copies of certificates of insurance upon your written request.

SECTION J – GENERAL TERMS AND CONDITIONS

1. Additional Products and Services. You may purchase additional products and services at the rates set forth in the Investment Summary for twelve (12) months from the Effective Date, and thereafter at our then-current list price, by executing a mutually agreed contract amendment pursuant to Paragraph G(1.3). If no rate is provided in the Investment Summary, or those twelve (12) months have expired, you may purchase additional products and services at our then-current list price, also by executing a mutually agreed contract amendment pursuant to Paragraph G(1.3). The terms of this Agreement will control any such additional purchase(s), unless otherwise specifically provided in the amendment.
2. Optional Items. Pricing for any listed optional products and services in the Investment Summary will be valid for twelve (12) months from the Effective Date.
3. Contract Dispute Resolution. Any dispute concerning a question of fact as a result of this Agreement which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy to us within ninety (90) days. The decision of the County Purchasing Agent shall be final and conclusive unless we appeal within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. We may not institute legal action, prior to receipt of the County Purchasing Agent's decision on the claim, unless the County Purchasing Agent fails to render such decision within the time specified.

Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of our intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

4. Taxes. Fairfax County is exempt from and will not pay Federal Excise Tax, Transportation Tax, or the Commonwealth of Virginia Sales and Use Tax. The Federal Excise Tax Number is 54-74-012K. The Commonwealth of Virginia Sales and Use Tax Certificate may be obtained by calling (703) 324-3206. Fairfax County will provide tax exempt forms as required under the Contract.
5. Nondiscrimination. During the performance of this Agreement, we will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, in accordance with Article 3, Section 2.A of the Fairfax County Purchasing Resolution, as amended.
6. E-Verify. We have complied, and will comply, with the E-Verify procedures administered by the U.S. Citizenship and Immigration Services Verification Division for all of our employees assigned to your project.

7. Subcontractors. We will not subcontract any services under this Agreement without your prior written consent, not to be unreasonably withheld.
8. Binding Effect; No Assignment. This Agreement shall be binding on, and shall be for the benefit of, either your or our successor(s) or permitted assign(s). Neither party may assign this Agreement without the prior written consent of the other party; provided, however, your consent is not required for an assignment by us as a result of, but you will be notified in writing within thirty (30) days following the closing of, a corporate reorganization, merger, acquisition, or purchase of substantially all of our assets.
9. Force Majeure. Except for your payment obligations, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure; provided, however, that within ten (10) business days of the Force Majeure event, the party whose performance is delayed provides the other party with written notice explaining the cause and extent thereof, as well as a request for a reasonable time extension equal to the estimated duration of the Force Majeure event.
10. No Intended Third Party Beneficiaries. This Agreement is entered into solely for the benefit of you and us. 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. This provision does not affect the rights of third parties under any Third Party Terms agreed to and executed by the Fairfax County Purchasing Agent.
11. Entire Agreement; Amendment. This Agreement represents the entire agreement between you and us with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Purchase orders submitted by you, if any, are for your internal administrative purposes only, and the terms and conditions contained in those purchase orders will have no force or effect. Shrink wrap, browse wrap, click through, or similar processes are for access purposes only, and any terms and conditions offered in or referenced by those procedures will have no force or effect. This Agreement may only be modified by a written amendment signed by an authorized representative of each party.
12. Severability. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.
13. No Waiver. In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this Agreement, nor will such non-enforcement prevent such party from enforcing each and every term of this Agreement thereafter.
14. Independent Contractor. We are an independent contractor for all purposes under this Agreement.
15. Notices. All notices or communications required or permitted as a part of this Agreement, such as notice of an alleged material breach for a termination for cause or a dispute that must be submitted to dispute resolution, must be in writing and will be deemed delivered upon the earlier of the following: (a) actual receipt by the receiving party; (b) upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the receiving party; (c) upon receipt by sender of proof of email delivery; or (d) if not actually received, five (5) 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 other party at the address set forth on the signature page hereto or such other address as the party may have designated by proper notice. The consequences for the failure to receive a notice due to improper notification by the intended receiving party of a change in address will be borne by the intended receiving party.

16. Confidentiality. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities, including the parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (e.g., social security numbers) and our software code. We acknowledge that any records or other information we submit to you shall be subject to the Virginia Freedom of Information Act ("VFOIA"), Va. Code § 2.2-3700, *et seq.* as amended, and the Virginia Public Procurement Act ("VPPA"), Va. Code § 2.2-4300, *et seq.* as amended. Under this Agreement "confidential information" does not mean any records or information subject to disclosure under the VFOIA or the VPPA.

Each party agrees that it will not disclose any confidential information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement. This obligation of confidentiality will not apply to information that:

- (a) with the exception of personal identifying information, is in the public domain, either at the time of disclosure or afterwards, except by breach of this Agreement by a party or its employees or agents;
 - (b) a party can establish by reasonable proof was in that party's possession at the time of initial disclosure, with the exception of personal identifying information;
 - (c) a party receives from a third party who has a right to disclose it to the receiving party
 - (d) is required to be disclosed by court order; or
 - (e) is the subject of a legitimate disclosure request and not subject to any exceptions from disclosure under the VFOIA, the VPPA, or all other applicable public records disclosure laws. In the event either party receives an open records or other similar applicable request, the response to which requires disclosure of Confidential Information of the other party, the party receiving the request will give the other party prompt notice of the request.
17. Multiple Originals and Authorized Signatures. This Agreement may be executed in multiple originals, any of which will be independently treated as an original document. Any electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as if an original signature. Each party represents to the other that the signatory set forth below is duly authorized to bind that party to this Agreement.
18. Audit Records. We shall maintain adequate copies of books, records, and vouchers directly related to the work under the Agreement and as required to fully comply with the Virginia Freedom of Information Act (Va. Code. §§ 2.2-3700, *et seq.*) and the Virginia Public Procurement Act (Va. Code §§ 2.2-4300, *et seq.*) in such a manner that they may be audited in progress and upon three years following completion of the Agreement.
19. Officials not to Benefit. Upon acceptance of this Agreement, we certify that to the best of our knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this Agreement in accordance with the Fairfax County Purchasing Resolution Article 2, Section 5.A.3.
20. License Requirement. All firms doing business in Fairfax County shall obtain a license as required by Chapter

4, Article 7.2, of The Code of the Fairfax County, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222 8234 or visit: http://www.fairfaxcounty.gov/dta/business_tax.htm.

21. Registering of Corporations. In accordance with Virginia Code Section 13.1-758, any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, as amended, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209.
22. Authorization to Conduct Business in the Commonwealth. A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section following a 15-day period to cure after written notice is received by Tyler that it is not in compliance.
23. Covenant Against Contingent Fees. We warrant that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by us for the purpose of securing business. For violation of this warranty, you shall have the right to terminate or suspend this Agreement without liability to you or in your discretion to deduct from the Agreement's price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
24. Vendor Relations Division. In connection with the performance of this contract, we agree to use our best effort to carry out this policy and to ensure that small and minority businesses shall have the maximum practicable opportunity to compete for subcontract work under this Agreement consistent with the efficient performance of this Agreement. Contractors may rely on oral or written representations by subcontractors regarding their status as small and/or minority business enterprises in lieu of independent investigation. PLEASE COMPLETE THE ATTACHED BUSINESS CLASSIFICATION SCHEDULE.

Where Federal grants or monies are involved it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A 102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

25. Ineligibility. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent, in accordance with Article 5, Section 1 of the Fairfax County Purchasing Resolution.
26. Compliance with Federal, State, and County Laws. We will comply with all applicable federal, state, and applicable local laws and ordinances.

27. Drug Free Workplace. During the performance of this Agreement, we agree to provide a drug-free workplace for our employees in accordance with Article 3, Section 2 of the Fairfax County Purchasing Resolution, as amended.
28. Americans with Disabilities Act Requirements. Fairfax County Government is fully committed to the federal Americans with Disabilities Act (ADA), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Fairfax County government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment to the extent applicable. Acceptance of this Agreement by us acknowledges our commitment and compliance with ADA to the extent applicable.
29. Jurisdiction and Venue. This Agreement and its terms, including, but not limited to, the parties' obligations under it, the performance due from each party under it, and the remedies available to each party for breach of it, shall be governed by, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflict of laws, rules, or provisions, including those of the Commonwealth of Virginia that would cause the application of any laws other than those of the Commonwealth of Virginia shall not apply. Any and all disputes, claims and causes of action arising out of or in connection with this Agreement or any performance hereunder, shall be brought in the state courts of Fairfax County, Virginia, or in the United States District Court, Eastern District of Virginia, Alexandria Division.
30. Immigration Reform and Control Act. We agree that we do not, and shall not during the performance of this Agreement for goods and services in the Commonwealth; knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
31. Contract Documents. This Agreement includes the following exhibits:
- | | |
|-----------|-------------------------------------|
| Exhibit A | Investment Summary |
| Exhibit B | Invoicing and Payment Policy |
| Exhibit C | Maintenance and Support Agreement |
| | Schedule 1: Service Level Agreement |
| | Schedule 2: Support Call Process |

SIGNATURES APPEAR ON FOLLOWING PAGE

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

Tyler Technologies, Inc.

By: 

Name: Robert Kennedy-Jensen

Title: Director of Contracts

Date: 1/6/21

Address for Notices:

Tyler Technologies, Inc.
One Tyler Drive
Yarmouth, ME 04096
Attention: Associate General Counsel

County of Fairfax, VA

DocuSigned by:

By: DEFA0EDCE6834D3

Name: Cathy A. Muse

Title: Purchasing Agent.

02/16/21
Date: _____

Addresses for Notices:

Fairfax County Police Department
Information Technology Bureau
12099 Government Center Pkwy
Fairfax, VA 22035
Attention: Captain Randy Hargus

County of Fairfax
Department of Information Technology
12000 Government Center Parkway, Suite 527
Fairfax, VA 22035
Attention: George Coulter, Tech. Solutions Dir.

County of Fairfax
Department of Procurement and Material
Management
12000 Government Center Parkway, Suite 427
Fairfax, VA 22035
Attention: Yong Kim



Exhibit A
Investment Summary

The following Investment Summary details the software, products, and services to be delivered by Tyler Technologies, Inc. to you under your License and Services Agreement. This Investment Summary is effective as of the Effective Date. Capitalized terms not otherwise defined will have the meaning assigned to such terms in your License and Services Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



Quoted By:
Quote Expiration:

Lisa McKenzie
5/8/21

Quote Name:

2020-213401

Sales Quotation For:

Fairfax County Police Department
4100 Chain Bridge Rd
Fairfax, VA 22030-7003
Phone: 703-691-2131

Shipping Address:

Fairfax County Police Department
4100 Chain Bridge Rd
Fairfax, VA 22030-7003

Tyler Software

Description	License	Discount	License Total	Year One Maintenance
Brazos				
License				
Brazos Site License	\$ 0	\$ 0	\$ 0	\$ 105,602
Total	\$ 0	\$ 0	\$ 0	\$ 105,602
Task				
Task: Spatial Mapping Reporting and GeoLocation	\$ 0	\$ 0	\$ 0	\$ 4,500
Total	\$ 0	\$ 0	\$ 0	\$ 4,500
TOTAL				\$ 110,102

Annual / SaaS

Description	Quantity	Fee	Discount	Annual
Brazos				
Hosting Fee				

Brazos Hosting Fee

\$ 0

\$ 0

\$ 0

TOTAL**\$ 0****Summary****One Time Fees****Recurring Fees**

Total Tyler Software

\$ 0

\$ 105,602

Total Annual

\$ 0

\$ 4,500

Total Tyler Services

\$ 0

\$ 0

Total Third-Party Hardware, Software, Services

\$ 0

\$ 0

Summary Total**\$ 0****\$110,102****Contract Total****\$ 110,102**

Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held for six (6) months from the Quote date or the Effective Date of the contract, whichever is later.

Client Approval: _____

Date: _____

Print Name: _____

P.O.#: _____



Exhibit B

Invoicing and Payment Policy

Tyler Technologies, Inc. will provide you with the software, products, and services set forth in the Investment Summary of your License and Services Agreement. Capitalized terms not otherwise defined will have the meaning assigned to such terms in your License and Services Agreement.

Invoicing and Payment Procedures: We will invoice you for the applicable license fees, products, and services in the Investment Summary as set forth below. Your rights to dispute any invoice are set forth in your License and Services Agreement.

1. Tyler Software.

- 1.1 *License Fees:* License fees are invoiced upon the execution of the License and Services Agreement.
- 1.2 *Maintenance and Support Fees:* Maintenance and Support Fees for the first annual term are specified in the Investment Summary and are due upon execution of the License and Services Agreement. Subsequent maintenance and support fees, at Tyler's then-current rates, are invoiced annually in advance of the anniversary of January 1st. Notwithstanding anything in the prior sentence, Tyler agrees not to raise your annual maintenance and support fees by more than four (4) percent above the prior years' annual term for Years Two (2) through Five (5) of this Agreement.
- 1.3 *Spatial Mapping Reporting and GeoLocation:* Year 1 annual fees are invoiced on the date Tyler makes the software available to the Client ("Delivery Date") for the prorated period of the Delivery Date through December 31, 2021. Subsequent annual Spatial Mapping Reporting and GeoLocation fees, at Tyler's then-current rates, are invoiced annually in advance of the anniversary of January 1 each year. Notwithstanding anything in the prior sentence, Tyler agrees not to raise your annual Spatial Mapping and GeoLocation fees by more than four (4) percent above the prior years' annual term for Years Two (2) through Five (5) of this Agreement.

2. Professional Services.

- 2.1 *Professional Services:* Subject to Paragraph C(2) of the Agreement, professional services are billed as delivered and invoiced as incurred. If no rate is provided in the Investment Summary for Professional Services, you may purchase professional services at rates to be negotiated, by executing a mutually agreed upon addendum pursuant to Paragraph G(1.3) of the Agreement and prior to delivery of professional services.
- 2.2 *Requested Modifications to the Tyler Software:* Requested modifications to Tyler Software are invoiced 25% upon delivery of specifications and 75% upon installation of the applicable modification. You must report any failure of the modification to conform to the specifications within sixty (60) business days of delivery; otherwise, the modification will be deemed to be in compliance with the specifications after the 60-day window has passed.

3. Other Services and Fees.

3.1 *Hosting Fees:* Hosting Fees for the Tyler Software identified on the Investment Summary are part of and are included in the Brazos Site License annual Maintenance and Support Fees and will renew automatically for additional one (1) year terms at the same time as Brazos Site License annual Maintenance and Support Fees, unless terminated in writing by either party at least thirty (30) days prior to the end of the then-current term; provided, however, that this Agreement will terminate upon the expiration of the Period of Agreement. Notwithstanding anything in the prior provision, Tyler agrees not to raise Client's annual Hosting Fees by more than four (4) percent above the prior years' annual Hosting Fees from Years Two (2) through five (5) of this Agreement.

4. Third Party Products.

Third Party Software License Fees: License fees for Third Party Software, if any, shall be invoiced in accordance with the addendum approving purchase of such Third Party Software.

4.1 *Third Party Software Maintenance:* The first-year maintenance for the Third Party Software is invoiced when we make it available to you for downloading.

4.2 *Third Party Hardware:* Third Party Hardware costs, if any, shall be invoiced in accordance with the addendum approving purchase of such Third Party Hardware.

4.3 *Third Party Services:* Third Party Services, if any, fees shall be invoiced in accordance with the addendum approving purchase of such Third Party Services.

5. Travel Expenses. The parties acknowledge that there are no services itemized in the Investment Summary that would require Tyler to travel onsite, and no such services are contemplated as of the Effective Date of this Agreement. Should the County request onsite services following the Effective Date, the parties will enter into a mutually agreeable addendum, in accordance with Paragraph G(1.3) of the Agreement, relating to such onsite services and the travel expense associated therewith, if any.

Payment. We prefer to receive payments electronically. Our electronic payment information is:



Exhibit C

Maintenance and Support Agreement

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

1. **Term.** We provide maintenance and support services on an annual basis. The initial term commences on January 1, 2021 and remains in effect for one (1) year. The term will renew automatically for additional one (1) year terms unless terminated in writing by either party at least thirty (30) days prior to the end of the then-current term; provided, however, that this Agreement hereunder will terminate upon expiration of the Period of Agreement.
2. **Maintenance and Support Fees.** Your year 1 maintenance and support fees for the Tyler Software are listed in the Investment Summary, and your payment obligations are set forth in the Invoicing and Payment Policy. We reserve the right to suspend maintenance and support services if you fail to pay undisputed maintenance and support fees within sixty (60) days of our written notice. We will reinstate maintenance and support services only if you pay all past due maintenance and support fees, including all fees for the periods during which services were suspended.
3. **Maintenance and Support Services.** As long as you are not using the Help Desk as a substitute for our training services on the Tyler Software, and you timely pay your maintenance and support fees, we will, consistent with our then-current Support Call Process:
 - 3.1 perform our maintenance and support obligations in a professional, good, and workmanlike manner, consistent with industry standard best practices, to resolve Defects in the Tyler Software (limited to the then-current version and the immediately prior version); provided, however, that if you modify the Tyler Software without our consent, our obligation to provide maintenance and support services on and warrant the Tyler Software will be void;
 - 3.2 provide telephone support during our established support hours;
 - 3.3 maintain personnel that are sufficiently trained to be familiar with the Tyler Software and Third Party Software, if any, in order to provide maintenance and support services;
 - 3.4 provide you with a copy of all major and minor releases to the Tyler Software (including updates and enhancements) that we make generally available without additional charge to customers who have a maintenance and support agreement in effect; and
 - 3.5 provide non-Defect resolution support of prior releases of the Tyler Software in accordance with our then-current release life cycle policy.
4. **Dedicated Account Manager.** If you pay for the services of a Dedicated Account Manager, Tyler will provide

you with a Dedicated Account Manager in accordance with the provisions below. The Dedicated Account Manager's term will renew for additional one (1) year terms if approved in writing by you at least thirty (30) days prior to the end of the then-current term.

- 4.1 The Dedicated Account Manager will provide you with 40 hours per month of maintenance and support services;
 - 4.2 The Dedicated Account Manager's responsibilities are limited to your production environment of the Tyler Software;
 - 4.3 The Dedicated Account Manager's services must be utilized during the then-current annual maintenance and support term, and do not carry over to any subsequent term;
 - 4.4 Requested services over the 40 hours per month will be billed at our then-current rates. We will provide you with a proposed contract amendment per Section C(3); and
 - 4.5 The Dedicated Account Manager will provide services from our offices. Should you request the Dedicated Account Manager perform onsite services, you will be responsible for travel and other expenses incurred, subject to the Invoicing and Payment Policy.
5. Client Responsibilities. We will use all reasonable efforts to perform any maintenance and support services remotely. Currently, we use a third-party secure unattended connectivity tool called Bomgar, as well as GotoAssist by Citrix to access the devices or computers operating the Tyler Software. Therefore, you agree to maintain a high-speed internet connection capable of connecting us to your devices or computers operating the Tyler Software. You agree to provide us with a login account and local administrative privileges as we may reasonably require to perform remote services. We will, at our option, use the secure connection to assist with proper diagnosis and resolution, subject to any reasonably applicable security protocols. If we cannot resolve a support issue remotely, we may be required to provide onsite services. In such event, we will be responsible for our travel expenses, unless it is determined that the reason onsite support was required was a reason outside our control. Either way, you agree to provide us with full and free access to the Tyler Software, working space, adequate facilities within a reasonable distance from the equipment, and use of machines, attachments, features, or other equipment reasonably necessary for us to provide the maintenance and support services, all at no charge to us. We strongly recommend that you also maintain a VPN for backup connectivity purposes.
6. Hardware and Other Systems. If you are a self-hosted customer and, in the process of diagnosing a software support issue, it is discovered that one of your peripheral systems or other software is the cause of the issue, we will notify you so that you may contact the support agency for that peripheral system. We cannot support or maintain Third Party Products except as expressly set forth in the Agreement.

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

- (a) All infrastructure executing Tyler Software shall be managed by you;
 - (b) You will maintain support contracts for all non-Tyler software associated with Tyler Software (including operating systems and database management systems, but excluding Third-Party Software, if any); and
 - (c) You will perform daily database backups and verify that those backups are successful.
7. Other Excluded Services. Maintenance and support fees do not include fees for the following services: (a) initial installation or implementation of the Tyler Software; (b) onsite maintenance and support (unless Tyler cannot remotely correct a Defect in the Tyler Software, as set forth above); (c) application design; (d) other consulting services; (e) maintenance and support of an operating system or hardware, unless you are a

hosted customer; or (f) installation, training services, or third party product costs related to a new release. Requested maintenance and support services such as those outlined in this section will be billed to you on a time and materials basis at our then current rates, subject to paragraph G(1.3) of this Agreement. You must request those services with at least one (1) weeks' advance notice.

8. Current Support Call Process. Our current Support Call Process for the Tyler Software is attached to this Exhibit C at Schedule 1.



Exhibit C

Schedule 1

Service Level Agreement

Agreement Overview

This SLA outlines the information technology service levels that Tyler will provide to Client to ensure the availability of the Hosting Services that Client has requested Tyler to provide. All other support services are documented in the applicable Support Call Process. All defined terms not defined below have the meaning set forth in the Agreement.

Definitions

Attainment: The percentage of time a service is available during a billing cycle, with percentages rounded to the nearest whole number.

Client Error Incident: Any service unavailability resulting from Client's applications, content or equipment, or the acts or omissions of any of Client's service users or third-party providers over whom Tyler exercises no control.

Downtime: Those minutes during which the applicable software products are materially unavailable for Client's use. Downtime does not include those instances in which only a Defect is present.

Service Availability: The total number of minutes in a billing cycle that a given service is capable of receiving, processing, and responding to requests, excluding maintenance windows, Client Error Incidents and Force Majeure.

Service Availability

The Service Availability of the applicable software products is intended to be 24/7/365. Tyler sets Service Availability goals and measures whether Tyler has met those goals by tracking Attainment.

Client Responsibilities

Whenever Client experiences Downtime, Client must make a support call according to the procedures outlined in the applicable Support Call Process exhibit. Client may escalate through the hosting hotline. Client will receive a support incident number. Any Downtime is measured from the time Tyler intakes Client's support incident.

To track attainment, Client must document, in writing, all Downtime that Client has experienced during a billing cycle. For purposes of this Service Level Agreement, billing cycle shall be based on each calendar quarter. Client

must deliver such documentation to Tyler within thirty (30) days of a billing cycle's end.

The documentation County provides must substantiate the Downtime. It must include, for example, the support incident number(s) and the date, time and duration of the Downtime(s).

Tyler Responsibilities

When Tyler's support team receives a call from Client that a Downtime has occurred or is occurring, Tyler will work with Client to identify the cause of the Downtime (including whether it may be the result of a Client Error Incident or Force Majeure). Tyler will also work with Client to resume normal operations.

Upon timely receipt of Client's Downtime report, outlined above, Tyler will compare that report to Tyler's own outage logs and support tickets to confirm that a Downtime for which Tyler was responsible indeed occurred.

Tyler will respond to Client's Downtime report within thirty (30) days of receipt. To the extent Tyler has confirmed Downtime for which Tyler is responsible, Tyler will provide Client with the relief set forth below.

Client Relief

When a Service Availability goal is not met due to Client's confirmed Downtime, Tyler will provide Client with relief that corresponds to the percentage amount by which that goal was not achieved, as set forth in the Client Relief Schedule below.

Notwithstanding the above, the total amount of all relief that would be due under this SLA will not exceed 5% of the fee for any one billing cycle. Issuing of such credit does not relieve Tyler of its obligations under the Agreement to correct the problem which created the service interruption. A correction may occur in the billing cycle following the service interruption. In that circumstance, if service levels do not meet the corresponding goal for that later billing cycle, Client's total credits will be doubled, with equal relief being provided in that later billing cycle.

Client Relief Schedule

Targeted Attainment	Actual Attainment	Client Relief
100%	98-99%	Remedial action will be taken at no additional cost to Client.
100%	95-97%	Remedial action will be taken at no additional cost to Client. 4% credit of fee for affected billing cycle will be posted to next billing cycle
100%	<95%	Remedial action will be taken at no additional cost to Client. 5% credit of fee for affected billing cycle will be posted to next billing cycle

Client may request a report from Tyler that documents the preceding billing cycle's Service Availability,

Downtime, any remedial actions that have been/will be taken, and any credits that may be issued. That report is available by contacting the hosting hotline through the support portal(s).

Applicability

The commitments set forth in this SLA do not apply during maintenance windows, Client Error Incidents, and Force Majeure.

Tyler performs maintenance during limited windows that are historically known to be reliably low-traffic times. If and when maintenance is predicted to occur during periods of higher traffic, Tyler will provide advance notice of those windows and will coordinate to the greatest extent possible with Client. When maintenance is scheduled to occur, Tyler will provide approximately two (2) weeks' advance written notice to the contact information that Client supplies on Client notification form. When emergency maintenance is scheduled, Client will receive an email at that same contact point.

Force Majeure

Client will not hold Tyler responsible for meeting service levels outlined in this SLA to the extent any failure to do so is caused by Force Majeure. In the event of Force Majeure, Tyler will file with Client a signed request that said failure be excused. That writing will include the details and circumstances supporting Tyler's request for relief with clear and convincing evidence pursuant to this provision. Client will not unreasonably withhold its acceptance of such a request.



Exhibit C

Schedule 2

Support Call Process

Support Channels

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

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

Support Resources

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

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

Support Availability

Tyler's Brazos eCitations solutions offers 24/7 support of the product and software.

Issue Handling

Incident Tracking

Every support incident is logged into Tyler's Customer Relationship Management System and given a unique incident number. This system tracks the history of each incident. The incident tracking number is used to track and reference open issues when clients contact support. Clients may track incidents, using the incident number, through the portal at Tyler's website or by calling software support directly.

Incident Priority

Each incident is assigned a priority number, which corresponds to the client's needs and deadlines. The client is responsible for reasonably setting the priority of the incident per the chart below. The goal of this structure is

to help the client clearly understand and communicate the importance of the issue and to describe expected responses and resolutions.

Priority Level	Characteristics of Support Incident	Resolution Targets
1 Critical	Support incident that causes (a) complete application failure or application unavailability; (b) application failure or unavailability in one or more of the client's remote location; or (c) systemic loss of multiple essential system functions.	Tyler shall provide an initial response to Priority Level 1 incidents within one (1) business hour of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within one (1) business day. Tyler's responsibility for lost or corrupted data is limited to assisting the client in restoring its last available database.
2 High	Support incident that causes (a) repeated, consistent failure of essential functionality affecting more than one user or (b) loss or corruption of data.	Tyler shall provide an initial response to Priority Level 2 incidents within four (4) business hours of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within five (5) business days. Tyler's responsibility for loss or corrupted data is limited to assisting the client in restoring its last available database.
3 Medium	Priority Level 1 incident with an existing circumvention procedure, or a Priority Level 2 incident that affects only one user or for which there is an existing circumvention procedure.	Tyler shall provide an initial response to Priority Level 3 incidents within one (1) business day of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents without the need for a circumvention procedure with the next published maintenance update or service pack. Tyler's responsibility for lost or corrupted data is limited to assisting the client in restoring its last available database.
4 Non-critical	Support incident that causes failure of non-essential functionality or a cosmetic or other issue that does not qualify as any other Priority Level.	Tyler shall provide an initial response to Priority Level 4 incidents within two (2) business days. Tyler shall use commercially reasonable efforts to resolve such support incidents, as well as cosmetic issues, with a future version release.

Incident Escalation

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

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

If a client feels they are not receiving the service needed, they may contact the appropriate Software Support Manager. After receiving the incident tracking number, the manager will follow up on the open issue and determine the necessary action to meet the client's needs.

On occasion, the priority or immediacy of a software support incident may change after initiation. Tyler encourages clients to communicate the level of urgency or priority of software support issues so that we can respond appropriately. A software support incident can be escalated by any of the following methods:

- (1) Telephone – for immediate response, call toll-free to either escalate an incident's priority or to escalate an issue through management channels as described above.
- (2) Email – clients can send an email to software support in order to escalate the priority of an issue
- (3) On-line Support Incident Portal – clients can also escalate the priority of an issue by logging into the client incident portal and referencing the appropriate incident tracking number.

Remote Support Tool

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