

**Technical Support Services, Licenses, and Maintenance Services**

**Contract No. 234-A**

THIS AGREEMENT made and entered into as of this 24<sup>th</sup> day of OCTOBER, 2005 by and between Tier Technologies, Inc., a corporation organized and existing under the laws of the State of California, having its principal office at 10780 Parkridge, Blvd. Suite 400, Reston, VA 20191 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide Technical Support Services, Licenses, and Maintenance Services for the existing ADPICS / OLF FAMIS system, as set forth in the Scope of Services (Exhibit A); and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the County desires to procure from the Contractor such Technical Support Services, Licenses, and Maintenance Services for the ADPICS / OLF FAMIS system for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

**ARTICLE 1. DEFINITIONS**

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Exhibit A), and all associated addenda and attachments, the Contractor's Proposal, and all other

attachments hereto and all amendments issued hereto.

- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative.
- d) The word "Contractor" to mean Tier Technologies, Inc. and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescriptions of the County's Project Manager, in his or her reasonable discretion, and similarly, the words "approved", "acceptable", "satisfactory", "equal", "necessary" or words of like import to mean respectively, approved, acceptable or satisfactory to, equal or necessary, all in the reasonable discretion of the County's Project Manager.
- h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County and Contractor.
- i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Contract.
- k) The words "Scope of Services" to mean the document appended hereto as Exhibit A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of

Contract with the Contractor.

- m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

**ARTICLE 2. ORDER OF PRECEDENCE**

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Exhibit A), 3) the Price Schedule (Exhibits B, B1) and any associated addenda and attachments thereof.

**ARTICLE 3. RULES OF INTERPRETATION**

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

**ARTICLE 4. NATURE OF THE AGREEMENT**

- a) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b) The Contractor shall furnish all labor, materials, tools, supplies, and other items

required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Managers.

- c) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. Subject to written agreement between the parties regarding any pricing and schedule, the Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

#### **ARTICLE 5. CONTRACT TERM**

The Contract shall become effective on October 1, 2005 and shall be for a duration of two (2) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period for three (3) additional years on a year-to-year basis. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. The fees during any such extension shall be those that would have been in effect if the Contract be renewed for a subsequent term. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period upon mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

#### **ARTICLE 6. NOTICE REQUIREMENTS**

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax and followed with delivery of hard copy; and in any case addressed as follows:

##### **(1) to the County**

- i. to the Project Manager (For OLF FAMIS, RIMS, Cost Allocation, Labor Distribution Systemwide, STARGAZE / GUI, WebGUI, and Accounts

Payable Module) :

Miami-Dade County  
Finance Department  
111 NW 1<sup>st</sup> Street Suite 2600  
Miami FL, 33128

Attention: Controller  
Phone: (305) 375 - 5080  
Fax: (305) 375 - 4966

ii. to the Project Manager (For ADPICS):

Miami-Dade County  
Department Of Procurement Management  
111 NW 1<sup>st</sup> Street Suite 1300  
Miami FL, 33128

Attention: ADPICS Project Manager  
Phone: (305) 375 - 2205  
Fax: (305) 375 - 5688

and,

iii. to the Contract Manager (For All) :

Miami-Dade County  
Department of Procurement Management  
111 N.W. 1<sup>st</sup> Street, Suite 1300  
Miami, FL 33128-1974  
Attention: Director  
Phone: (305) 375-5257  
Fax: (305) 375-2316

**(2) To the Contractor**

Tier Technologies, Inc.  
10780 Parkridge Blvd. Suite 400  
Reston, VA 20191

Attention: Vice President, Financial Management Systems  
Phone: (571) 382-1023  
Fax: (571) 382-1005

With a copy to: General Counsel  
Phone: (571) 382-1023  
Fax: (571) 382-1005

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

**ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED**

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall not exceed the total amount of One Million, Six Hundred Ninety-Five Thousand, Seven Hundred Forty-Nine Dollars (\$1,695,749.00). The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

With respect to travel costs and travel related expenses, the County shall not be liable for any such expenses incurred unless notified in writing and approved in advance by the designated Project Managers. The Contractor then agrees to adhere to CH. 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees.

**ARTICLE 8. PRICING**

Except as otherwise set forth in this Agreement, prices shall remain firm and fixed for the term of the Contract, including any option or extension periods; however, the

Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.

#### **ARTICLE 9. METHOD AND TIMES OF PAYMENT**

The Contractor agrees that subject to the terms of this Agreement, the Contractor may invoice and the County agrees to pay for: (a) the Maintenance Services described in this Agreement on an annual basis, in advance of the then current maintenance term, (b) the Services provided in connection with the development of certain enhancements to the Contractor's software ("Enhancements") performed on a time and materials basis at the rates set forth in this Agreement, subject to the invoice schedule agreed upon between the parties in an applicable Statement of Work or Change Order, and (c) Production Support services at the rates set forth in this Agreement, invoiced on a monthly basis for the actual time spent and expenses incurred in performing such Production Support in the immediately preceding calendar month. Invoices requesting reimbursement of expenses will be supported by copies of corresponding receipts.

It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses and minority and women business enterprises shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

- a) For OLF FAMIS, RIMS, Cost Allocation, Labor Distribution, SYSTEMWIDE, STARGAZE / GUI, WebGUI and Accounts Payable Module:

Miami-Dade County  
Finance Department  
111 NW 1<sup>st</sup> Street Suite 2600  
Miami, FL 33128

Attention: Controller

b) For ADPICS:

Miami-Dade County  
Department Of Procurement Management  
111 NW 1<sup>st</sup> Street Suite 1300  
Miami, FL 33128

Attention: ADPICS Project Manager

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

#### **ARTICLE 10. PROJECTS AND SERVICES**

The parties anticipate that from time to time they will be in contact regarding the County's needs for assistance on clearly defined Projects ("Projects") in the areas of business strategy, business integration, business process improvement, training, management development, project management, computer programming, systems integration, data processing, software development and other specific activities related to improving the County's computer systems, training or personnel to operate the same, creation or modification of software, and related consulting activities ("Services").

#### **ARTICLE 11. STATEMENT OF WORK**

Prior to the commencement of Services for any Project, the County and the Contractor shall mutually agree upon the terms and conditions required to complete a Statement of Work ("SOW") for the specific Project that shall define in detail the Services to be performed. After the SOW has been accepted a detailed requirements and detailed design document shall be submitted illustrating the complete financial terms that govern the SOW, proposed Project staffing, anticipated Project schedule, and other information relevant to the Project. Each SOW executed hereunder shall automatically incorporate

the terms and conditions of this Agreement.

## **ARTICLE 12. INDEMNIFICATION AND INSURANCE**

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Upon County's notification, the Contractor shall, furnish to Miami-Dade County, Department of Procurement Management, Technical Services Division, 111 N.W. 1<sup>st</sup> Street, Suite 1300, Miami, Florida 33128-1974, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of the Department of Procurement Management, as the certificate holder, must appear on the certificate of insurance.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.

4. Professional Liability Insurance in an amount not less than \$250,000 with a deductible per claim not to exceed ten percent (10%) of the limit of liability.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

**Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.**

**NOTE: MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement

within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

#### **ARTICLE 13. MANNER OF PERFORMANCE**

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a

manner consistent with the requirements for such a position.

- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

**ARTICLE 14. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR**

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

**ARTICLE 15. INDEPENDENT CONTRACTOR RELATIONSHIP**

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise,

agreement or representation other than specifically provided for in this Agreement.

#### **ARTICLE 16. AUTHORITY OF THE COUNTY'S PROJECT MANAGERS**

- a) The Contractor hereby acknowledges that the County's Project Managers will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Managers, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Managers as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Managers. In the event that the Contractor and the Project Managers are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be

made. Whenever the County Manager is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

- e) The County Manager shall have up to thirty (30) calendar days to render a written opinion to the parties. Upon receipt of such decision, or in the absence of a decision after the expiration of this thirty-day period, either party, at its sole discretion, may submit the dispute to a court of competent jurisdiction. Nothing in this Article shall prevent or delay either party from seeking injunctive relief for misuse or misappropriation of its confidential or proprietary information under this Agreement.

#### **ARTICLE 17. MUTUAL OBLIGATIONS**

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

#### **ARTICLE 18. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING**

The Contractor shall maintain, and shall require that its subcontractors and suppliers

maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope Of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

**ARTICLE 19. AUDITS**

The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement.

The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

**ARTICLE 20. SUBSTITUTION OF PERSONNEL**

Except as noted below, in the event the Contractor wishes to substitute personnel for the personnel specifically designated in writing in the applicable Statement of Work or Change Order as a "Key Personnel", the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution. Tier shall not be required to provide such notice for any Key Personnel who leaves Tier's employment without providing ten (10) business days notice or whose employment with Tier is terminated on less than ten (10) days notice; provided that Tier shall promptly notify the County of any such termination of employment upon becoming aware of the same.

**ARTICLE 21. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT**

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

**ARTICLE 22. SUBCONTRACTUAL RELATIONS**

Contractor may not subcontract its rights or delegate its obligations under this Agreement without the County's prior written consent and approval, which shall not be unreasonably withheld or delayed.

**ARTICLE 23. SOFTWARE**

The Contractor shall provide the County with documentation, satisfactory to the County, confirming that the Contractor has acquired on the County's behalf all software licenses required hereunder.

- a. In the event the County purchases a license for Licensed Software, the Contractor shall provide to the County the computer programs (the "Programs"), other materials related thereto (the "Documentation") with the Programs.

**ARTICLE 24. SOFTWARE LICENSE**

- a. Upon payment of all amounts due therefore, the Contractor shall grant to the County, a perpetual, non-exclusive, non-transferable license to use the Program(s) and associated Documentation, in both object code and source code format, solely for the County's internal use and subject to the terms and restrictions of this Agreement. The County is prohibited from disclosing the Program and Documentation other than to its employees and contractors who: (i) have a need to know, (ii) are permitted to use the Program and Documentation solely at the County's facilities and (iii) have agreed, in writing, to confidentiality terms substantially similar to those in Article 38 of this Agreement. The County agrees that it shall use and maintain the Program and Documentation solely at its facilities. The County agrees to promptly notify Contractor in the event it learns of any use or threatened use of the Program or Documentation which is contrary to the terms of this Agreement and agrees to use commercially reasonable efforts to stop and/or assist Contractor in stopping such use or threatened use.
- b. County may make reasonable copies of the Program and Documentation for back-up and archival purposes in accordance with applicable law. County shall reproduce the Program Software and Documentation accurately and include all original copyright and trademark notices, claims of confidentiality or trade secrets, and other proprietary rights notices on all back-up or archival copies.

Any copies that County makes of the Program or Documentation, in whole or in part, are Contractor's sole property.

- c. License Restrictions: County may not: (i) modify, adapt, decompile or reverse engineer any Program; (ii) create derivative works based on any Program; (iii) transfer to a location other than a County facility, or sublicense to any third party, any Program or Documentation, or any part thereof; or (f) use any Program to perform Value Added Services (as defined below). As used in this Agreement, "Value Added Services" means using the Program in connection with providing services to any third party, including installation, integration and testing of hardware, software and/or networking solutions.

#### **ARTICLE 25. SCOPE OF LICENSE**

The County may use the Licensed Software on any and all equipment configurations of whatever make, manufacture and/or model, owned, controlled or contracted for, by the County or entities controlling, controlled by, under common control with, or organizations which may hereafter be formed by or which may assume the responsibilities of the County or any successors of the County. Irrespective of the number of equipment configuration(s) controlled by the County upon which the Licensed Software is used, the County shall pay only one license fee, which license fee is set forth herein, provided however that the County orders such Licensed Software. In no event shall Contractor be required to provide maintenance or other like services to fix variances between the Program's performance and its corresponding Documentation to the extent such variances are caused by the County using the Program on other than the equipment and equipment configurations approved in the Documentation.

#### **ARTICLE 26. SOFTWARE RELATED DOCUMENTATION**

The Licensed Software-related Documentation ("Documentation") shall consist of the source code for all Licensed Software for which source code is a Deliverable hereunder, any and all operator's and user's manuals, training materials, guides, listings, design documents, specifications, flow charts, data flow diagrams, commentary, and other materials and documents that explain the performance, function or operation of individual programs and the interaction of programs within the system; control file and scripts used to compile, link, load and/or make the applications and systems; test scripts, test plans and test data and other materials for use in conjunction with the applicable software. The Documentation will in all cases be fully applicable to the use of the Programs with the Equipment, and will identify and reflect any particular features of the Equipment which may affect the normal use and operation of the Programs. The

Contractor shall deliver to the County three (3) copies of said Documentation. The County will have the right, as part of the license granted herein, to make as many additional copies of the Documentation as it may deem necessary.

**ARTICLE 27. OPERATIONG ENVIRONMENT FOR INFORMATION SYSTEMS**

Subject to the terms and conditions of this Agreement, Contractor shall provide the Maintenance Services to the County as described in Article 29 of this Agreement.

**ARTICLE 28. OWNERSHIP OF LICENSED SOFTWARE**

The Contractor hereby represents that the Contractor possesses all rights to and interests in the Licensed Software, and all portions thereof, or otherwise have the right to grant to the County the affected licenses, without violating any rights of any third party, and there are currently no actual or threatened suits by any such third parties based on an alleged violation of such rights by the Contractor.

**ARTICLE 29. GOVERNMENT SUPPORT CENTER SERVICE GUARANTEE**

Miami-Dade County is a Tier Technologies, Inc. Gold Service client. Exact duplications of the code in the Miami-Dade County development region is maintained at the Tier Technologies, Inc. headquarters in Reston, VA. Rates included in the Maintenance Service Agreement cover the Gold Service package. Subject to the payment of corresponding maintenance fees, the Gold Service Support will continue regardless of applications installed (Including but not limited to WebGUI, WebProcure, etc.)

As part of the Software support services and Maintenance Agreement, the Licensor will maintain the Products in an operable condition according to the specifications contained in the technical manuals and as outlined in the contract with the Licensee response thereto. Licensor shall provide Licensee with Enhancements to the Software as they are made generally available from time to time. Notwithstanding any other provisions of this Agreement, Licensor shall provide support with respect to the Licensee then-current version of the Software.

Licensor shall also provide technical support for Software Errors. Upon receipt of Licensee's request for technical support in connection with a Software Error, Licensor will (a) create an error report, (b) assign a severity level and (c) attempt to resolve the Software Error in accordance with the procedures and processes for problem resolution detailed below. It is understood by the parties that the Licensee and Licensor must mutually agree on whether an error is classified as a Severity Level 1, 2, or 3 error.

**Severity Level 1** implies a Software Error in which the Software is not functioning. Some examples include but are not limited to Severity Level 1 Software problems are as follows: (a) Software is down and will not restart; (b) Software is not able to communicate with external systems; and (c) Software is generating a data corruption condition.

Licensor shall resolve Severity Level 1 Software Errors within one (1) business day, or within a mutually agreed upon timeframe. When a Severity Level 1 Software Error is reported, Licensor will assign resources necessary to correct the Software Error. If access to the Software is required, Licensee will provide a contact available to Licensor and access to Licensee's system and other software for the duration of the error correction procedures.

**Severity Level 2** implies a Software Error such that (a) an essential function does not work as documented, or (b) testing and usage can continue but the task cannot be completed, and no workarounds exist. Licensor shall assign at least one (1) dedicated person to the problem and shall resolve Severity Level 2 Software Errors within two (2) business days, or within a mutually agreed upon timeframe.

**Severity Level 3** implies a Software Error such that implementations of function do not match specification and/or technical Documentation, and a workaround may exist. Licensor shall resolve Severity Level 3 Software Errors within ten (10) business days, or within a mutually agreed upon timeframe.

If the Licensor fails to meet the above agreed upon terms of this service guarantee; it is expected that the Licensor provide an alternative plan of action in writing to the County within one business day. The plan of action will provide a detailed remedy to the situation that must be agreed upon by the County Project Managers prior to execution. If the remedy proposed by the Licensor in their plan of action does not fall into the covered maintenance charges, then the work will be completed at the Licensor's expense.

### **ARTICLE 30. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS**

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters,

projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

### **ARTICLE 31. SEVERABILITY**

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

### **ARTICLE 32. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK**

- a) The County may terminate this Agreement if the Contractor is found to have committed fraud, misrepresentation or to have made a material misstatement, all in the performance of this Agreement.
- b) In the event the Agreement is terminated as provided in Article 34(a) of this Agreement, the County may terminate or cancel any other contract(s) that the Contractor has with the County.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.
- d) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement for convenience (and not for cause, breach or default) upon providing Contractor with no less than thirty (30) calendar days prior written notice.
- e) The Contractor shall, upon receipt of such notice, unless otherwise directed by

the County:

- i. stop work on the date specified in the notice ("the Effective Termination Date");
  - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
  - iii. cancel orders;
  - iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
  - v. take no action which will increase the amounts payable by the County under this Agreement; and
- f) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
- i. portion of the Services completed in accordance with the Agreement and the Work Order up to the Effective Termination Date; and
  - ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and Work Order and has been specifically developed for the sole purpose of this Agreement Work Order but not incorporated in the Services.
- g) All compensation pursuant to this Article are subject to audit.

**ARTICLE 33. EVENT OF DEFAULT**

- a) Subject to Article 34, either party may terminate this Agreement or any Statement of Work or Change Order hereunder solely as a result of a material breach of this Agreement by the other party.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with

respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within five (5) business days of Contractor's receipt of the County's request, or such longer time as may be agreed upon between the parties, in writing, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:

- i. treat such failure as a repudiation of this Agreement;
  - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data, and agrees to compensate Contractor for the Services performed through the effective date of the termination of this Agreement.

#### **ARTICLE 34. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION**

In the event of a material breach of this Agreement, as referenced in Article 33(a) of this Agreement, the non-breaching party, as a condition of terminating this Agreement for cause, breach or default, shall first notify the other, breaching party of the breach and provide the breaching party with at least thirty (30) calendar days from receipt of the notice to cure the alleged breach. The non-breaching party may grant an additional period of such duration as it shall deem appropriate without waiver of any of its rights hereunder, so long as the breaching party has commenced curing such breach and is effectuating a cure with diligence and continuity during the cure period.

#### **ARTICLE 35. REMEDIES IN THE EVENT OF DEFAULT**

Subject to Article 36 of this Agreement, if an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for procurement of Services, including procurement and administrative costs; and
- b) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default.

The County may also bring any suit or proceeding for specific performance or for an injunction.

**ARTICLE 36. LIMITATION ON LIABILITY**

The County agrees that the Contractor, its members, directors, officers and employees shall not be liable to the County for any actions, damages, claims, liabilities, costs expenses, or losses in any way arising out of or relating to the services performed hereunder for an aggregate amount in excess of the fees payable by the County to the Contractor under this Agreement, as may be extended. In no event shall the Contractor, its members, directors, officers, or employees be liable for consequential, special, indirect, incidental, punitive, or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits, and opportunity costs, lost data or use). In furtherance and not in limitation of the foregoing, the Contractor will not be liable with respect to any decisions made by the County that is contrary to the advice provided by the Contractor. The provisions of this Paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort (including, without limitation, negligence), or otherwise.

Either party may bring action, regardless of form, arising under or relating to this engagement, at any time within the applicable statute of limitations.

**ARTICLE 37. PATENT AND COPYRIGHT INDEMNIFICATION**

- a) Subject to the limitations in this Article 37, the Contractor shall indemnify and hold the County harmless from and against any third party claim, including reasonable attorney's fees, brought against the County for infringement of patents, copyrights, service marks, trade secrets, or any other third party

proprietary rights, by use or supply of the Programs and/or Documentation in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Work.

- b) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation at its option to: (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the items(s).
- c) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.
- d) Contractor will have no liability for, and no obligation to defend County against, any claim of infringement to the extent such claim is based on (i) use of the Program(s) outside the scope of this Agreement or the corresponding Documentation; (ii) use of a superseded or altered release of any Program(s) if the infringement would have been avoided by the use of a current unaltered release of the Program; (iii) the combination, operation, or use of a Program with other software, hardware or other materials if such infringement would have been avoided by the use of the Program without such software, hardware or other materials; (iv) any modification of the Program not made by Contractor; or (v) County's use of the Program after Contractor provides notice that County shall cease use of the Program due to such claim.

#### **ARTICLE 38. CONFIDENTIALITY**

- a) Contractor or County may disclose to the other, either orally or in any recorded medium, information comprised of or relating to: the Programs, Documentation, County employee information, County financial information, techniques; schematics; contracts; methods of operations; procedures; products and/or

services (collectively referred to as the "Confidential Information"). Confidential Information may be in any form whatsoever whether oral or recorded in any medium. Except for the Program, Documentation and information about the County's employees, the parties are obligated to specifically designate information transmitted pursuant to this Agreement as Confidential Information in order to receive the protections of this Article.

- b) Subject to the provisions of Florida's public records laws, Contractor and County agree to maintain in strict confidence the Confidential Information of the other. The party disclosing the Confidential Information to the other party shall be referred to as the "Disclosing Party," whereas the party receiving the Confidential Information of the other shall be referred to as the "Receiving Party." The Receiving Party will use the Confidential Information solely to perform this Agreement. The Receiving Party will not disclose the Confidential Information to any person; provided that, the Confidential Information, may be disclosed on a need-to-know basis to a Receiving Party's employees and/or consultants who have agreed to receive it under written terms at least as restrictive as those specified in this Article 38. The Receiving Party will take reasonable measures to maintain the confidentiality of the Confidential Information, but in no event less than the measures it uses for its own information of similar type. The Receiving Party will immediately give notice to the Disclosing Party of any unauthorized use or disclosure of the Confidential Information. The Receiving Party agrees to reasonably assist the Disclosing Party in remedying any such unauthorized use or disclosure of the Confidential Information. The County agrees to promptly notify the Contractor of any request to disclose Contractor's Confidential Information pursuant to Florida's public records laws, and to cooperate with the Contractor in good faith and to provide the Contractor with reasonable assistance to obtain a protective order against such disclosure.
- c) The obligations contained in this Article 38 will not apply to the extent that Receiving Party can demonstrate that the Confidential Information: (i) was part of the public domain at the time of disclosure or properly became part of the public domain, by publication or otherwise; (ii) was properly in the possession of the Receiving Party at the time of disclosure; (iii) was received from a third party without similar restrictions and without breach of this Agreement; or (iv) is required to be disclosed by a government agency to further the objectives of this Agreement, or by a proper court of competent jurisdiction; provided, however, that Receiving Party will use its best efforts to minimize the disclosure of such information and will consult with and assist the Disclosing Party in obtaining a protective order prior to such disclosure.

**ARTICLE 39. PROPRIETARY INFORMATION**

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledge that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the contractors will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

**ARTICLE 40. PROPRIETARY RIGHTS**

The Contractor hereby acknowledges and agrees that the County retains all rights, title and interest in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder, including all copyright and other proprietary rights therein. The County hereby acknowledges and agrees that the Contractor retains all rights, title and interest in and to all materials, data, documentation and copies thereof furnished by the Contractor to the County hereunder, including the Programs

and the Documentation and all copyright and other proprietary rights therein. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

#### **ARTICLE 41. BUSINESS APPLICATION AND FORMS**

**Business Application** The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

#### **ARTICLE 42. INSPECTOR GENERAL REVIEWS**

##### **Independent Private Sector Inspector General Reviews**

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from

the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

**Miami-Dade County Inspector General Review**

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

**Exception:** The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust

contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

#### **ARTICLE 43. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS**

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Business Development Participation

Provisions, as applicable to this Contract.

- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

#### **ARTICLE 44. NONDISCRIMINATION**

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex,

handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

**ARTICLE 45. CONFLICT OF INTEREST**

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
  
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
  - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

- ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

**ARTICLE 46. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION**

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency,

commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

**ARTICLE 47. BANKRUPTCY**

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

**ARTICLE 48. GOVERNING LAW**

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida.

**ARTICLE 49. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION**

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;

3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIIH/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

**ARTICLE 50. COUNTY USER ACCESS PROGRAM (UAP)**

**a) User Access Fee**

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the contract price and shall accept as payment thereof the contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

**b) Joint Purchase**

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

**c) Contractor Compliance**

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 33 of this Contract.

**ARTICLE 51. SURVIVAL**

Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

**ARTICLE 52. NEGOTIATED ITEMS**

Description	Price
Maintenance Services in connection with the County's use of the Programs listed in the Scope of Services	\$237,796.00

(Exhibit A) in Year 1 October 1, 2005 – September 30, 2006	
Maintenance Services in connection with the County's use of the Programs listed in the Scope of Services (Exhibit A) in Year 2 October 1, 2006 – September 30, 2007	\$267,796.00
<b>As referenced in Exhibit A, fees below are estimates only and subject to agreement in SOW:</b>	
DPM Priority 1 Enhancements	\$321,530.00
DPM Priority 2 Enhancements	\$63,270.00
DPM Priority 3 Enhancements	\$78,440.00
Commodity Code Upgrade	\$27,750.00
Payment Tracking Outside FAMIS	\$26,882.00
Web GUI: Full Implementation and Deployment	\$165,000.00
Vendor Name Recast	\$59,400.00
A/P Enhancements	\$196,100.00
FAMIS Enhancements	\$51,800.00
Executive Data Warehouse	\$199,985.00
<b>Total</b>	<b>\$1,695,749.00</b>

**Production Support Rates**

In addition to providing maintenance services as specified in this Agreement and developing Enhancements as agreed upon in an applicable Statement of Work, Contractor shall also make certain personnel available upon the County's written request above and beyond the maintenance services provided. Such Production Support shall be provided on a time and materials basis, at the hourly rates set forth below, regardless of the staff level provided:

- \$185 per hour during the initial two year term of the Agreement
- \$210 per hour per hour for the third, fourth and fifth year term of the Agreement

Subject to a Statement of Work executed between the parties, Contractor shall provide Services in connection with developing certain Enhancements on a time and materials basis, at the hourly rates set forth below:

Staff		Hourly Rate
<b>Principal</b>	≤ 10 hrs / month	\$275.00
	> 10 hrs / month	\$240.00
<b>Associate Principal</b>	≤ 10 hrs / month	\$250.00
	> 10 hrs / month	\$225.00
<b>Senior Consultant</b>	≤ 10 hrs / month	\$185.00
	> 10 hrs / month	\$175.00
<b>Consultant</b>	≤ 10 hrs / month	\$165.00
	> 10 hrs / month	\$150.00

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IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor

Miami-Dade County

By: [Signature]

By: [Signature]

Name: James Weave

Name: Alina T. Hudak

Title: CEO

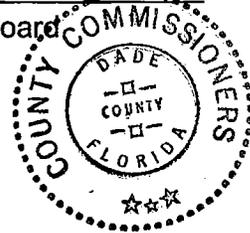
Title: Assistant County Manager

Date: May 17 2005

Date: Oct-7, 2005

Attest: [Signature]  
Corporate Secretary

Attest: [Signature]  
Clerk of the Board



Corporate Seal

Approved as to form and legal sufficiency

[Signature]  
Assistant County Attorney

# **Exhibit A**

Exhibit A

Scope of Services

Scope

The Online OLF FAMIS products are developed by Tier Technologies, Inc. Tier Technologies is the authorized vendor to provide sales, maintenance, and support services for these products.

The Online OLF FAMIS products include:

• Financial Accounting Management Information System	OLF FAMIS	5.1
• Advanced Purchasing and Inventory Control System	ADPICS	5.1
• Recurring Information Management System	RIMS	5.1
• Labor Distribution System	LDS	5.1
• Cost Allocation System	CAS	5.1
• Systemwide Report Writer	SYSTEMWIDE	5.1
• STARGAZE Graphical User Interface (GUI)	GUI	5.1
• Fixed Assets and Accounting Control System	FAACS	5.1

The County has already implemented the latest releases of OLF FAMIS, ADPICS, RIMS, LDS, CAS, and SYSTEMWIDE. Production operations for ADPICS commenced on August 30,1999 under the original Contract No. 234 with KPMG. Tier Technologies, Inc. purchased the Government Solutions Center, a division of KPMG Consulting on March 16, 2002 and is currently providing post-implementation support.

The projects listed on the following pages are proposed enhancement options for various tasks over the course of the next two years to further improve the County's financial reporting and procurement processes. Acceptance of this agreement does not obligate the County to purchase any or all of these items. Rather this agreement establishes a fixed pricing structure for the specified term.

The amounts set forth on the following pages are estimates based upon the information available to the parties at the time this Agreement was negotiated. Contractor's obligation to perform such Enhancement services shall be subject to a mutually agreed upon Statement of Work.

Department of Finance

Modifications Description	Estimated Hrs.	Estimated Cost
Tracking of payments against contracts and other encumbrances currently being managed outside of FAMIS	145	\$26,882.00
Web GUI full implementation and deployment	1,000	\$165,000.00
Vendor Number Recast	360	\$59,400.00
<b>A/P Enhancements</b>		
Enhance Credit Memo processing - posting while vouchers in process, partial CM for 2N matching	780	\$144,300.00
Allow Change Order increase while document is in PVCH, therefore, allowing for continued processing	280	\$51,800.00
<b>FAMIS Enhancements</b>	280	\$51,800.00
Closing T/X's to bypass vendor inactive edit		
More ids for overriding "blocks"		
Different vendor number prefix		
Back up withholding/tax liens, etc.		
Improve back reconciliation process		
<b>Total</b>	<b>2,845</b>	<b>\$499,182.00</b>
Executive Data Warehouse	1,081	\$199,985.00
Implementation, data clean up, and production		
<b>Grand Total</b>	<b>3,926</b>	<b>\$699,167.00</b>

Department of Procurement Management

Priority	Screen	Modification Description	Requirements Definition Hours	Detail Design	Coding	Comments Involving Estimate
1		Implement worksheet capabilities within all ADPICS/GUI inquiry screens (i.e. PO's by department, BPO's with Dept allocation). Include the worksheet functionality within the Bid Entry and Bid Tabulation screens. Currently, screen 2240 Bid Tab Commodity Detail and screen 2250 Bid Tab Vendor Detail include the worksheet functionality. However, screen 2320 Bid Entry Requisition and 2230 Vendor Summary do not include the worksheet functionality. Provide additional fields and/or search criteria to be used in the creation of spreadsheets	68	40	72	
1		Protect the Inspector General Field when a user is creating a Small Purchase Order. When users create a Release the IG value defaults from the BPO, but for small Purchase orders it needs to be protected.	24	8	16	
1		Interface vendor certification information from DBD database to include NCIS certification in screen 9600	88	40	128	
1		Add a total field at the bottom of screen 2341 to sum all Department allocations	12	8	24	
1	New Screen	Create Inquiry "PO/BPO by Department by Vendor. We need the ability to inquire for a specific department all BPO's where they have an allocation. Also the same inquiry for PO's by Department.	40	24	120	New screen will involve lots of refinement. It is possible that 2 new screens are needed or 1 new screen and a change to PHCL2510
1		Create a cross reference inquiry for Change Orders against Purchase Orders by allowing users to input change order number and obtain the number of the original document. Users cannot enter C.O # to INQ. on an Advice of Change, Vendor Change Order, or a Cancellation document number and they want to figure out to which other system document the change relates.	64	18	60	
1		Ability to put an ITB in cancel status and/or ability to do an Advice of Change	110	30	100	This would include a mechanism to handle your issues involving the removal of items from buyers workload
1		Change 2510 and 2324 or provide a similar screen that will include document payment amounts. We need the ability to view the amount.	80	18	80	

1		Include in the 'Note Pad' screen the document number that the note is related to.	20	8	24	
1		Enhance the PO print to include in the 'Ship To' field a note that reads 'See Details Lines for Shipping Information' (Multiple Locations)	8	8	10	The multiple lines are printed, but the 'Ship To' field on the 1 <sup>st</sup> pg. is currently blank
1		Remove the requisition from DPM Agents mailbox (Screen 2470) after the agents have initiated a change order to cancel the requisition. This will keep DPM agents mailboxes in order with only active request.	64	24	88	
2		Modify screen 2410 ( Requisitions by Department ) to reflect the REQ TITLE instead of the commodity description. Changing this field will aid departments when inquiring the status of requisitions, allowing the department to readily identify the requisition without selecting for viewing each req. Include the PO title under the Requisition number (second line)	24	8	80	Will require more time than normal for something like this because screen fields will need to be arranged
2		The "Bill To" portion of the purchase order currently has just the address. Ability to display the telephone and fax numbers.	16	10	6	
2	1100/5100	Increase the Commodity Name field so that the title is fully displayed	16	16	16	
2	New Screen	Create "Workload" screen for creator of documents similar to screen 2430 or 2470 where a user can view all requisition submitted to DPM and see if a PO has been issued or the status.	40	20	80	Need to determine various types of documents that will appear and how long they will stay. Also, what files/fields will be used and updated must also be determined.
3		Ability to allow on screen 2365 (5) decimal places instead of 4. This will benefit users departments when entering market unit cost that are often the case with produce and gas purchases.	160	80	120	
3		Include all 'Ship To' and 'Bill To' addresses in the 2140/2150 inquiry screens.	24	10	30	
1	2360	Block the Inspector General field when creating a Small Purchase Order	12	8	16	

1	2342	Eliminate the default Inspector General value making it a required field when creating a BPO	40	8	16	
1	2360 / 2340	Block the Interface Type field on the PO screen to prevent user update	40	8	64	Estimate higher than required for basic change. The County will want a security method to allow some users to be able to change the interface type field.
1	2360 / 2340	Commodity Code Upgrade	32	8	110	

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<b>Total Hours</b>	<b>982</b>	<b>402</b>	<b>1260</b>	
<b>Priority 1</b>	<b>702</b>	<b>258</b>	<b>928</b>	<b>\$321,530.00</b>
<b>Priority 2</b>	<b>96</b>	<b>54</b>	<b>192</b>	<b>\$63,270.00</b>
<b>Priority 3</b>	<b>184</b>	<b>90</b>	<b>150</b>	<b>\$78,440.00</b>
<b>Commodity Code Upgrade</b>	<b>32</b>	<b>8</b>	<b>110</b>	<b>\$27,750.00</b>
<b>Total</b>				<b>\$490,990.00</b>

# **Exhibit B**

**Exhibit B  
Tier Technologies  
Annual Maintenance Fees**

<b>Module</b>	<b>Annual Fee 10/1/2005 – 9/30/2006</b>	<b>Maintenance Anniversary Date</b>
ADPICS	\$50,031	October 1
FAMIS	\$60,037	October 1
RIMS	\$15,010	October 1
Cost Allocation	\$7,005	October 1
Labor Distribution	\$12,007	October 1
SYSTEMWIDE	\$6,004	October 1
GUI (WebGUI)	\$87,702	October 1
Executive	\$0	October 1
<b>Total Annual Fees:</b>	<b>\$237,796.00</b>	

<b>Module</b>	<b>Annual Fee 10/1/2006 – 9/30/2007</b>	<b>Maintenance Anniversary Date</b>
ADPICS	\$50,031.00	October 1
FAMIS	\$60,037.00	October 1
RIMS	\$15,010.00	October 1
Cost Allocation	\$7,005.00	October 1
Labor Distribution	\$12,007.00	October 1
SYSTEMWIDE	\$6,004.00	October 1
GUI (WEBGUI)	\$87,702.00	October 1
Executive	\$30,000.00	October 1
<b>Total Annual Fees:</b>	<b>\$267,796.00</b>	

**Exhibit B  
Tier Technologies  
Annual Maintenance Fees**

**OTR Year 1**

<b>Module</b>	<b>Annual Fee 10/1/2007 – 9/30/2008</b>	<b>Maintenance Anniversary Date</b>
ADPICS	\$52,533.00	October 1
FAMIS	\$63,039.00	October 1
RIMS	\$15,761.00	October 1
Cost Allocation	\$7,355.00	October 1
Labor Distribution	\$12,607.00	October 1
SYSTEMWIDE	\$6,304.00	October 1
GUI (WEBGUI)	\$92,087.00	October 1
Executive	\$31,500	October 1
<b>Total Annual Fees:</b>	<b>\$281,186.00</b>	

**OTR Year 2**

<b>Module</b>	<b>Annual Fee 10/1/2008 – 9/30/2009</b>	<b>Maintenance Anniversary Date</b>
ADPICS	\$55,160.00	October 1
FAMIS	\$66,191.00	October 1
RIMS	\$16,549.00	October 1
Cost Allocation	\$7,723.00	October 1
Labor Distribution	\$13,327.00	October 1
SYSTEMWIDE	\$6,619.00	October 1
GUI (WEBGUI)	\$96,691.00	October 1
Executive	\$33,075.00	October 1
<b>Total Annual Fees:</b>	<b>\$295,335.00</b>	

**Exhibit B  
Tier Technologies  
Annual Maintenance Fees**

**OTR Year 3**

<b>Module</b>	<b>Annual Fee 10/1/2009 – 9/30/2010</b>	<b>Maintenance Anniversary Date</b>
ADPICS	\$57,918.00	October 1
FAMIS	\$69,501.00	October 1
RIMS	\$17,376.00	October 1
Cost Allocation	\$8,109.00	October 1
Labor Distribution	\$13,899.00	October 1
SYSTEMWIDE	\$6,950.00	October 1
GUI (WEBGUI)	\$101,526.00	October 1
Executive	\$34,729.00	October 1
<b>Total Annual Fees:</b>	<b>\$310,008.00</b>	

\* Accounts Payable / Construction Contract Functionality payments will only be applied if the decision is made in the future to implement the WebProcure module.

Note: The County reserves the right to eradicate obsolete module applications from the existing ADPICS FAMIS system as new module enhancements and customizations are made. All charges associated with the obsolete modules will be deducted from the Total Annual Fees upon the maintenance anniversary date.

**Production Support Rates**

The following rates will be effective during the life of this contract and any renewal periods for production support related activities above and beyond the included maintenance services.

<b>Staff</b>	<b>Hourly Rate</b>
<b>Principal</b>	≤ 10 hrs / month      \$275.00
	> 10 hrs / month      \$240.00
<b>Associate Principal</b>	≤ 10 hrs / month      \$250.00
	> 10 hrs / month      \$225.00

**Exhibit B  
Tier Technologies  
Annual Maintenance Fees**

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<b>Senior Consultant</b>	≤ 10 hrs / month	\$185.00
	> 10 hrs / month	\$175.00

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<b>Consultant</b>	≤ 10 hrs / month	\$165.00
	> 10 hrs / month	\$150.00

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**Exhibit B-1  
Tier Technologies  
Annual Maintenance Fees**

Note: Exhibit B1 is a supplement to Exhibit B. Exhibit B1 will not take effect unless WebProcure is implemented by the County. WebProcure will not be implemented until the completion of the initial two-year term. The following rates will apply during OTR years 1 through 3.

Additionally, rates are included for the Executive Data Warehousing solution. *Executive* is not currently part of the Miami-Dade County suite of systems. These fees will only be due if the *Executive* software is installed.

See Attached List

**Exhibit B-1  
Tier Technologies  
Annual Maintenance Fees**

<b>OTR Year 1</b>		
<b>Module</b>	<b>Annual Fee 10/1/2007 – 9/30/2008</b>	<b>Maintenance Anniversary Date</b>
ADPICS	\$19,881	October 1
FAMIS	\$63,039.00	October 1
RIMS	\$15,761.00	October 1
Cost Allocation	\$7,355.00	October 1
Labor Distribution	\$12,607.00	October 1
SYSTEMWIDE	\$6,304.00	October 1
GUI (WEBGUI)	\$92,087.00	October 1
Executive	\$31,500	October 1
<b>Total Annual Fees:</b>	<b>\$248,534.00</b>	

**OTR Year 2**

<b>Module</b>	<b>Annual Fee 10/1/2008 – 9/30/2009</b>	<b>Maintenance Anniversary Date</b>
ADPICS	\$20,875.00	October 1
FAMIS	\$66,191.00	October 1
RIMS	\$16,549.00	October 1
Cost Allocation	\$7,723.00	October 1
Labor Distribution	\$13,327.00	October 1
SYSTEMWIDE	\$6,619.00	October 1
GUI (WEBGUI)	\$96,691.00	October 1
Executive	\$33,075.00	October 1
<b>Total Annual Fees:</b>	<b>\$261,050.00</b>	

**Exhibit B-1  
Tier Technologies  
Annual Maintenance Fees**

**OTR Year 3**

<b>Module</b>	<b>Annual Fee 10/1/2009 – 9/30/2010</b>	<b>Maintenance Anniversary Date</b>
ADPICS	\$21,919.00	October 1
FAMIS	\$69,501.00	October 1
RIMS	\$17,376.00	October 1
Cost Allocation	\$8,109.00	October 1
Labor Distribution	\$13,899.00	October 1
SYSTEMWIDE	\$6,950.00	October 1
GUI (WEBGUI)	\$101,526.00	October 1
Executive	\$34,729.00	October 1
<b>Total Annual Fees:</b>	<b>\$274,009.00</b>	



**Technologies, Inc.**

**SOFTWARE MAINTENANCE AGREEMENT**

LICENSEE: Miami-Dade County

LICENSOR: Tier Technologies, Inc.

EFFECTIVE DATE: October 1, 2005

**LICENSEE:**

Licensee Name:	<u>Miami-Dade County</u>	Bill to Address (if different):	_____
Contact:	<u>Mari Saydal, DPM; Connie White, Finance</u>		_____
Address:	<u>111 NW 1<sup>st</sup> Street, Suite 1300 (DPM)</u> <u>111 NW 1<sup>st</sup> Street, Suite 2600 (Finance)</u> <u>Miami, Florida 33128</u>		_____
Phone:	<u>(305) 375-2205 (DPM); 375-3738 (Finance)</u>	Phone:	_____
Fax:	<u>(305) 375-5688 (DPM); 375-4966 (Finance)</u>	Fax:	_____
Email:	<u>rms@miamidade.gov (DPM); yaw@miamidade.gov (Finance)</u>	Email:	_____

This Software Maintenance Agreement ("Agreement") is entered into by and between Tier Technologies, Inc., a California Corporation with principal offices at 10780 Parkridge Blvd, Suite 400, Reston, VA 20191, and Miami-Dade County ("Licensee").

1. Maintenance Services.

Licensee hereby purchases from Tier, and Tier hereby agrees to provide during the term of this Agreement, the following Maintenance Services for the Tier software programs identified in Appendix A (the "Software") Monday through Friday, excluding Federal holidays, 8:30 a.m. to 5:30 p.m. Eastern Time:

a. Technical Support. Duly qualified Tier staff will respond to any queries or problems concerning the Software and its operation communicated by the Licensee to Tier by telephone or in writing (including, without limitation, by electronic mail). If Licensee notifies Tier that Software does not operate substantially in accordance with the related documentation generally provided by Tier with such Software, Licensee shall provide Tier such information and materials as Tier may reasonably request (including without limitation computer listing, magnetic media, data listing, etc.) to document and reproduce such problem and to verify whether any proposed solution corrects such problem. Following receipt of such information and materials, if Tier determines that such Software does not operate substantially in accordance with the related documentation, then Tier will use reasonable commercial efforts to correct or replace the defective Software. With respect to problems that, in Tier's reasonable discretion, seriously impair the performance of a major function of the Software or that have been demonstrated to render the Software inoperative, Tier shall make commercially reasonable efforts to correct any programming errors, defects or malfunctions as soon as is reasonably practicable. With respect to other problems, corrections shall be made available to Licensee in a subsequent general Release (as hereinafter defined).

b. Software Updates and Corrections. Tier will promptly make available to Licensee all updates, enhancements and corrections generally released by Tier for such Software, including all relevant documentation

prepared, via the internet, magnetic media or CD-ROM, although nothing herein shall require Tier to provide installation, implementation and testing services hereunder for such updates, enhancements and corrections. Updates, enhancements and corrections do not include software that Tier, in its sole discretion, designates as a new product.

c. **New Releases.** Tier may periodically announce new Software releases ("Releases" and, individually, a "Release") designated by computer platform and operating environment. Releases do not include software that Tier, in its sole discretion, designates as a new product. Upon written request by Licensee, Tier will make available to Licensee via the internet, magnetic media or CD-ROM, a machine-readable copy of the Release and one complete copy of the related documentation. The Release will be provided to Licensee AS IS, without any warranty of any type or nature, for installation and use. Upon written notification to the Licensee of the issuance of a new Release, Tier shall have no obligation whatsoever to provide Maintenance Services (i) in connection with Software Errors that are corrected in such Release or (ii) for prior Releases of the Software after 180 days from the date on which Licensee receives written notification of the new Release, unless Licensee and Tier agree to a different schedule. The Licensee acknowledges that new Releases may not operate on or with all operating Software. The Licensee further agrees that Tier shall be under no obligation to develop any new Release during the term of this Agreement.

This Agreement does not cover any on-site consulting or services, which services shall be provided pursuant to a Statement of Work under a Services Agreement between the parties. Licensee acknowledges and agrees that Tier makes no warranty or guarantee that its efforts will always be successful, (B) there is no warranty or guarantee that any subsequent release of the Software will occur during the term of this Agreement, and (C) the Licensee will not be entitled hereunder to receive such Release if it is released after the term of this Agreement.

## 2. Licensee Obligations.

a. The Licensee shall designate a single contact person to coordinate Licensee requests for Maintenance Services.

b. The Licensee shall cooperate with Tier as requested, including, without limitation, providing Tier with timely access to data, information and personnel of the Licensee, including, without limitation, telecommunications access to the Licensee's technical environment. The Licensee shall be responsible for the performance of its employees and agents and for the accuracy and completeness of all data and information provided to Tier under this Agreement.

c. The Licensee shall be solely responsible for making appropriate back-up copies of Software data and for recovering or reconstructing data that may be altered or destroyed by Software errors.

d. The Licensee will supply to Tier a copy of the current source code of the Software on computer readable media and in a format supported and approved by Tier upon Tier's request.

## 3. Warranties; Limitation of Liability.

a. Tier's sole obligation under this Agreement is to perform Maintenance Services as provided herein. **THIS IS A SERVICES AGREEMENT.** All decisions in connection with the implementation of Tier's advice and recommendations shall be made by, and are the sole responsibility of, the Licensee. In the event of a claim by a third party relating to services rendered by Tier under this Agreement, the Licensee shall indemnify and hold harmless Tier, its employees, officers, directors, consultants and other representatives, from all such claims, liabilities, costs and expenses, including reasonable attorney's fees, except for claims for personal injury or property damage caused by Tier's negligence.

b. **TIER WARRANTS THAT IT WILL PROVIDE MAINTENANCE SERVICES IN GOOD FAITH. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 3.b, TIER MAKES NO REPRESENTATIONS OR WARRANTIES, AND TIER EXPRESSLY DISCLAIMS, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE AND SUCH IMPLIED WARRANTIES ARE EXPRESSLY EXCLUDED. TIER**

MAKES NO WARRANTY AS TO THE ADEQUACY OR CAPACITY OF THE SOFTWARE, ANY HARDWARE OR ANY THIRD PARTY SOFTWARE TO ACHIEVE SOME OR ALL OF THE PERFORMANCE OBJECTIVES OF THE LICENSEE, THE SOFTWARE'S ABILITY TO OPERATE IN COMBINATION WITH ANY THIRD PARTY HARDWARE OR SOFTWARE, OR THAT THE SOFTWARE'S OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE.

c. IF THE LICENSEE REPORTS ANY BREACH OF THE WARRANTY PROVIDED IN SECTION 3.b TO TIER IN WRITING, TIER SHALL PROMPTLY PERFORM THE SERVICES REFERENCED IN SUCH NOTICE IN ACCORDANCE WITH TIER'S OBLIGATIONS HEREUNDER. THIS SECTION 3.c STATES THE ENTIRE OBLIGATION OF TIER AND THE SOLE AND EXCLUSIVE REMEDY OF THE LICENSEE WITH REGARD TO ANY SERVICES RENDERED BY TIER IN CONNECTION WITH THE SOFTWARE.

d. THE LICENSEE ACKNOWLEDGES AND AGREES THAT TIER'S LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AGGREGATE AMOUNT OF THE ANNUAL FEE PAID BY THE LICENSEE TO TIER HEREUNDER. IN NO EVENT SHALL TIER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, LOSS OF PROFIT, OR ANY OTHER SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF WHATEVER NATURE ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF THE LICENSEE IS APPRISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY.

e. Maintenance Services do not include any responsibility, warranty or other obligations by Tier with respect to: (i) use of the Software (a) not in accordance with applicable documentation, or (b) inconsistent with the terms of the Software License Agreement between the parties ("License Agreement"); (ii) Software that has been altered, modified or revised by a party other than Tier; (iii) the malfunction of any third party software or hardware or any part thereof; (iv) Licensee's failure to provide Tier access to the Software and related hardware as required herein; or (v) any version of the Software which is no longer eligible for Maintenance Services, provided that Tier has so notified Licensee in writing.

4. Term; Renewal. This Agreement shall commence on the Effective Date and shall automatically renew for one-year terms on the Maintenance Anniversary Date until termination notice is provided pursuant to Section 6.

5. Payment.

a. For the Maintenance Services, the Licensee will pay Tier an annual fee ("Annual Fee") initially calculated as outlined in Appendix C. The Annual Fee is due and payable each calendar year on the Maintenance Anniversary Date designated in Appendix C. The Licensee shall pay any applicable sales or use taxes on any payments made hereunder. Any future changes in Tier's Annual Fee will be communicated to the Licensee by a written notice at least sixty (60) days before the Maintenance Anniversary Date.

b. If payment is not received within thirty (30) days of invoicing, simple interest shall accrue from the Maintenance Anniversary Date at the rate of one and one-half percent (1-1/2%) per month or the highest rate permitted under applicable law, whichever is less. If payment is not received by Tier within sixty (60) days of invoicing, Tier may terminate this Agreement or suspend performance of services hereunder until payment of all past due invoices, including applicable interest, is received. In the event that a Software Maintenance Agreement with Tier has lapsed or was terminated by Licensee or Licensee's Annual Fee is past due, Tier shall have no obligation to resume its provision of Maintenance Services until the Licensee pays Tier the then-current Annual Fee plus all cumulative fees that would have been payable had there been no lapse in, or delayed payment for, Maintenance Services. The one (1) year term of this Agreement shall not be tolled or extended by the period of any suspension.

c. Any payments required to be made by the Licensee hereunder shall be mailed to the address set forth, and in accordance with any additional instructions included, on the applicable invoice.

6. Termination.

a. The Licensee may terminate this Agreement at the end of any one (1) year term by providing sixty (60) days prior written notice to Tier of its intent not to renew the Agreement.

b. Tier may terminate this Agreement (i) if the Licensee breaches any of the terms and conditions of this Agreement and fails to cure the breach within thirty (30) days after receiving notice of the breach or (ii) upon ninety (90) days written notice to the Licensee. If Tier terminates this Agreement pursuant to Section 6.b.(ii), Tier shall refund to the Licensee a pro rata amount of the Annual Fee for the then-current year of Maintenance Services. The prorated portion shall be calculated from the effective date of the termination to the Maintenance Anniversary Date.

c. The provisions of Sections 3.a, 3.d, 3.e, Section 5 in its entirety, 7, 8, 9, 10, 12 and 14 shall survive termination or expiration of this Agreement and shall remain fully enforceable thereafter.

d. This Agreement shall terminate immediately upon any termination or expiration of the License Agreement.

#### 7. Proprietary Rights; Confidentiality.

a. Any Error correction, patch, work around, new Release, Release or other software and related materials supplied by Tier hereunder shall be subject to Section 3 ("Proprietary Rights") of the License Agreement.

b. (i) The Licensee and Tier acknowledge and agree that all information communicated to either the Licensee or to Tier by the other party in connection with the performance by a party under this Agreement shall be received in confidence and used only for purposes of this Agreement, and no such confidential information shall be disclosed by the receiving party ("Recipient") or its agents or personnel without the prior written consent of the disclosing party ("Discloser"). Except to the extent otherwise required by applicable law or professional standards, the parties' obligations under this section do not apply to information that (A) is or becomes generally available to the public other than as a result of disclosure by the Recipient, (B) was known to, or previously possessed by, the Recipient without restriction, (C) was independently developed by the Recipient without violation of this Agreement, or (D) the Recipient and Discloser mutually agree to disclose. Each party shall exercise the same level of care as it exercises to protect its own confidential information, except to the extent that applicable law or professional standards impose a higher requirement. Tier may retain, subject to the terms of this section, copies of the Licensee's confidential business information required for compliance with applicable professional standards or internal policies.

(ii) If either party receives a subpoena or other validly issued administrative or judicial demand requiring it to disclose the other party's confidential information, such party shall provide prompt written notice to the other party's contact point listed in Section 11 herein in order to permit such other party to seek a protective order or take other action. As long as the notifying party gives notice as provided herein, the notifying party shall thereafter be entitled to comply with such demand to the extent permitted by law, subject to any protective order or similar court order that may have been entered in the matter. This Section 7 is intended to supplement and not supersede any obligations of confidentiality under the License Agreement.

8. Severability and Waiver. If any provision of this Agreement shall be declared illegal or otherwise unenforceable, that provision shall be severed and the remainder of this Agreement shall remain in full force and effect. The waiver of any right or election of any remedy in one instance shall not effect any rights or remedies in another instance. A waiver shall be effective only if made in writing and signed by an authorized representative of each party. Titles and section headings are for convenient reference and are not a part of this Agreement.

9. Entire Agreement. This Agreement and the License Agreement between the parties hereto constitute the entire agreement and understanding of the parties with respect to the subject matter hereof and thereof and supersede any prior oral or written communication that relates to such subject matter. No modification to this Agreement shall be of any force or effect unless made in writing signed by both parties.

10. Notice.

a. Any notice required or permitted under this Agreement will be sufficiently given on the date of mailing if sent to such party by certified mail, postage prepaid, addressed as set forth below or to such other address as a party shall designate by written notice given to the other party.

In the case of Tier:

Tier Technologies, Inc.  
Attn: General Counsel  
10780 Parkridge Blvd, Suite 400  
Reston, VA 20191

In the case of the Licensee:

Miami-Dade County  
111 NW 1<sup>st</sup> Street Suite 1300  
Miami, Florida 33128

Attn: Director of Procurement Management

Tier and the Licensee may change their respective points of contact under this provision upon written notice to the other party.

11. No Assignment. Licensee shall not assign this Agreement without the prior written consent of Tier. Tier may assign this Agreement upon written notice to the Licensee.

12. Independent Contractor. The parties agree that each is an independent contractor and that neither party is, nor shall be considered, an agent, distributor or representative of the other.

13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as they would apply to contracts entered into and performed in the State of Florida by residents thereof.

14. Force Majeure. Neither party shall have any liability hereunder for any failure or delay of performance caused by acts of God, floods, fires, earthquakes, storms, strikes, lockouts, disputes with employees, riot, insurrection, acts of public enemy, war, federal, state, municipal and local restrictions, prohibitions, regulations and requisitions, or other interferences beyond the control of the parties to the extent that the same prevent or delay the performance of the obligations herein contained.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials.

LICENSEE

By: \_\_\_\_\_

Tier Technologies, Inc.

By:  \_\_\_\_\_

Name: \_\_\_\_\_  
(Print or Type Name)

Title: \_\_\_\_\_  
(Print or Type Title)

Date: \_\_\_\_\_

Name: James Weaver  
(Print or Type Name)

Title: Chief Executive Officer  
(Print or Type Title)

Date: \_\_\_\_\_

# APPENDIX A

## COVERED SOFTWARE

<b>Module</b>	<b>Version</b>
ADPICS	5.1
FAMIS	5.1
RIMS	5.1
Cost Allocation	5.1
Labor Distribution	5.1
SYSTEMWIDE	5.1
GUI	5.1

## **APPENDIX B**

### **EQUIPMENT**

*Computer Manufacturer:* **IBM**

*Computer Model:* **9772-R35 (2 Machines)**

*OS and version:* **OS/390 2.4**

*Database and version:* **VSAM**

## APPENDIX C

### ANNUAL MAINTENANCE FEES

Module	Annual Fee	Maintenance Anniversary Date
ADPICS	\$50,031	October 1, 2005
FAMIS	\$60,037	October 1, 2005
RIMS	\$15,010	October 1, 2005
Cost Allocation	\$7,005	October 1, 2005
Labor Distribution	\$12,007	October 1, 2005
SYSTEMWIDE	\$6,004	October 1, 2005
GUI (WebGUI)	\$87,702	October 1, 2005
Executive	\$ -	October 1, 2005

Module	Annual Fee	Maintenance Anniversary Date
ADPICS	\$50,031	October 1, 2006
FAMIS	\$60,037	October 1, 2006
RIMS	\$15,010	October 1, 2006
Cost Allocation	\$7,005	October 1, 2006
Labor Distribution	\$12,007	October 1, 2006
SYSTEMWIDE	\$6,004	October 1, 2006
GUI (WebGUI)	\$87,702	October 1, 2006
Executive	\$30,000	October 1, 2006

Module	Annual Fee	Maintenance Anniversary Date
ADPICS	\$52,533	October 1, 2007
FAMIS	\$63,039	October 1, 2007
RIMS	\$15,761	October 1, 2007
Cost Allocation	\$7,355	October 1, 2007
Labor Distribution	\$12,607	October 1, 2007
SYSTEMWIDE	\$6,304	October 1, 2007
GUI (WebGUI)	\$92,087	October 1, 2007
Executive	\$31,500	October 1, 2007

Module	Annual Fee	Maintenance Anniversary Date
ADPICS	\$55,160	October 1, 2008
FAMIS	\$66,191	October 1, 2008
RIMS	\$16,549	October 1, 2008
Cost Allocation	\$7,723	October 1, 2008
Labor Distribution	\$13,237	October 1, 2008
SYSTEMWIDE	\$6,619	October 1, 2008
GUI (WebGUI)	\$96,691	October 1, 2008
Executive	\$33,075	October 1, 2008

Module	Annual Fee	Maintenance Anniversary Date
ADPICS	\$57,918	October 1, 2009
FAMIS	\$69,501	October 1, 2009
RIMS	\$17,376	October 1, 2009
Cost Allocation	\$8,109	October 1, 2009
Labor Distribution	\$13,899	October 1, 2009
SYSTEMWIDE	\$6,950	October 1, 2009
GUI (WebGUI)	\$101,526	October 1, 2009
Executive	\$34,729	October 1, 2009