



INCORPORATED COUNTY OF LOS ALAMOS SOFTWARE AND A SERVICES AGREEMENT

This Subscription Agreement (this "Agreement") is entered into by and between the **Incorporated County of Los Alamos**, an incorporated county of the State of New Mexico ("County"), and **Tyler Technologies, Inc.**, a Delaware corporation ("Contractor" or "Tyler"), to be effective for all purposes April 5, 2017.

WHEREAS, the County Purchasing Agent has determined in writing that procurement of the services to be provided by Contractor, using the existing NJPA contract, may be obtained per Section 31-3(b)(4)c of the Los Alamos County Procurement Code; and

WHEREAS, Contractor shall provide the Licenses, Services, and Support for EnerGov Software as a Service ("SaaS") Silver ("Services") to County as described below; and

WHEREAS, the County Council approved this Agreement at a public meeting held on April 4, 2017.

NOW, THEREFORE, for and in consideration of the premises and the covenants contained herein, County and Contractor agree as follows:

SECTION A. DEFINITIONS: In addition to any other terms elsewhere defined in this Agreement, the following terms are defined for the purpose of this Agreement:

"Defect" refers to a failure of the Licensed Property to materially conform to the functional specifications set forth in the Documentation and any custom software modifications made to the Licensed Property specifically for the County. Future functionality may be updated, modified, or otherwise enhanced through Contractor, and the governing functional descriptions for such future functionality will be made available in Contractor's then-current Documentation.

Documentation refers to any online or written documentation related to the use or functionality of the Licensed Property that Contractor provides or otherwise makes available to County, including instructions, user guides, manuals, documentation of reporting views, and other training and self-help documentation.

"Licensed Property" refers to all Contractor software products, identified in the Product and Rate Schedule, Exhibit "A" attached hereto and made a part hereof for all purposes, and any related interfaces and product upgrades.

"Los Alamos County Technology Standards" means the currently supported versions of the County hardware, underlying software and protocols identified in the Los Alamos County Technology Standards, Exhibit "B," attached hereto and made a part hereof for all purposes. In the event these standards are adjusted, County will identify any applicable adjustments to Contractor, and those adjustments shall only apply to the extent they reflect then-current industry standards that do not impact Contractor's performance under this Agreement. In the event of any such impact, the parties will negotiate a mutually agreeable adjustment to this Agreement to account for the impact.

“*Site License*” means the license herein granted to County to use EnerGov Adv Server Extensions Bundle and EnerGov My GovPay, as identified in Exhibit “A,” by all users of County for its governmental purposes.

SECTION B. LICENSE AND SUBSCRIPTION AGREEMENT

1. GRANT OF LICENSE:

- a) Contractor shall grant to County, and County shall accept from Contractor, a non-exclusive, revocable, nontransferable, non-assignable license to use the software products identified in the Exhibit “A”, as well as any modifications, enhancements, and related interfaces (the “Licensed Property”) solely for County’s own business purposes. Ownership of the Licensed Property shall remain with Contractor. Unless otherwise specified on the Exhibit “A”: (a) The Licensed Property is purchased as named-user subscriptions and may be accessed by no more than the specified named users; (b) Additional named-user subscriptions may be added during the term at the same pricing as that for the pre-existing subscriptions, prorated for the remainder of the term in effect at the time the additional named-user subscriptions are added; and (c) The added named-user subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated named users and cannot be shared or used by more than one user; provided, however, that user subscriptions may be reassigned to new users replacing former users who no longer require ongoing use of the Licensed Property.
- b) Licensed Property shall be maintained by Contractor to run on a supported server platform, desktop and database service level as identified in Exhibit “B.”
- c) County’s rights to the Licensed Property may be revoked if Contractor provides notice to County that it is in non-compliance with the terms of this license grant and related payment obligations, and County fails to resolve that non-compliance within sixty (60) days of receipt of notice, provided, however, that if the nature of County’s obligation is of such a nature that it cannot reasonably be cured within said sixty-day period, County shall not be deemed to be in non-compliance so long as County commences curing such non-compliance within said sixty-day period and diligently prosecutes same to completion.
- d) For as long as this Agreement is in effect, Contractor shall provide County access to the Licensed Property in accordance with Contractor’s then-current Service Level Agreement. The current Service Level Agreement is attached to this Agreement as Exhibit “C” and made part hereof for all purposes.
- e) Additional terms and conditions related to County’s subscription to Contractor’s MyGovPay and VirtualPay are set forth as Exhibit “D” and made part hereof for all purposes.

- 2. WARRANTY.** Contractor warrants that the Licensed Property will be without Defect(s) as long as this Agreement is in effect. If the Licensed Property does not perform as warranted, Contractor will use all reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the Support Call Process, Exhibit C, Schedule 1, attached hereto and made a part hereof for all purposes. Should Contractor be unable to cure the Defect, Contractor shall provide a functional equivalent. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES, CONDITIONS, AND REPRESENTATIONS, WHETHER

EXPRESS, IMPLIED OR VERBAL, STATUTORY OR OTHERWISE, AND WHETHER ARISING UNDER THIS AGREEMENT OR OTHERWISE, ARE HEREBY EXCLUDED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

SECTION C. PROFESSIONAL SERVICES/TRAINING

1. **SCOPE:** Upon County's request, Contractor shall provide the Professional Services to County for onsite training for up to FORTY (40) HOURS per year, for the five (5) year duration of the Agreement.
2. **TRAINING ENVIRONMENT:** County is responsible for providing a productive environment to conduct training at County's site. Contractor is not responsible for its inability to conduct training or for inadequate training arising due to interruptions and/or unavailability of County personnel to be trained. Parties shall agree, in advance, upon the scheduled training days and hours. Time spent on-site by Contractor that results in non-training time beyond Contractor's control will be billed as training time. Contractor will make reasonable efforts to schedule training on dates requested by the County. Trainers will be on-site approximately noon Monday through noon Friday. This allows appropriate travel time to and from the County's site.
3. **SITE REQUIREMENTS:**
 - a) County shall maintain a high-speed internet connection (minimum 1.5mbps download AND 512kbps upload) and must be able to provide Contractor with IP connection to County's network through Citrix GotoAssist, VPN, Citrix, or Microsoft Terminal Services. County shall use the connection to facilitate access to the Licensed Property. Contractor shall use the connection to assist with problem diagnosis and resolution of software support incidents. Contractor is not responsible for purchase of VPN client software license, County connectivity issues due to bandwidth saturation, or configuration of County's firewall settings.
 - b) Contractor shall provide County with remote support through the use of secure connection over the Internet connection via Citrix GotoAssist. If County will not allow access through GotoAssist, Contractor cannot guarantee support standards will be met. Contractor will make every effort to support County's operating environment but cannot guarantee compatibility with all County devices or third party software applications.
4. **ADDITIONAL SERVICE PROVISIONS:**
 - a) County shall not be liable for, and shall provide no insurance for, any loss or damage incurred by Contractor or its employees, agents, contractors or subcontractors or to equipment or property owned by Contractor, regardless of whether such losses are insured by Contractor.
 - b) Contractor shall provide experienced, competent, and knowledgeable staff to provide Professional Services to County. In the event that any Contractor employee is found to be unacceptable to County (acting reasonably), County shall notify Contractor of such fact and Contractor shall immediately remove said employee and, if requested by County, provide a replacement acceptable to County, as soon as reasonably possible.
 - c) Contractor shall use its best efforts to ensure the continuity of Contractor employees assigned to the Services. However, Contractor may remove or reassign those of its employees assigned to perform services hereunder without prior notice to County and without County's prior consent.
 - d) Contractor's personnel and subcontractors shall observe all applicable laws, rules and

policies of County while working on County premises.

- e) Contractor hereby represents and warrants to County, with respect to the Services, that each of its employees assigned to perform Services shall have the proper skill, training and background to be able to perform in a competent and professional manner and that all work will be performed in accordance with this Agreement.
- f) County acknowledges that the implementation of the products identified within this Agreement is a cooperative process requiring the time and resources of County personnel. County shall, and shall cause County personnel to, use all reasonable efforts to cooperate with and assist the Contractor as may be reasonably required to timely implement the systems as detailed in the Implementation Document. The Contractor shall not be liable for failures to timely and effectively implement the systems when such failure is due to Force Majeure (as identified within) or for the failure by County personnel to provide such cooperation and assistance (either through action or omission).

SECTION D. COMPENSATION:

1. **Amount of Compensation.** The total amount payable under this Agreement for all Services identified herein shall be in accordance with rates identified in Exhibit "A," and shall be payable according to the terms set forth below. Compensation for all Services during the life of this Agreement shall not exceed a combined total of SEVEN HUNDRED TWENTY-SIX THOUSAND TWO HUNDRED SIXTY-ONE DOLLARS (\$726,261.00) excluding New Mexico Gross Receipts Tax ("NMGR"). There shall be no reimbursable expenses associated with this agreement except as otherwise noted and agreed upon herein. In the event County cancels services less than two (2) weeks in advance for reasons other than force majeure or breach by Contractor, County will be liable to Contractor for (i) all non-refundable expenses incurred by Contractor on County's behalf, and (ii) daily fees associated with cancelled professional services if Contractor is unable to reassign our personnel. Contractor will make all reasonable efforts to reassign personnel in the event County cancels within two (2) weeks of scheduled commitments.

- a) **SUBSCRIPTION FEES.** County shall pay compensation for SaaS Subscription Fees in an amount not to exceed a combined total of SIX HUNDRED SEVENTY-SIX THOUSAND SIXTY-ONE DOLLARS (\$676,061.00) for the entire term of this Agreement. Compensation shall be paid in monthly installments of TEN THOUSAND ONE HUNDRED NINETY-SIX DOLLARS (\$10,196.00) for the first year and shall increase no more than five percent (5%) per year for the duration of the agreement. Contractor shall submit itemized monthly invoices to County's Information Management Division Management Analyst indicating amount of compensation due, amount of any NMGR, and total amount payable. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.

- b) **PROFESSIONAL SERVICES FEES:**

- i. At any time during this Agreement, County may request Contractor to provide County Professional Services for onsite training for up to FORTY (40) HOURS per year, for the five (5)-year duration of the Agreement. County shall pay compensation for performance of the Professional Services at the rate set out in Exhibit "A." Professional Services Fees shall not exceed a combined total of THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00) for the entire term of this Agreement. All services will be invoiced monthly in hourly increments as delivered. Rates for work beyond the Scope identified in Exhibit "A" or for future projects will be separately

quoted at Contractor's then current rate, requiring a separate contract in conformity with County's Procurement Code

- ii. Total fees for EnerGov Data Extract, at least one extract per year upon request by County, shall not to exceed a combined total of FIVE THOUSAND DOLLARS (\$5,000.00) and shall be at the rate set out in Exhibit "A." All services will be invoiced per Data Extract upon successful delivery to County.
 - c) **REIMBURSABLE EXPENSES.** Contractor's travel expenses shall not exceed a combined total of TEN THOUSAND TWO HUNDRED DOLLARS (\$10,200.00) for the entire term of this Agreement. This total amount includes any travel associated with the optional County-requested Professional Services provided pursuant to Section C above. Travel expenses shall be submitted to the County Project Manager on a monthly invoice that identifies, among other applicable travel expenses, the number of on-site days of per diem. Travel expenses will be invoiced to County according to the then-current Contractor Business Travel Policy. The current Contractor Business Travel Policy is set forth at Exhibit "E," attached hereto and made a part hereof for all purposes. Contractor agrees that any changes to its Business Travel Policy will not result in reimbursement allowances that materially deviate from the allowances set forth in the Business Travel Policy in effect as of the Effective Date, except as otherwise agreed to by the parties. County reserves right to inspect travel and lodging receipts on request and with reasonable notice. Contractor shall submit copies of these supporting documents if so requested. Receipts for per diem expenses, miscellaneous items less than \$25, and mileage logs are not required. There shall be no reimbursable expenses associated with this agreement except as otherwise noted and agreed upon herein.
2. **Invoices.** Contractor shall submit itemized invoices to County's Project Manager showing amount of compensation due, amount of any NMGR, and total amount payable monthly. Payment of undisputed amounts shall be due and payable thirty (30) days after County's receipt of the invoice.
 3. **Taxes.** Prices and license fees are exclusive of all federal, state, municipal or other political subdivision, excise, sales, use, property, occupational or like taxes now in force or enacted in the future, and are therefore subject to an increase equal to any such taxes Contractor may be required to collect or pay upon the sale or delivery of the Licensed Property and Services purchased or licensed hereunder. Should Contractor be required to pay any of these taxes as a result of this Agreement, the appropriate amounts will be added to invoices and paid by County. Contractor shall be responsible for remittance of the New Mexico Gross Receipts Tax ("NMGR") levied on the amounts payable under this Agreement.

SECTION E. GENERAL TERMS AND CONDITIONS:

1. **TERM.** The term of this Agreement shall commence on April 4, 2017, and shall be effective for five (5) years, with a termination date of April 4, 2022 unless sooner terminated, as provided in this Agreement. The Agreement may be renewed by mutual agreement of the parties, consistent with applicable procurement and appropriations laws.
2. **INSURANCE.** Contractor shall obtain and maintain insurance of the types and in the amounts set out below throughout the term of this Agreement with an insurer acceptable to County. Contractor shall assure that all subcontractors maintain like insurance. Compliance with the terms and conditions of this Section is a condition precedent to County's obligation to pay

compensation for the Services and Contractor shall not provide any Services under this Agreement unless and until Contractor has met the requirements of this Section. Contractor shall provide a Certificate of Insurance as evidence that Contractor has met its obligation to obtain and maintain insurance. Any subcontractor will be required to provide County a Certificate of Insurance to assure that the subcontractor maintains like insurance. Should any of the policies described below be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. General Liability Insurance and Automobile Liability Insurance shall name County as an additional insured.

- a) **General Liability Insurance:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate.
- b) **Workers' Compensation:** In an amount as may be required by law. County may immediately terminate this Agreement if Contractor fails to comply with the Worker's Compensation Act and applicable rules when required to do so.
- c) **Automobile Liability Insurance for Contractor and its Employees:** ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence; TWO MILLION DOLLARS (\$2,000,000.00) aggregate on any owned, and/or non-owned motor vehicles used in performing Services under this Agreement.
- d) **Professional Liability Insurance:** \$1,000,000 each occurrence and \$2,000,000 annual aggregate. Professional Liability Insurance shall provide coverage for Services provided hereunder during the term of this Agreement and for a period of at least five (5) years thereafter.

3. INVOICE DISPUTES.

- a) If County believes any invoiced product or service does not conform to the warranties set forth in this Agreement, County shall provide written notice of such disputed invoice to Attention: Associate General Counsel, at the address listed in the Notice section of this Agreement. Such written notice shall be provided to Contractor within thirty (30) calendar days of County's receipt of the disputed invoice. An additional fifteen (15) days is allowed for the County to provide written clarification and details for the disputed invoice. Contractor shall provide a written response to County that shall include either a justification of the invoice or an explanation of an adjustment to the invoice and an action plan that will outline the reasonable steps needed to be taken by Contractor and County to resolve any issues presented in County's notification to Contractor. County may withhold payment of only the amount actually in dispute until Contractor provides the required written response, and full payment shall be remitted to Contractor upon Contractor's completion of all material action steps required to remedy the disputed matter. Notwithstanding the foregoing sentence, if Contractor is unable to complete all material action steps required to remedy the disputed matter because County has not completed the action steps required of them, County shall remit full payment of the invoice.
- b) Any invoice not disputed as described above shall be deemed accepted by the County. If payment of any invoice that is not disputed as described above is not made within sixty (60) calendar days, Contractor reserves the right to suspend delivery of all services.

4. **RESOLUTION OF DISPUTES; LIMITATION OF LIABILITY.** Each party agrees to provide the other with written notice within thirty (30) days of becoming aware of a dispute under this Agreement. The parties agree to cooperate in trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative of each party to meet and engage in good faith negotiations. Such senior representatives will meet for not more than four (4) hours within thirty (30) days of the written dispute notice, unless otherwise

agreed. To the extent allowable by law, all meetings and discussions between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If the parties fail to resolve the dispute, either may assert its respective rights and remedies as provided in Paragraph 18 below. Nothing in this Paragraph shall prevent a party from seeking necessary injunctive relief during the dispute resolution procedure.

County agrees that Contractor's total liability, and County's sole and exclusive remedy, for damages in any way related to or arising from the performance of Contractor's duties and obligations under this Agreement, whether on claims for breach of contract, warranty, negligence, tort (including strict liability) or otherwise, shall not exceed County's actual, direct damages, not to exceed the total fees set forth in Exhibit "A." It is agreed by the parties that this sum is reasonable under all the circumstances. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS SUBJECT TO CONTRACTOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION F(20), BREACH OF CONTRACTOR'S OBLIGATIONS UNDER EXHIBIT "F," OR THAT ARISE OUT OF CONTRACTOR'S WILLFUL, RECKLESS OR WANTON MISCONDUCT OR CONTRACTOR'S BAD FAITH CONDUCT.**

5. TERMINATION.

- a) This Agreement may not be modified except by the written mutual consent of both parties or as otherwise provided in this Agreement. Upon termination, or cancellation the licenses provided under this Agreement shall be automatically terminated, and County's access to the Licensed Property shall be denied.
- b) County may terminate this Agreement with or without cause upon ninety (90) calendar days prior written notice to Contractor.
- c) This Agreement shall terminate without further action by County on the first day of any County fiscal year for which funds to pay compensation hereunder are not appropriated by County Council. County shall make reasonable efforts to give Contractor at least ninety (90) days advance notice that funds have not been and are not expected to be appropriated for that purpose.
- d) In the event of any termination or cancellation, County will be responsible for payment of all undisputed software and Services delivered, and expenses incurred, to the extent payable as set forth in Section D through the effective date of termination. Upon termination, Contractor shall refund any prepaid fees covering the remainder of the term after the effective date of termination. Contractor shall render a final report of the Services performed to the date of termination. In a termination for cause, disputed fees will be resolved according to the dispute resolution process set forth in Section F(4), above.

- 6. SEVERABILITY; WAIVER.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law. In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this Agreement, nor will such non-enforcement prevent such party from enforcing each and every term of this Agreement thereafter.

7. **NOTICES.** Any notices required under this Agreement shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or five (5) calendar days after deposit in the United States Mail:

County:
Information Management Program Manager
Incorporated County of Los Alamos
1000 Central Avenue, Suite 220
Los Alamos, New Mexico 87544

Contractor:
Attn: Chief Legal Officer
Tyler Technologies, Inc.
1 Tyler Drive
Yarmouth, Maine 04096

8. **NO INTENDED THIRD PARTY BENEFICIARIES.** This Agreement is entered into solely for the benefit of Contractor and County. No third party shall be deemed a beneficiary of this Agreement, and no third party shall have the right to make any claim or assert any right under this Agreement.
9. **INVALIDITY OF PRIOR AGREEMENTS.** This Agreement supersedes all prior contracts or agreements, either oral or written, that may exist between the parties with reference to the Licensed Property and Services described herein and expresses the entire agreement and understanding between the parties with reference to said Licensed Property and Services. This Agreement cannot be modified or changed by any oral promise made by any person, officer, or employee. In the case of conflict between this Agreement and Exhibits, this Agreement shall govern.
10. **APPROVAL OF GOVERNING BODY.** County represents and warrants to Contractor that this Agreement has been approved by its governing body and is a binding obligation upon County. County's representative executing this Agreement has been duly authorized and empowered to enter into this Agreement.
11. **STATUS OF CONTRACTOR, STAFF, AND PERSONNEL.** This Agreement calls for the performance of services by Contractor as an independent contractor. Contractor is not an agent or employee of County and will not be considered an employee of County for any purpose. Contractor, its agents or employees shall make no representation that they are County employees, nor shall they create the appearance of being employees by using a job or position title on a name plate, business cards, or in any other manner, bearing County's name or logo. Neither Contractor nor any employee of Contractor shall be entitled to any benefits or compensation other than the compensation specified herein. Contractor shall have no authority to bind County to any agreement, contract, duty or obligation. Contractor shall make no representations that are intended to, or create the appearance of, binding County to any agreement, contract, duty, or obligation. Contractor shall have full power to continue any outside employment or business, to employ and discharge its employees or associates as it deems appropriate without interference from County; provided, however, that Contractor shall at all times during the term of this Agreement maintain the ability to perform the obligations in a professional, timely and reliable manner.
12. **EMPLOYEES AND SUB-CONTRACTORS.** Contractor shall be solely responsible for payment of wages, salary or benefits to any and all employees or contractors retained by Contractor in the performance of the Services. Contractor agrees to indemnify, defend and hold harmless County for any and all claims that may arise from Contractor's relationship to its employees and subcontractors.
13. **STANDARD OF PERFORMANCE.** Contractor agrees and represents that it has and will maintain the personnel, experience and knowledge necessary to qualify it for the particular duties to be performed under this Agreement. Contractor shall perform the Services described

herein in accordance with a standard consistent with the industry standard of care for performance of the Services.

- 14. E-VERIFY.** Contractor has complied, and will comply, with the E-Verify procedures administered by the U.S. Citizenship and Immigration Services Verification Division for all Contractor employees assigned to County's project.
- 15. RECORDS.** Contractor shall maintain, throughout the term of this Agreement and for a period of six (6) years thereafter, records that indicate the date, time, and nature of the services rendered. Contractor shall make available, for inspection by County, all records, books of account, memoranda, and other documents pertaining to this Agreement at any reasonable time upon request.
- 16. OWNERSHIP OF COUNTY DATA.** All County data, including all content in any media or format entered into, stored in and /or susceptible to retrieval from County's Computer systems, shall remain property of County. County's data shall not be used by the Contractor other than in connection with providing the services pursuant to this Agreement; it shall not be disclosed, sold, assigned, leased or otherwise provided to third parties by Contractor, or commercially exploited by or on behalf of the Contractor, its employees, agents, subcontractors, invitees, or assigns, or any third party, in any respect. Prior to termination of this Agreement, Contractor shall not delete or destroy any County data or media on which County data resides without prior authorization of County. Upon request, Contractor shall promptly return to County, in the format and on the media in use as of the date of the request, any and all requested portions of any County data it may possess or control; County acknowledges that additional fee, as agreed to by the parties prior to the commencement of work pursuant to such request, will apply. Notwithstanding any other provision in this Agreement, at any time, County shall have the irrevocable right, and may engage a third party on behalf of or assistance with County, to export, merge, convert, or otherwise transfer County data to another system in any other format or media. Nothing in this Paragraph 18 shall be deemed to give County or third party direct access to Contractor's servers or other equipment. County may exercise its rights under this Paragraph only by accessing the software through its normal operation and via County computers.
- 17. APPLICABLE LAW.** Contractor shall abide by all applicable federal, state and local laws, regulations, and policies and shall perform the Services in accordance with all applicable laws, regulations, and policies during the term of this Agreement. In any lawsuit or legal dispute arising from the operation of this Agreement, Contractor agrees that the laws of the State of New Mexico shall govern without regards to its conflict of laws provisions. Venue shall be in the state or federal courts in or serving Los Alamos County, New Mexico.
- 18. NON-DISCRIMINATION.** During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of the obligations of Contractor under this Agreement, with regard to race, color, religion, sex, age, ethnicity, national origin, sexual orientation or gender identity, disability or veteran status.
- 19. INDEMNIFICATION.** Contractor shall indemnify, hold harmless and defend County, its Council members, employees, agents and representatives, from and against all third-party liabilities, damages, claims, demands, actions (legal or equitable), and costs and expenses, including without limitation reasonable attorneys' fees, of any kind or nature, arising from (i) personal injury or property damage caused by Contractor's employees, agents, representatives and subcontractors' negligence or willful misconduct or intentional act or omission, (ii) Contractor's violation of law, or (iii) damages that arise out of Contractor's gross misconduct or fraud.

Contractor will defend County against any third party claim(s) that the Licensed Property

infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). County must notify Contractor promptly in writing of the claim and give Contractor sole control over its defense or settlement. County agrees to provide Contractor with reasonable assistance, cooperation, and information in defending the claim at Contractor's expense. Contractor's obligations under this Section will not apply to the extent the claim or adverse final judgment is based on County's: (a) use of a previous version of the Licensed Property and the claim would have been avoided had County installed and used the current version of the Licensed Property, after Contractor made that version available and advised County that it must install it to avoid an infringement claim; (b) combining the Licensed Property with any product or device not provided, contemplated, or approved by Contractor; (c) altering or modifying the Licensed Property in a manner that is inconsistent with this Agreement, including any modification by third parties at County's direction or otherwise permitted by County; (d) use of the Licensed Property in contradiction of this Agreement, including with non-licensed third parties; or (e) willful infringement, including use of the Licensed Property after Contractor notifies County to discontinue use due to such a claim. If Contractor receives information concerning an infringement or misappropriation claim related to the Licensed Property, Contractor may, at Contractor's expense and without obligation to do so, either: (i) procure for you the right to continue its use; (ii) modify it to make it non-infringing; or (iii) replace it with a functional equivalent, in which case County will stop running the allegedly infringing Licensed Property immediately. If, as a result of an infringement or misappropriation claim, County's use of the Licensed Property is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement), Contractor will, at its option, either: (i) procure the right to continue its use; (ii) modify it to make it non-infringing; (iii) replace it with a functional equivalent; or (l) terminate County's license and refund all subscription fees paid for the infringing Licensed Property for the time period commencing on the effective date of the injunction.

- 20. FORCE MAJEURE.** Neither County nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.
- 21. NON-ASSIGNMENT.** Neither party may assign this Agreement or any privileges or obligations herein without the prior written consent of the other party, except that Contractor may, without County's prior written consent, assign the contract in its entirety to the surviving entity of any merger or consolidation or to any purchaser of substantially all of Contractor's assets. Contractor shall provide County with notice within sixty (60) days of such assignment becoming public information. Contractor's Assignee shall fully comply with all of the terms and conditions of this Agreement as if Assignee was the Contractor.
- 22. LICENSES.** Contractor shall maintain all required licenses including, without limitation, all necessary professional and business licenses, throughout the term of this Agreement. Contractor shall require and shall assure that all of Contractor's employees and subcontractors maintain all required licenses including, without limitation, all necessary professional and business licenses.
- 23. PROHIBITED INTERESTS.** Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its Services hereunder. Contractor further agrees that it will not employ any person having such an interest to perform Services under this Agreement. No County Council member or other elected official of County, or manager or employee of County shall solicit, demand, accept or agree to accept a gratuity or offer of employment contrary to Section 31-

282 of the Los Alamos County Code.

- 24. CAMPAIGN CONTRIBUTION DISCLOSURE FORM.** A Campaign Contribution Disclosure Form is attached as Exhibit "F." Contractor must submit this form with this Agreement, if applicable and in accordance with Chapter 81 of the laws of 2006 of the State of New Mexico.
- 25. CONFIDENTIALITY.** The Confidential Information Disclosure Statement in Exhibit "G," attached hereto and incorporated herein by reference for all purposes, must be completed by Contractor as a condition precedent and submitted as part of this Agreement. Its terms shall govern as if fully set forth herein.
- 26. CLIENT LISTS.** County agrees that Contractor may identify County by name in client lists, marketing presentations, and promotional materials.
- 27. MULTIPLE ORIGINALS AND SIGNATURES.** This Agreement may be executed in multiple originals, any of which will be independently treated as an original document. Any electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as if an original signature.
- 28. DISCLAIMER.** The warranties set forth herein are in lieu of all other warranties. To the maximum extent permitted under applicable law, all other warranties, conditions and representations, whether express, implied or verbal, statutory or otherwise, and whether arising under this Agreement or otherwise, are hereby excluded, including, without limitation, the implied warranties of merchantability or fitness for a particular purpose.
- 29. CONTRACT DOCUMENTS.** This Agreement includes the following exhibits and schedules:
- | | |
|-----------|---|
| Exhibit A | Product and Rate Schedule |
| Exhibit B | Los Alamos Technology Standards |
| Exhibit C | Service Level Agreement |
| | Schedule 1: Support Call Process |
| Exhibit D | MyGovPay/VirtualPay and IVR |
| Exhibit E | Contractor's Business Travel Policy |
| Exhibit F | Campaign Contribution Disclosure Form |
| Exhibit G | Confidential Information Disclosure Statement |

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth opposite the signatures of their authorized representatives to be effective for all purposes on the date first written above.

ATTEST

INCORPORATED COUNTY OF LOS ALAMOS

NAOMI D. MAESTAS
COUNTY CLERK

BY: _____
HARRY BURGESS **DATE**
COUNTY MANAGER

Approved as to form:

J. ALVIN LEAPHART
COUNTY ATTORNEY

TYLER TECHNOLOGIES, INC.

BY: _____
NAME: _____ **DATE**
TITLE: _____

EXHIBIT "A"
AGR17-939

Product and Rate Schedule

Energov SAAS Silver	Units	Named Users	Rate per unit	Unit	Monthly Fee
Core:					
EnerGov EPortal (Prior to CSS GoLive)	1		\$17,400	site/yr	\$1,450.00
EnerGov Citizen Self Service (CSS)	1		\$20,000	site/yr	\$1,667.00
Permitting & Land Mgmt Suite – Silver Package Projects, Permits, Plans Review, Code Enforcement, Requests Management, Inspections, & GIS		36	\$163.00	user/mo	\$5,868.00
Licensing & Regulatory Suite – Silver Package Business, Trade, Rental, Tax Licensing, Enforcement Processes, & GIS		10	\$169.00	user/mo	\$1,690.00
iG Workforce Apps		9	\$49.00	user/mo	\$441.00
Subtotal Named User Subscription:		55			\$7,999.00
Extensions (AccessLevel Silver):					
EnerGov Adv Server Extensions Bundle		1	\$725.00	site/yr	\$725.00
MyGovPay**	1		\$0	site/yr	\$0
VirtualPay**	1		\$0	user	\$0
Discount on Subscription Fees	1			2%	
Training (new):					
EnerGov Onsite Training & Configuration Support (40 hrs annually)	200		\$175.00	hr.	
Estimated Travel	5		\$2040	yr	
SQL Database exports:					
Quarterly export (4 per year)			\$5,000.00	1/year	

Total costs for five (5) year contract

Fiscal year:	Subscription Fees.	Monthly Subscription Fee based on all options
FY18	\$122,350	\$10,196
FY19	\$128,468	\$10,706
FY20	\$134,891	\$11,241
FY21	\$141,635	\$11,803
FY22	\$148,717	\$12,393
Total subscription:	\$676,061	<- 5% per year increase
Total training (Professional Services and Travel):	\$45,200	<- Not to exceed time and material, per request, over 5 years
SQL Database exports (assumed cost for one request per year)	\$ 5,000	<- Not to exceed - 1 extract per request, per year, over 5 years
Total 5yr contract not to exceed:	\$ 726,261	

EXHIBIT "B"
AGR17-939

Los Alamos County Technology Standards Modified for SAAS

The following Los Alamos County Technology Standards are required and shall be supported by the contractor, reseller hence forth called Operator, for any County solicitation requiring technology or integration to the County network and incorporated into any resultant agreement. Standards are listed with the expectation that the Operator will provide software updates to allow Los Alamos County to stay on supported versions of hardware, underlying software and protocols as outlined below.

LAC Staff Accounts	Software shall function for end users with standard user privileges ; user cannot install software and shall not have administrative rights.
Desk Hardware	Physical unit minimum hardware requirements consist of: Intel core i5 based processor, minimum 4 GB RAM, Intel integrated graphics 1280 capable video minimum, display port DVI input, 4 USB 2/3 ports. Preferred: Use of virtual desktop infrastructure (VDI) dual screen capable.
Desktop OS	Microsoft Windows 7 Enterprise Edition at current Service Pack (SP), Operator software must be maintained to run on a supported OS platform service level as defined by Microsoft at the latest stable patch level. Microsoft Windows 10 may be used if integration with all County enterprise software is not required and must have a written exemption from the CIO or ITD Liaison.
Internet Browser	Internal County Network: Internet Explorer 10X or Chrome compatible will be considered on a business case basis. New Applications requiring Microsoft Silverlight are not supported. ITD shall be consulted for compatibility issues prior to considering new application purchases requiring Java. Public Application/Web Access: Applications that will be accessed by devices external to the County network shall meet the Internal County Network criteria and as well as be compatible with current versions of Internet Explorer, Safari, Chrome and Firefox browsers as well as mobile devices (inclusive of smart phones, iPad, and other Internet enabled devices).
Cloud Based Services	Los Alamos County is interested in taking advantage of opportunities available through Cloud Service providers (CSP). Operators proposing Cloud based solutions shall provide information on the following areas of concern: <ul style="list-style-type: none">• CSP shall describe the classification of the proposed Cloud solution. Is the solution SAAS, PAAS, IAAS or a combination of the classification types. If SAAS is the solution is the service located within the CSP infrastructure or is the solution a partnership of several CSPs including infrastructure partners.• CSP processes involving:<ul style="list-style-type: none">○ Physical infrastructure: including locations, internet connectivity and disaster recovery methodologies. CSP data centers shall be located within the United States.○ Hybrid Connectivity: Solutions requiring cloud system interface with the county network or peripherals located within the County

	<p>network, require testing prior to solution engagement or formalization of service agreements.</p> <ul style="list-style-type: none"> ○ Data: Ownership of County data held in the CSP solution shall inure with the County of Los Alamos. CSP shall provide assurance on data ownership. CPS shall describe any other potential use of County data housed within the cloud infrastructure, application or service. CSP shall provide methods for protecting the integrity and security of data (ex. Use of data encryption over internet connections). CSP will describe how the solution meets statutory requirements for data (ex, PII, HIPA, Gram-Leach-Bliley act, FIPS 199...). Provide all relevant information including legal boundaries not set forth in contractual agreements if any. Methodology or process for meeting County Records Retention policies. Mitigation strategy for security breaches involving County data. ○ Customer\User Security: Describe CSP methodology for implementing administrative and end-user security and access. What is the CSP methodology for mitigating security breaches with respect to access and user credentials? What is the CSP's methodology or process governing e-discovery request from entities other than the County? • CSP shall provide strategies or process for withdrawing or exiting the cloud based solution. Information shall discuss: <ul style="list-style-type: none"> ○ CSP shall providing the County with data in a usable form. Database exports in Microsoft SQL are required, any other format and data type shall require presentation of method, discussion with the County's stake holders and written acceptance by the Chief Information Officer or designee. ○ Any expected transition cost expected in transition from CSP vendor to on premise or other CSP shall be contracted prior to entering into the service agreement. <p>CSP using a database as part of their solution shall be responsible for providing the County with a database export (see database requirement) a minimum of 1 time per year upon County request. The County may at additional expense request multiple Database exports. Costs and request requirements for multiple exports shall be part of CSP proposal for service.</p>
--	--



SERVICE LEVEL AGREEMENT

I. Agreement Overview

This SLA operates in conjunction with, and does not supersede or replace any part of, the Agreement. It outlines the information technology service levels that we will provide to you to ensure the availability of the application services that you have requested us to provide. All other support services are documented in the Support Call Process.

II. Definitions. Except as defined below, all defined terms have the meaning set forth in the Agreement.

Attainment: The percentage of time the Tyler Software is available during a calendar quarter, with percentages rounded to the nearest whole number.

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

Downtime: Those minutes during which the Tyler Software is not available for your use. Downtime does not include those instances in which only a Defect is present.

Service Availability: The total number of minutes in a calendar quarter that the Tyler Software is capable of receiving, processing, and responding to requests, excluding maintenance windows, Client Error Incidents and Force Majeure.

III. Service Availability

The Service Availability of the Tyler Software is intended to be 24/7/365. We set Service Availability goals and measures whether we have met those goals by tracking Attainment.

a. Your Responsibilities

Whenever you experience Downtime, you must make a support call according to the procedures outlined in the Support Call Process. You will receive a support incident number.

You must document, in writing, all Downtime that you have experienced during a calendar quarter. You must deliver such documentation to us within 30 days of a quarter's end.

The documentation you provide must evidence the Downtime clearly and convincingly. It must include, for example, the support incident number(s) and the date, time and duration of the Downtime(s).

b. Our Responsibilities

When our support team receives a call from you that Downtime has occurred or is occurring, we will work with you to identify the cause of the Downtime (including whether it may be the result of a Client Error

Incident or Force Majeure). We will also work with you to resume normal operations.

Upon timely receipt of your Downtime report, we will compare that report to our own outage logs and support tickets to confirm that Downtime for which we were responsible indeed occurred.

We will respond to your Downtime report within 30 day(s) of receipt. To the extent we have confirmed Downtime for which we are responsible, we will provide you with the relief set forth below.

c. Client Relief

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

Notwithstanding the above, the total amount of all relief that would be due under this SLA per quarter will not exceed 5% of one quarter of the then-current SaaS Fee. The total credits confirmed by us in one or more quarters of a billing cycle will be applied to the SaaS Fee for the next billing cycle. Issuing of such credit does not relieve us of our obligations under the Agreement to correct the problem which created the service interruption.

Every quarter, we will compare confirmed Downtime to Service Availability. In the event actual Attainment does not meet the targeted Attainment, the following Client relief will apply, on a quarterly basis:

Targeted Attainment	Actual Attainment	Client Relief
100%	98-99%	Remedial action will be taken.
100%	95-97%	4% credit of fee for affected calendar quarter will be posted to next billing cycle
100%	<95%	5% credit of fee for affected calendar quarter will be posted to next billing cycle

You may request a report from us that documents the preceding quarter's Service Availability, Downtime, any remedial actions that have been/will be taken, and any credits that may be issued.

IV. Applicability

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

We perform maintenance during limited windows that are historically known to be reliably low-traffic times. If and when maintenance is predicted to occur during periods of higher traffic, we will provide advance notice of those windows and will coordinate to the greatest extent possible with you.

V. Force Majeure

You will not hold us responsible for not meeting service levels outlined in this SLA to the extent any failure to do so is caused by Force Majeure. In the event of Force Majeure, we will file with you a signed request that said failure be excused. That writing will at least include the essential details and circumstances supporting our request for relief pursuant to this Section. You will not unreasonably withhold its acceptance of such a request.



Exhibit C

Schedule 1

Support Call Process

Support Channels

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

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

Support Resources

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

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

Support Availability

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

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

Issue Handling

Incident Tracking

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

Incident Priority

Each incident is assigned a priority number, which corresponds to the client's needs and deadlines. The client is responsible for reasonably setting the priority of the incident per the chart below. This chart is not intended to address every type of support incident, and certain "characteristics" may or may not apply depending on whether the Tyler software has been deployed on customer infrastructure or the Tyler cloud. The goal is to help guide the client towards clearly understanding and communicating the importance of the issue and to describe generally expected responses and resolutions.

Priority Level	Characteristics of Support Incident	Resolution Targets
1 Critical	Support incident that causes (a) complete application failure or application unavailability; (b) application failure or unavailability in one or more of the client's remote location; or (c) systemic loss of multiple essential system functions.	Tyler shall provide an initial response to Priority Level 1 incidents within one (1) business hour of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within one (1) business day. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the client in restoring its last available database.
2 High	Support incident that causes (a) repeated, consistent failure of essential functionality affecting more than one user or (b) loss or corruption of data.	Tyler shall provide an initial response to Priority Level 2 incidents within four (4) business hours of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within ten (10) business days. For non-hosted customers, Tyler's responsibility for loss or corrupted data is limited to assisting the client in restoring its last available database.
3 Medium	Priority Level 1 incident with an existing circumvention procedure, or a Priority Level 2 incident that affects only one user or for which there is an existing circumvention procedure.	Tyler shall provide an initial response to Priority Level 3 incidents within one (1) business day of receipt of the support incident. Tyler shall use commercially reasonable efforts to resolve such support incidents without the need for a circumvention procedure with the next published maintenance update or service pack. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the client in restoring its last available database.

Priority Level	Characteristics of Support Incident	Resolution Targets
4 Non-critical	Support incident that causes failure of non-essential functionality or a cosmetic or other issue that does not qualify as any other Priority Level.	Tyler shall provide an initial response to Priority Level 4 incidents within two (2) business days. Tyler shall use commercially reasonable efforts to resolve such support incidents, as well as cosmetic issues, with a future version release.

Incident Escalation

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

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

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

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

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

Remote Support Tool

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

EXHIBIT "D"
AGR17-939
MyGovPay/VirtualPay and IVR

1. MyGovPay/VirtualPay Licensing. Access to MyGovPay and/or Virtual Pay is hereby granted if Customer elects to use MyGovPay or VirtualPay, products of Tyler Technologies (*Powered by Persolvent*), designed for Citizen Users to use for processing online payments.

(a) Special MyGovPay/VirtualPay Definitions.

"Merchant Agreement" means the agreement between Customer and Persolvent that provides for the Merchant Fees.

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

"MyGovPay" means the Product of Tyler Technologies that allows members of the public to pay for Customer's services with a credit or other payment card on the Customer's citizen-facing web portal.

"Persolvent" means Persolvent, formerly BankCard Services Worldwide, a Payment Card Industry (PCI) compliant processing agent through which the EnerGov Software passes credit card transactions.

"Use Fees" means the Technology Fees, Authorization Fees and Program/Convenience Fees as listed in Use Fees Table in Section 2, titled *MyGovPay/VirtualPay*.

"VirtualPay" means the Product of Tyler Technologies that allows the Customer to accept and process citizen user's credit or other payment card using the EnerGov Software.

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

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

2. MyGovPay/VirtualPay Fees. Customer agrees that the Use Fees set forth on the following page will apply if Customer elects to use MyGovPay/VirtualPay.

USE FEES TABLE FOLLOWS ON NEXT PAGE

Use Fees

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

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

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

EnerGov's VirtualPay (retail card present)

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

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

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

- (a) Network Security. Customer acknowledges that a third-party is used by Tyler Technologies to process IVR data. Customer's content will pass through and be stored on the third-party servers and will not be segregated or in a separate physical location from servers on which other customers' content is or will be transmitted or stored.
- (b) Content. Customer is responsible for the creation, editorial content, control, and all other aspects of content to be used solely in conjunction with the EnerGov Software.
- (c) Lawful Purposes. Customer shall not use the IVR system for any unlawful purpose.
- (d) Critical Application. Customer will not use the IVR system for any life-support application or other critical application where failure or potential failure of the IVR system can cause injury, harm, death, or other grave problems, including, without limitation, loss of aircraft control, hospital life-support system, and delays in getting medicate care or other emergency services.
- (e) No Harmful Code. Customer represents and warrants that no content designed to delete, disable, deactivate, interfere with or otherwise harm any aspect of the IVR system now or in the future, shall be knowingly transmitted by Customer or Users.
- (f) IVR WARRANTY. Except as expressly set forth in this Agreement, TYLER TECHNOLOGIES MAKES NO REPRESENTATION AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE FOR IVR.

EXHIBIT "E"
AGR17-939



1. Air Travel

A. Reservations & Tickets

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

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

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

B. Baggage Fees

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

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

Baggage fees for sports equipment are not reimbursable.

2. Ground Transportation

A. Private Automobile

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

B. Rental Car

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

C. Public Transportation

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

D. Parking & Tolls

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

3. Lodging

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

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

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

4. Meals and Incidental Expenses

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

A. Overnight Travel

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

Departure Day

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

Return Day

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

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

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

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

B. Same Day Travel

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

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

5. Internet Access – Hotels and Airports

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

EXHIBIT "F"
AGR17-939

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to Chapter 81, Laws of 2006, any prospective contractor seeking to enter into a contract with any state agency or local public body must file this form with that state agency or local public body. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"Applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other things of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"Contract" means any agreement for the procurement of items of tangible personal property, services, professional services, or construction.

"Family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

"Pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"Person" means any corporation, partnership, individual, joint venture, association or any other private legal entity.

"Prospective contractor" means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS: (Report any applicable made to the following - COUNTY COUNCILORS: Christine Chandler; James Chrobocinski; David Izraelevitz; Antonio Maggiore; Susan O’Leary; Rick Reiss; and Pete Sheehey.)

Contribution Made by: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

Signature

Date

Title (position)

—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

EXHIBIT "G"
AGR17-939

Confidential Information Disclosure Statement

The Incorporated County of Los Alamos is a governmental entity subject to certain disclosure laws including, but not limited to, the New Mexico Inspection of Public Records Act (1978) NMSA §§14-2-1, et seq. Nothing in this agreement is intended to diminish or expand the application of any applicable disclosure laws to any proprietary or confidential information.

This Confidential Information Disclosure Statement ("Statement") defines obligations and waivers related to Confidential Information disclosed pursuant to the above referenced Agreement between County and Contractor. County and Contractor agree to the following:

1. Statement Coordinator – Each party designates the following person as its Statement Coordinator for coordinating the disclosure or receipt of Confidential Information:

Contractor: Tyler Technologies, Inc Legal& Contracts Administration Group Representative

County: Information Management Program Manager

2. Definitions:

- a) **Confidential Information** - any form of information, in any format, disclosed by the Discloser to the Recipient and identified as confidential.
- b) **Discloser** - the party disclosing Confidential Information.
- c) **Exception** – An exception is satisfied if the Confidential Information disclosed: (i) was in Recipient's possession prior to receipt from Discloser, (ii) is publicly known or readily ascertainable by legal means, (iii) is lawfully received by Recipient from a third party without a duty of confidentiality, (iv) is disclosed by Discloser to a third party without a duty of confidentiality on the third party, (v) is independently developed or learned by Recipient, or (vi) is disclosed by Recipient with Discloser's prior written approval.
- d) **Recipient** – the party receiving Confidential Information.

3. Obligations – Recipient shall protect and ensure its participating subcontractors, agents, or associates will protect all Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the Confidential Information as Recipient uses to protect its own information of a like nature. If any person or entity requests or demands, by subpoena or otherwise, all or any portion of the confidential information provided by one party to another, the party receiving such request shall immediately notify the Discloser of such request or demand. The party receiving the request or demand shall independently determine whether the information sought is subject to disclosure under applicable law including the New Mexico Inspection of Public Records Act. If the party receiving the request or demand determines that the information is subject to disclosure, it shall notify the Discloser of its intent to permit the disclosure with sufficient time to permit the Discloser to invoke the jurisdiction of an appropriate court or administrative body to raise any legitimate objections or defenses it may have to the disclosure. In the absence of an appropriate order prohibiting the disclosure, the party receiving the request or demand shall permit and proceed with the disclosure without incurring any duty, obligation or liability to the Discloser.
4. Termination - (i) Except as provided in subparagraph (ii) following, upon termination for any reason of the above referenced Agreement, Recipient shall return or destroy all Confidential Information received on behalf of the Discloser. This provision shall apply to Confidential Information that is in the possession of subcontractors, agents, or associates of Recipient. (ii) If Recipient determines that returning or destroying Confidential Information is not feasible, Recipient shall provide to Discloser written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or

destruction of the Confidential Information is not feasible, Recipient shall extend the protections of this Confidential Information Disclosure Statement to such Confidential Information and shall limit further uses and disclosures of such Confidential Information to those purposes that make the return or destruction infeasible, for so long as Recipient maintains such Confidential Information. (iii) The respective rights and obligations of Recipient under this paragraph shall survive the termination of the Agreement of the parties to which this Confidential Information Disclosure Statement attaches.

5. Choice of Law – Without regard to conflict of law provisions, this Statement is governed by and shall be construed in accordance with the laws of the State of New Mexico.
6. Miscellaneous – Except as otherwise provided in the above-referenced agreement Between County and Contractor, all Confidential Information provided under the above referenced Agreement is proprietary in nature and belongs to and shall inure to the benefit of the Discloser. Recipient shall not acquire any patent, copyright, mask work, or trademark rights under this Statement. This Statement imposes no obligation on either party to purchase, sell, license, transfer, or otherwise dispose of any technology, service, or product; does not create any agency or partnership relationship; may be added to or modified only in a writing signed by both parties, supersedes all oral or implied agreements concerning Confidential Information; and may be signed in duplicate originals, or in separate counterparts, which are effective as if the parties signed a single original. A facsimile of an original signature transmitted to the other party is effective as if the original was sent to the other party.
7. Indemnity – Contractor shall indemnify, hold harmless, and defend County, its Council Members employees, agents, and representatives, from and against all liabilities, damages, claims, demands, actions (legal and equitable), and costs and expenses, including without limitation attorney's fees, of any kind or nature, arising from Contractor's performance hereunder or breach hereof or the performance of Contractor's employees, agents, representatives, and subcontractors.

Signed this ___ day of _____, 20__

Contractor

By

Title

County

By

Title