

**City and County of San Francisco
Office of Contract Administration
Purchasing Division**

Third Amendment

THIS AMENDMENT (this "Amendment") is made as of April 7, 2008, in San Francisco, California, by and between **Tier Technologies, Inc.** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the agreement term to June 30, 2009, increase the contract amount by \$128,735 for a new total of \$396,344, replace Appendix B-1 with Appendix B-2 to reflect additional cost of the annual maintenance renewal.

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

a. Agreement. The term "Agreement" shall mean the Agreement dated July 1, 2006 between Contractor and City, as amended by the:

First amendment, dated February 1, 2007, and
Second amendment, dated July 1, 2007.

b. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Section 3. Section 3 Term of the Maintenance Agreement of the Agreement currently reads as follows:

Subject to Section 2, the term of this Maintenance Agreement shall be from July 1, 2006 to June 30, 2008.

Such section is hereby amended in its entirety to read as follows:

Subject to Section 2, the term of this Maintenance Agreement shall be from July 1, 2006 to June 30, 2009.

2b. Section 4 Section 4, City's Payment Obligation, of the Agreement currently reads as follows:

4. City's Payment Obligation

4.1. The City will make a good faith attempt to pay all invoices within 30 days of billing. However, in no event shall City be liable for interest or late charges for any late payments made after such 30-day period. For each piece of Software listed in Appendix B-1, City shall pay the price listed in Appendix B-1 for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed Two hundred sixty-seven thousand Six hundred and nine dollars and no cents (\$267,609.00). This amount is a fixed fee for all Support Services.

As outlined in Appendix B-1, the fixed fee for the time period July 1, 2007 through June 30, 2008 shall be One hundred twenty-two thousand Six hundred and five dollars (\$122,605) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2007, 2) October 1 – December 31, 2007, 3) January 1 – March 31, 2008, and 4) April 1 – June 30, 2008. Each invoice will be submitted 30 days prior to the beginning of the quarter and will be due on the last day of the preceding quarter.

4.2. Contractor and the City understand and intend that the obligations of the City to pay maintenance charges hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City.

4.3. The City shall pay maintenance charges, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Maintenance Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City.

Such section is hereby amended in its entirety to read as follows:

4. City's Payment Obligation

4.1. The City will make a good faith attempt to pay all invoices within 30 days of billing. However, in no event shall City be liable for interest or late charges for any late payments made after such 30-day period. For each piece of Software listed in Appendix B-2, City shall pay the price listed in Appendix B-2 for Support Services for that piece of Software. However, in no event shall the amount of this Agreement exceed Three Hundred Ninety-Six Thousand Three Hundred Forty-Four and no cents (\$396,344.00). This amount is a fixed fee for all Support Services.

As outlined in Appendix B-2, the fixed fee for the time period July 1, 2007 through June 30, 2008 shall be One hundred twenty-two thousand Six hundred and five dollars (\$122,605) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2007, 2) October 1 – December 31, 2007, 3) January 1 – March 31, 2008, and 4) April 1 – June 30, 2008. Each invoice will be submitted 30 days prior to the beginning of the quarter and will be due on the last day of the preceding quarter.

As outlined in Appendix B-2, the fixed fee for the time period July 1, 2008 through June 30, 2009 shall be One hundred twenty-eight thousand Seven hundred and thirty-five dollars and no cents (\$128,735.00) and shall be invoiced quarterly for the following time periods: 1) July 1 – September 30, 2008, 2) October 1 – December 31, 2008, 3) January 1 – March 31, 2009, and 4) April 1 – June 30, 2009. Each invoice will be submitted 30 days prior to the beginning of the quarter and will be due on the last day of the preceding quarter.

4.2. Contractor and the City understand and intend that the obligations of the City to pay maintenance charges hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City.

4.3. The City shall pay maintenance charges, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Maintenance Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City.

2c. Requiring Minimum Compensation for Covered Employees. Section 44 is hereby replaced in its entirety to read as follows:

44. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these

requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

2d. Appendix B-2. Appendix B-2, attached hereto, is hereby incorporated and hereby replaces Exhibit B-1 in its entirety.

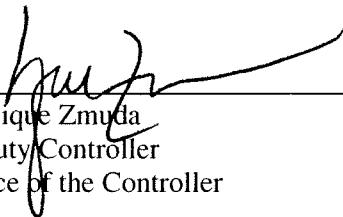
3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

Recommended by:



Monique Zmuda
Deputy Controller
Office of the Controller

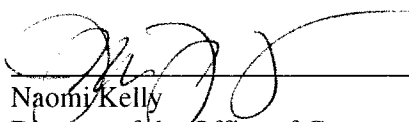
Approved as to Form:

Dennis J. Herrera
City Attorney

By: 

Deputy City Attorney

Approved:



Naomi Kelly
Director of the Office of Contract Administration,
and Purchaser

CONTRACTOR

Tier Technologies, Inc.



Tim Ramsey
Vice President, FMS
Tier Technologies, Inc.
10780 Parkridge Blvd., Suite 400
Reston, VA 20191

City vendor number: 61482

Exhibit B-2

Maintenance Fees, 7/1/06 to 6/30/07

Module	6-Month Fee
FAMIS (including RIMS)	\$22,973
ADPICS	19,144
FAACS	4,961
Labor Distribution	4,595
SYSTEMWIDE	3,829
Stargaze GUI	4,500
Performance Executive	12,500
Total	\$72,502

Maintenance Fees, 7/1/07 to 6/30/08

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 55,136	\$ 13,784.00
Asset Management	9,922	2,480.50
Purchasing	38,288	9,572.00
System Wide	7,658	1,914.50
Client GUI	11,601	2,900.25
	\$ 122,605	\$ 30,651.25

Quarterly Fee Payment Schedule

Payment #1	July 1, 2007
Payment #2	October 1, 2007
Payment #3	January 1, 2008
Payment #4	April 1, 2008

Maintenance Fees, 7/1/08 to 6/30/09

Module	Annual Fee	Quarterly Fee
Accounting (FAMIS, RIMS, & Labor Distribution)	\$ 57,893	\$ 14,473.25
Asset Management	10,418	2,604.50
Purchasing	40,202	10,050.50
System Wide	8,041	2,010.25
Client GUI	12,181	3,045.25
	\$ 128,735	\$ 32,183.75

Quarterly Fee Payment Schedule

Payment #1	July 1, 2008
Payment #2	October 1, 2008
Payment #3	January 1, 2009
Payment #4	April 1, 2009