

SOFTWARE PURCHASE AGREEMENT

This Agreement (hereinafter "Agreement") is made as of this _____ day of _____, 2007, by and between Tier1 Innovation, LLC, a Colorado corporation having a place of business at 7979 East Tufts Avenue, Suite 1100, Denver, Colorado 80237 (hereinafter "Tier1") and CITY OF SACRAMENTO, CALIFORNIA, a municipal corporation, ("CITY").

RECITALS

WHEREAS, CITY agrees to purchase from Tier1 the software products and/or maintenance as listed in Exhibit A at the net prices specified (hereinafter "Purchase");

WHEREAS, CITY agrees to the terms and conditions of the End User License Agreement, attached hereto as Exhibit B, without exception or modification;

WHEREAS, CITY is responsible for payment of all appropriate sales, use and other taxes related to Purchase,

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, and other good and valuable consideration, the parties agree as follows:

ARTICLE I – PAYMENT TERMS

- 1.1 CITY agrees to remit payment to Tier1 in full by the due date specified on the invoice (Net 30 days from date of delivery), without withholding, deduction or offset of any amounts for any purpose.
- 1.2 All invoices shall be sent electronically via e-mail to the following CITY individual:

Contact Name: Gina Knepp
Contact Title: Program Manager
E-mail Address: geknepp@cityofsacramento.org
Address: 5730 24th Street Building 1

City, State, ZIP: Sacramento CA 95822
Phone: 916-808-8333
Fax: 916-433-1340

ARTICLE II – SHIPPING INFORMATION

- 1.1 Tier1 agrees to make software available via an FTP download site within ten (10) business days of execution of this Agreement. Instructions for downloading software will be provided to the following CITY contact:

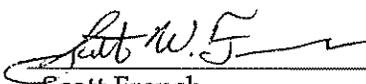
Name: Scott McAdara
E-mail Address: SMcAdara@cityofsacramento.org
Telephone: 916-808- 5586

IN WITNESS WHEREOF, CITY hereto has caused this Agreement to be executed as of the day and year first hereinabove written.

CITY OF SACRAMENTO

TIER1 INNOVATION, LLC

By: _____

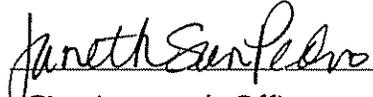
By: 

Name: Ray Kerridge

Name: Scott French

Title: City Manager

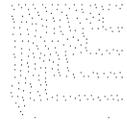
Title: Vice President

Approved as to form: 

City Attorney's Office

Attest: _____

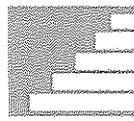
City Clerk's Office



Tier *Innovation*

Exhibit A

SOFTWARE QUOTATION



OneCity^{by} Tier1 Innovation

Customer: **City of Sacramento**

Line	Description	Quantity	List	Discounted Price
1	OneCity™ application and repository	Unlimited	\$ 250,000.00	\$ 175,000.00



Tier Innovation

Exhibit B

TIER1 INNOVATION ONECITY™ END USER LICENSE AGREEMENT

TIER1 INNOVATION ONECITY™

END USER LICENSE AGREEMENT

IMPORTANT – READ CAREFULLY: THIS IS A LEGAL AGREEMENT BETWEEN YOU AND TIER1 INNOVATION, LLC ("TIER1"). SIGNING BELOW AND OPENING THE ENVELOPE IN WHICH THE SOFTWARE WAS DELIVERED, INSTALLATION, USE, OR COPYING OF THE SOFTWARE BY YOU OR BY A THIRD PARTY ON YOUR BEHALF INDICATES YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS.

DEFINITIONS. "Documentation" shall mean Tier1's then current on-line help, guides, and manuals published by Tier1 and included on the media for the Programs. "Programs" mean the pre-configured OneCity™ application and repository (including seed data and scripts) developed by Tier1 and which must be used in conjunction with an equal number of licenses to Oracle|Siebel application software licensed separately, for use on the Supported Platform. "Ancillary Programs" means third party computer software provided to you by or on behalf of Tier1 or Oracle|Siebel software purchased by you or on your behalf for use with the Programs, and any related materials or documentation thereto. "Supported Platform" is the hardware and software platforms (e.g., database server systems, application server systems, and client systems) that operate with the Programs as expressly set forth in the Documentation. A "User" is a named or specified (by password or other user identification) individual authorized by you to use the Programs, regardless of whether such individual is actively using the Programs at any given time and for which a corresponding license of Oracle|Siebel application software license is purchased. The maximum number of Users permitted under this Agreement is specified in the Signature section. "Support Services" shall mean the services provided in accordance with Tier1's then-current Support Services Program. "Services" shall mean all services provided by Tier1 under the City of Sacramento Consultant and Professional Services Agreement, including Support Services. "Internal Business Operations" includes the following agencies: City of Sacramento, Sacramento Housing and Redevelopment Agency (SHRA), Sacramento Regional Transit District, Downtown Sacramento Partnership, Sacramento Area Council of Governments, Sacramento Public Library Authority, Sacramento Employment and Training Agency, the Capitol Area Development Authority, and the Sacramento Emergency Operations Center.

YOU MAY (a) install, use, and allow access to the Programs on the Supported Platform up to the number of Users for which this license is granted and you have paid; (b) make as many copies of the Programs as the number of Users for which you have paid (subject to the restrictions in the Documentation); (c) make copies of the Programs in machine-readable form solely for archival, emergency back-up, or disaster recovery purposes as needed adhere to the City's backup, recovery, and records management procedures and policies; and (d) physically transfer a copy of the User Programs from a User's desktop computer to an additional notebook or portable computer of such User, provided that each licensed copy is used by such User on only one computer at any given time and the total number of Users does not exceed the number for which this license is granted and you have paid. You must make reasonable efforts to reproduce all proprietary notices on all copies you make. If you are provided with any upgrades or new versions of the Programs, and you subsequently implement the upgrade, you shall promptly replace, cease using and destroy all superseded copies; and make copies of the documentation for internal business operations as needed.

YOU MAY NOT (a) modify, translate, reverse-engineer, decompile, disassemble, derive source code, based on, or copy the Programs (except as stated above), the accompanying Documentation, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation; New Interfaces between Siebel software and other applications may be made by the City, or one of the City's agents; interfaces implemented by Tier1 for the City may be upgraded by the City, or one of the City's agents; Tables may be modified as the City desires for internal business operations. (b) rent, transfer, distribute, outsource or grant any rights in the Programs in any form; (c) use the Programs for any purpose other than to support your own internal business operations or without a corresponding equal number of licenses granted under this Agreement; (d) remove any proprietary notices, labels or marks in or on the Programs; (e) transfer the Programs to any platform other than the Supported Platform; (f) use, copy, modify or transfer the Programs, or any copy thereof, in whole or in part, except as expressly provided in this Agreement; You shall not limit Tier1 in any way from developing, using, licensing, distributing, modifying, or otherwise freely exploiting the Programs, Documentation, any other materials provided by Tier1, or any modifications, enhancements, improvements or derivative works thereof, or permit third parties from so doing.

ASSIGNMENT. This Agreement is binding upon the parties and their respective successors and assignees. Neither party may transfer this Agreement or any rights granted hereunder without the advance written consent of the other party; provided, however, that such consent shall not be required if this Agreement is assigned in connection with a merger, acquisition, or sale of all or substantially all of the party's assets, in which case such assignment shall become effective upon

the other party's receipt of (i) the written notice of the assignment and (ii) the surviving entity's written assent to the terms of this Agreement, within thirty (30) days of the assignment. Notwithstanding the foregoing, any assignment or transfer of this Agreement or your rights hereunder in connection with a merger, acquisition, or sale of all or substantially all of your assets in which the surviving entity is a direct competitor of Tier1 shall in all cases require the prior written consent of Tier1.

INTELLECTUAL PROPERTY RIGHTS. Tier1 reserves all rights not expressly granted to you in this Agreement. Without limiting the generality of the foregoing, you acknowledge and agree that: (i) except as specifically set forth in this Agreement, Tier1 have all rights, title and interest in and to the Programs, and Documentation and all derivative works thereto, and you shall not acquire any right, title, or interest to the Programs or Documentation except as specifically set forth herein, (ii) any configuration or deployment of the Programs shall not affect or diminish Tier1's rights, title, and interest in and to the Programs.

TERM. Unauthorized use or copying of the Programs and Documentation or otherwise failing to comply with the terms and conditions of this Agreement may result in termination of this license and may entitle Tier1 or its suppliers to other legal remedies. The City will be notified of the license breach, and the City will be given 60 days to remedy any license breaches, once notified by Tier1 of such breaches. Upon termination of this Agreement for any reason whatsoever: (i) you must immediately cease using the Programs and Documentation, (ii) all of the rights granted to you hereunder shall immediately cease, and (iii) you must promptly destroy and erase all copies (including back-up copies) of the Programs.

NON-DISCLOSURE. The Programs and Documentation are proprietary and confidential information of Tier1. You agree, unless otherwise required by law, not to make such information available in any form to any third party (except Users and contractors hired by the City to perform work on the Siebel and OneCity products, or contractors hired by the City to maintain City IT Applications) or to use such information for any purpose other than in the performance of this Agreement and to take all reasonable steps to ensure that such information is not disclosed or distributed by your employees or agents in breach of this Agreement. You agree to use the Documentation solely in accordance with its accompanying terms. You shall not disclose the results of any benchmark or other performance tests of the Programs to any third party. You agree that if you recommend to Tier1 additional features, functionality, or performance or if Tier1 retains generalized information hereunder that Tier1 subsequently incorporates into its product or service offerings, then with respect to such recommendations and information, you hereby (a) grant Tier1 a worldwide, non-exclusive, royalty-free, perpetual right and license to use and incorporate such recommendations and such information into such offerings, and (b) acknowledge that all right and title to such offerings incorporating such recommendations and information shall be the sole and exclusive property of Tier1 and all such recommendations and information shall be free from any confidentiality restrictions that might otherwise be imposed upon Tier1 under this Section.

Notwithstanding any provision of this Agreement to the contrary, all materials received from Tier1 by the City of Sacramento, whether received in connection with this License Agreement will be disclosed upon receipt of a request for disclosure pursuant to the California Public Records Act; provided, however, that the City shall give notice to Tier1 of any request for disclosure of such information. Tier1 shall then have five (5) days from the date it receives such notice to enter into an agreement with the City providing for the defense of, and complete indemnification and reimbursement of all costs (including plaintiff's attorney fees) incurred by the City in any legal action to compel the disclosure of such information under the California Public Records Act. Tier1 shall have sole responsibility for defense of the actual "proprietary" or "trade secret" designation of such information. The parties understand and agree that any failure by Tier1 to respond to the notice provided by the City and/or enter into an agreement with the City, as set forth herein, shall constitute a complete waiver by Tier1 of any nondisclosure or confidentiality rights hereunder with respect to such materials, and such materials shall be disclosed by the City pursuant to applicable procedures required by the Public Records Act.

SERVICES. You may, but are not required, to purchase Support Services for the Programs. Tier1 will provide all Services, including Support Services in accordance with the City of Sacramento Consultant and Professional Services Agreement in effect at the time such Services are ordered.

LIMITED WARRANTIES AND DISCLAIMERS.

Limited Program Warranty. Tier1 warrants for one (1) year from the date of receipt of the Program that each unmodified Program will perform in all material respects the functions described in the Documentation when operated in accordance with the Documentation on a Supported Platform. If this warranty is breached, your sole and exclusive remedy and Tier1's sole liability shall be to use commercially reasonable efforts to correct or provide a workaround for reproducible Program errors, or, if Tier1 is unable to make the affected Program operate as warranted within a reasonable time considering the severity of the error and its impact on you, you will be entitled to recover the license fees paid by you to Tier1 for such Program

Anti-Virus Warranty. Tier1 warrants that to the best of its knowledge after employing reasonable technical means to detect computer viruses, the Programs as delivered by Tier1 do not contain any virus designed to damage, or erase the Programs or other software or data. If this warranty is breached, your sole and exclusive remedy and Tier1's sole liability shall be to, at Tier1's expense, immediately replace all copies of the affected Programs in your possession

Limited Media Warranty. Tier1 warrants for ninety (90) days from the date of receipt that the media upon which Tier1 delivers the Programs will be free of defects in materials and workmanship under normal use. If this warranty is breached, your sole and exclusive remedy and Tier1's sole liability shall be to replace the media

Ancillary Program Warranties. You shall have the benefit of any third party warranties, service agreements and infringement indemnities available to end users of the Ancillary Programs; provided, however, that your sole remedy for breach of any such warranty, indemnification, service agreement, or other rights shall be against the third party offering such rights and not against Tier1

You must notify Tier1 in writing, as set forth below, during the applicable warranty period in order to accrue the benefit of any the foregoing warranties. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED WITH REGARD TO THE PROGRAMS INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE. Without limiting the generality of the above, Tier1 does not warrant that (a) the Ancillary Programs will meet your requirements; (b) the Programs will operate in combination with other hardware, software, systems or data which you may select for use but which are not provided by Tier1 (except as expressly specified in writing by Tier1 in the Tier1 Documentation); (c) the operation of the Programs will be uninterrupted or error-free; or (d) all Program errors will be corrected. Tier1's Support Services and professional services for the Programs are available for a separate charge

INTELLECTUAL PROPERTY INFRINGEMENT. If a third party makes a claim against you that the Programs directly infringe any patent, copyright, trade secret or trademark ("IP Claim"); Tier1 will defend and hold you harmless against the IP Claim and pay all costs, damages and expenses (including reasonable legal fees); *provided that:* (i) you promptly notify Tier1 in writing no later than sixty (60) days after your receipt of notification of a potential claim; (ii) Tier1 may assume sole control of the defense of such claim and all related settlement negotiations; and (iii) you provide Tier1, at Tier1's request and expense, with the assistance, information and authority necessary to perform Tier1's obligations under this Section. Notwithstanding the foregoing, Tier1 shall have no liability for any claim of infringement based on (a) the use of a superseded or altered release of Programs if the infringement would have been avoided by the use of a current unaltered release of the Programs, (b) the modification of a Program without Tier1's authorization, (c) the use of the Programs other than in accordance with the Documentation and this Agreement, or (d) any material or information provided to Tier1 by you, for which you shall be solely responsible

If, due to an IP Claim or the threat of an IP Claim, (i) the Programs are held, or in Tier1's reasonable judgment may be held to infringe, or (ii) you are enjoined from using the Programs, or in Tier1's reasonable judgment you may receive such an order, Tier1 shall in its reasonable judgment, and at its expense, (a) replace or modify the affected Programs to be non-infringing; (b) obtain for you a license to continue using the affected Programs; or (c) if Tier1 cannot reasonably obtain the remedies in (a) or (b), terminate the license for the infringing Programs and refund the license fees paid for those Programs upon return by you. This Section states Tier1's entire liability and your exclusive remedy for any claim of infringement

INDEMNITY. Tier1 will fully defend, indemnify and hold you harmless from any damage, loss, liability, claim or cause of action arising out of (i) personal injury or death, or (ii) damage to real property or tangible personal property, as a result of the negligent or willful misconduct of Tier1, its employees, agents, contractors or representatives in the course of performance of this License Agreement and any Support Services Agreement in effect. Tier1's obligations hereunder are contingent upon you providing Tier1 prompt written notice of such damage, loss, liability, claim or cause of action, all reasonable assistance in the defense of such claim, and sole authority to defend or settle such claim

LIMITATION OF LIABILITY. IN NO EVENT SHALL TIER1 OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE LIABILITY OF TIER1 OR ITS SUPPLIERS FOR DAMAGES ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE AMOUNT PAID BY YOU UNDER THIS AGREEMENT, AND IF SUCH DAMAGES RELATE TO A PARTICULAR PROGRAM, SUCH LIABILITY SHALL BE LIMITED TO THE FEES PAID FOR THE RELEVANT PROGRAM GIVING RISE TO THE LIABILITY. THIS LIMITATION OF LIABILITY SECTION SHALL NOT APPLY TO THE INDEMNITY PROVISIONS OF THIS AGREEMENT.

EXPORT CONTROLS. You will not export or re-export the Programs or Ancillary Programs in any form without the appropriate United States and foreign government licenses or approvals, if any. You will not directly or indirectly export or transfer the Programs or Ancillary Programs, or any direct product thereof, to any country to which transmission is restricted by applicable statute, including but not limited to the U.S. Export Administration Regulations

RESTRICTED RIGHTS NOTICE. U.S. GOVERNMENT RESTRICTED RIGHTS. The Programs and Documentation, delivered subject to the Department of Defense Federal Acquisition Regulation Supplement, are "commercial computer software" as set forth in DFARS 227.7202, Commercial Computer Software and Commercial Computer Software Documentation, and as such, any use, duplication and disclosure of the Programs and Documentation shall be subject to the restrictions contained in the applicable Tier1 license agreement. All other use, duplication and disclosure of the Programs and Documentation by the U.S. Government shall be subject to the applicable Tier1 license agreement and the restrictions contained in subsection (c) of FAR 52.227-19, Commercial Computer Software - Restricted Rights (June 1987), or FAR 52.227-14, Rights in Data - General (June 1987), including Alternate III (June 1987), as applicable. Contractor/licensor is Tier1 Innovation, LLC, 7979 East Tufts Avenue, Suite 1100, Denver, CO 80237

GENERAL. This Agreement shall be governed by and construed in accordance with the laws of the State of California, U.S.A., excluding its conflict of laws provisions; and the parties agree that jurisdiction and venue for any action hereunder shall be the state and U.S. federal courts in Sacramento County, CA. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party. The rights granted to herein are non-exclusive and non-transferable. The rights granted to you herein do not constitute a sale. Tier1 reserves all rights not expressly granted to you herein. In the event of any litigation of any controversy or dispute arising out of or in connection with this Agreement, its interpretation, its performance, or the like, the prevailing party shall be awarded reasonable attorneys' fees and expenses, court costs, and reasonable costs for expert and other witnesses attributable to the prosecution or defense of that controversy or dispute. **This Agreement constitutes the complete and entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings between the parties, whether written or oral, relating to the same subject matter.**

SIGNATURE. This Agreement is made as of _____, 2007 ("Effective Date") by and between the City of Sacramento (herein "You" or "City") and Tier1 Innovation, LLC ("Tier1") The person signing this Agreement for Tier1 represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Tier1 and to bind Tier1 to the performance of its obligations hereunder

Maximum Number of OneCity™ Licenses Granted under this Agreement: is
__unlimited__

All named users of Oracle|Siebel application software for the 311 Services program require a corresponding license of OneCity™ under this Agreement

CITY OF SACRAMENTO

A Municipal Corporation

Signature: _____
Ray Kerridge, City Manager

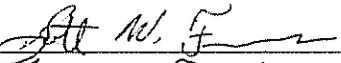
Approved as to form:


City Attorney's Office

Attest:

City Clerk's Office

Tier1 Innovation, LLC

Signature:  _____
Name: Scott W. French

Vice President