Tier
Expect A Lot

Tier Technologies, Inc.

SOFTWARE MAINTENANCE AGREEMENT

LICENSEE: City of Sunnyvale

LICENSE DATE: June 1, 2002

LICENSOR: Tier Technologies, Inc.

EFFECTIVE DATE: June 1, 2002

LICENSEE:

Licensee Name:	City of Sunnyvale	Bill to Address (if different):	
Contact:	Cheryl Bunnell, Apps. Devel. Manager		
Address:	650 West Olive Avenue		
	Sunnyvale, CA 94088		
Phone:	(408) 730-7657	Phone:	
Fax:	(408) 737-4950	Fax:	
Email:	cbunnell@ci.sunnyvale.ca.us	Email:	

This Software Maintenance Agreement ("Agreement") is entered into by and between Tier Technologies, Inc., a California Corporation with principal offices at 1350 Treat Blvd., Suite 250, Walnut Creek, CA 94596, and the City of Sunnyvale ("Licensee").

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

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

b. Software Updates and Corrections. Tier will promptly make available to Licensee all updates, enhancements and corrections generally released by Tier for such Software, including all relevant documentation prepared, via the internet, magnetic media or CD-ROM, although nothing herein shall require Tier to provide installation, implementation and testing services hereunder for such updates, enhancements and corrections. Updates, enhancements and corrections do not include software that Tier, in its sole discretion, designates as a new product.

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

If the Effective Date of this Agreement is other than the License Date set forth above, then Tier shall have no obligations hereunder unless the Software is certified by Tier, in Tier's sole discretion, as eligible to receive Maintenance Services. This Agreement does not cover any on-site consulting or services, which services shall be provided pursuant to a Statement of Work under a Services Agreement between the parties. Licensee acknowledges and agrees that Tier makes no warranty or guarantee that its efforts will always be successful, (B) there is no warranty or guarantee that any subsequent release of the Software will occur during the term of this Agreement, and (C) the Licensee will not be entitled hereunder to receive such Release if it is released after the term of this Agreement.

2. Licensee Obligations.

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

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

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

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

3. Warranties: Limitation of Liability.

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

b. TIER WARRANTS THAT IT WILL PROVIDE MAINTENANCE SERVICES IN GOOD FAITH. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 3.b, TIER MAKES NO REPRESENTATIONS OR WARRANTIES, AND TIER EXPRESSLY DISCLAIMS, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE AND SUCH IMPLIED WARRANTIES ARE EXPRESSLY EXCLUDED. TIER MAKES NO WARRANTY AS TO THE ADEQUACY OR CAPACITY OF THE SOFTWARE, ANY HARDWARE OR ANY THIRD PARTY SOFTWARE TO ACHIEVE SOME OR ALL OF THE PERFORMANCE OBJECTIVES OF THE LICENSEE, THE SOFTWARE'S ABILITY TO OPERATE IN COMBINATION WITH ANY THIRD PARTY

HARDWARE OR SOFTWARE, OR THAT THE SOFTWARE'S OPERATION WILL BE UNINTERRUPTED OR ERROR-FREE.

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

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

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

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

5. Payment.

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

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

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

6. Termination.

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

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

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

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

7. Proprietary Rights: Confidentiality.

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

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

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

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

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

10. Notice.

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

Tier Technologies, Inc.
Attn: General Counsel
1350 Treat Blvd., Suite 250
Walnut Creek, CA 94596

In the case of the Licensee:
City of Sunnyvale
650 West Olive Avenue
Sunnyvale, CA 94088

Attn: Cheryl Bunnell

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

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

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

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

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

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

City of Sunnyvale		Tier Technologies, Inc.	
By:	David Gakle	By:	
Name:	David Gakle (Print or Type Name)	Name:	James R Lukeover (Print or Type Name)
Title:	Senior Buyer Purchasing Div (Print or Type Title)	Title:	President (Print or Type Title)
Date:	8-28-02	Date:	9/26/02

APPENDIX A

COVERED SOFTWARE

Module	Version
Performance Accounting	2.x
Performance Asset Management	2.x
Performance Cost Allocation	2.x
Performance Purchasing	2.x

APPENDIX B

EQUIPMENT

Computer Manufacturer:	HP
Computer Model:	K420
OS and version:	Unix 11.x
Database and version:	Oracle 8.1.7

APPENDIX C

ANNUAL MAINTENANCE FEES

Module	Annual Fee	Maintenance Anniversary Date
Performance Accounting	$30,769	July 1
Performance Asset Management	$10,906	July 1
Performance Cost Allocation	$14,025	July 1
Performance Purchasing	$26,659	July 1
TOTAL	$82,359	