



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Execute Professional Services Agreement with Environmental Systems Research Institute, Inc., of Redlands, for Geographical Information System Services, and Appropriating Funds (\$72,000)

MEETING DATE: November 21, 2012

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute a professional services agreement with Environmental Systems Research Institute, Inc., of Redlands, for Geographical Information System services and appropriating funds in the amount of \$72,000.

BACKGROUND INFORMATION: On March 21, 2012 the City Council authorized the City Manager to execute a professional services agreement to replace the outdated MapGuide viewer with Environmental Systems Research Institute, Inc. (ESRI) for Geographical Information System (GIS) software at a cost of \$35,475 distributed over various departments. This was done to provide a standard mapping platform citywide. The ESRI GIS software is capable of much more complex uses and is intended to be the foundation to expand department specific GIS capabilities.

The GIS project for the Electric Utility Department (EUD) will have three phases; phase 1: data collection and migration to ESRI platform; phase 2: GIS model building; and phase 3: integration of EUD's existing Milsoft engineering software and Supervisory Control and Automatic Data Acquisition (SCADA) system into the GIS model. This contract will provide implementation of phase 1 as outlined in the attached agreement.

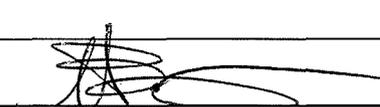
Staff researched the products of three companies that provide GIS. Of those studied, ESRI provided the most reliable, robust features, and expandability that best fit the Utility's needs. ESRI offers a complete enterprise GIS that provides functionality, flexibility and scalability from server GIS to desktop, to mobile devices, as well as, complete developer and GIS user support and open access to online resources and events.

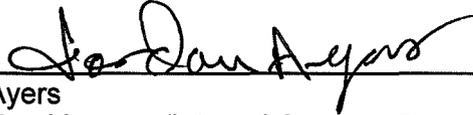
Staff recommends approval of this agreement and appropriation of funds.

FISCAL IMPACT: Implementation of GIS will improve the operational reliability, safety, and efficiency of the electrical system; ultimately will reduce outage time of electrical power, and reduce operational cost.

FUNDING AVAILABLE: Request Appropriation:
Electric Utility Department Operating Fund (160): \$72,000

APPROVED: _____


Konradt Bartlam, City Manager



Jordan Ayers
Deputy City Manager/Internal Services Director



Elizabeth A. Kirkley
Electric Utility Director

PREPARED BY: Weldat Haile, Senior Power Engineer

EAK/WH/lst



MASTER SERVICES AGREEMENT
(E115M 06/14/2010)

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

This Master Services Agreement ("Agreement") is entered into as of the ____ day of _____, 20____, by and between **Environmental Systems Research Institute, Inc.** (hereinafter referred to as "**Esri**"), a California corporation with its principal place of business at 380 New York Street, Redlands, California 92373-8100, and **City of Lodi** (hereinafter referred to as "**Licensee**"), a municipal corporation with its principal place of business at 221 West Pine Street, Lodi, CA, 95240.

In consideration of the mutual covenants and promises set forth herein, the parties agree as follows:

ARTICLE 1—DEFINITIONS

- i. "Task Order" means an order for professional services issued under this Agreement in substantially the same format as the sample task order form attached as Attachment A.
- ii. "Custom Software" means all or any portion of the computer software code, components, dynamic link libraries (DLLs), and programs delivered on any media provided in source, object, or executable code format(s), inclusive of backups, updates, or merged copies permitted hereunder or subsequently supplied under any Task Order, exclusive of Commercial off-the-shelf Software, or COTS Software.
- iii. "Technical Data" means, without limitation, all technical materials including formula, compilations, software code or programs, methods, techniques, know-how, technical assistance, processes, algorithms, designs, data dictionaries and models, schematics, user documentation, training documentation, specifications, drawings, flowcharts, briefings, test or quality control procedures, or other similar information supplied or disclosed by Esri under any Task Order. Technical Data does not include COTS Software, COTS data, or COTS documentation, which must be licensed separately by Licensee under Esri's commercial Software license.
- iv. "Map Data" means any digital dataset(s) including geographic, vector data coordinates, raster, or associated tabular attributes supplied by either party for use in the performance of any Task Order.
- v. "Deliverables" means Custom Software, Technical Data, or Map Data specified for delivery or use by Licensee under a firm fixed price Task Order.
- vi. "Commercial off-the-shelf Software" or "COTS Software" means all or any portion of Esri's proprietary software technology accessed or downloaded from an authorized Esri Web site or delivered on any media in any format, including backups, updates, service packs, patches, hot fixes, or permitted merged copies, available under license to the general public.
- vii. "Services" means consulting support being performed by Esri on a time and materials hourly basis in exchange for compensation from the Licensee.
- viii. "Services Output" means any tangible output produced as a result of the Services provided by Esri under this Agreement. Services Output can include, but is not limited to, reports, training materials, and Custom Software.

ARTICLE 2—TASK ORDERS AND PROJECT SCHEDULE

Esri shall provide Deliverables and/or Services as specified in a specific Task Order relating to the COTS Software identified in the Task Order.

Unless otherwise provided by Esri in writing, Esri's Contracts Manager for the Professional Services Division, John Perry, is authorized to agree to Task Orders. The following Licensee representatives are authorized to sign Task Orders and bind Licensee:

Department Heads, the City Manager and the City Council are authorized to approve and sign Task Orders up to their authority level according to the City of Lodi's purchasing policy that is in effect with Task Order is executed (LMC 2.12.060).

Each party may enter into Task Orders at its sole discretion and shall not have any obligation under a Task Order until it is signed by both parties.

Each party shall identify in writing the project manager who is responsible for the Services or Deliverables specified in Task Orders. By written notice, either party may replace the project manager at any time with a similarly qualified person.

The period of performance of each Task Order shall be specified in each Task Order.

ARTICLE 3—RESERVATION OF OWNERSHIP AND GRANT OF LICENSE

Except as specifically granted in this Article 3, Esri or its licensors own and retain all right, title, and interest in the Deliverables and Services Output. This Agreement does not transfer ownership rights of any description in the Deliverables or Services Output to Licensee or any third party. Subject to the terms and conditions set forth in this Agreement and effective upon the transfer, by any means, of the Deliverables or Services Output to the Licensee, Esri hereby grants to Licensee a nonexclusive, worldwide license in the Deliverables or Services Output to use, modify, and reproduce the Deliverables or Services Output in connection with Licensee's authorized use of COTS Software. The license grant in the immediately preceding sentence does not apply to Map Data, which Licensee must separately and directly license from the vendor.

Licensee shall retain any patent, copyright, or trademark or proprietary notices on all items licensed under this Agreement and shall take other necessary steps to protect Esri's or its licensor's intellectual property rights.

ARTICLE 4 PATENTS AND INVENTIONS

During the performance of Task Orders, the parties anticipate that inventions, innovations, and improvements ("Inventions") relating to the subject matter of such Task Orders may be conceived solely or jointly by principals, employees, consultants, or independent contractors (hereinafter called "Inventors") of the parties hereto.

The parties agree that, as of the effective date of this Agreement, Esri or its licensors own all intellectual property rights in the COTS Software. During the term of this Agreement, Licensee shall promptly notify Esri if Licensee becomes aware of any known or suspected infringement or violation of these rights.

Each party shall retain title to any Inventions made or conceived solely by its Inventors during the term of this Agreement, including, but not limited to, such Inventions that Esri's Inventors solely make or conceive while providing technical assistance pursuant to this Agreement. The parties shall jointly own any Inventions made or conceived jointly by Inventors from both parties.

Where only one party has title to an Invention, that party, at its sole discretion, shall have the right, but not the obligation, at its expense to: (i) decide on whether or not to seek or maintain, or to continue to seek or maintain, patent protection in any country on such Invention; (ii) decide the extent and scope of such protection; and (iii) protect and enforce in any country any patents issued on such Invention.

Except as provided in the next paragraph, where an Invention is jointly owned, each party shall share equally the costs of acquiring protection for the Invention and furnish the other joint owner with assistance reasonably required for acquiring protection.

The acquisition or maintenance of protection shall not be abandoned by a joint owner (the "Assigning Owner") without giving the other joint owner (the "Beneficial Owner") an opportunity to intervene and acquire or maintain protection at the Beneficial Owner's expense. The Assigning Owner electing not to acquire or maintain protection on any Inventions in any country or countries shall assign such of its rights in such Inventions to the Beneficial Owner as is necessary to enable the Beneficial Owner to protect such Inventions in such country or countries at its expense and for its exclusive benefit. In such event, the Assigning Owner shall make available to the Beneficial Owner the Assigning Owner's Inventors and shall otherwise cooperate with the Beneficial Owner in order to assist the Beneficial Owner in protecting such Inventions. The Beneficial Owner shall reimburse the Assigning Owner for all reasonable out-of-pocket expenses incurred in rendering such assistance. If any such Inventions are so protected by the Beneficial Owner, then the Assigning Owner shall have a license with respect to the subject matter of such protected Inventions in such country or countries.

All Inventions made by Inventors during performance of tasks and activities defined by Task Orders during the term of this Agreement will be presumed, absent clear and convincing evidence to the contrary, to have resulted from the Inventors' activities under the Task Orders.

Neither party may license, transfer, sell, or otherwise alienate or encumber its interest in jointly owned Inventions without the written consent of the other party, which shall not be unreasonably withheld by either party. However, either party may transfer such Inventions to its Affiliates for their internal use only. "Affiliate" shall mean the parent or subsidiary companies of a party or subsidiary companies to a party's parent provided there is more than fifty percent (50%) ownership of the subsidiary by the parent or party.

ARTICLE 5—CONFIDENTIALITY OF DELIVERABLES AND SERVICES OUTPUT

Except as required by California Public Records Act or as otherwise agreed in writing, the Deliverables and Services Output are Esri confidential information, and Licensee shall preserve and protect the confidentiality of said Deliverables and Services Output. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile Deliverables or Services Output delivered only in object code, executable code, or formats subject to similar or greater means of access control (collectively, "Secure Formats"). For Deliverables or Services Output delivered in source code or other human-readable formats, Licensee shall have met its obligations under this Article if its disclosure of Deliverables or Services Output is limited to Deliverables or Services Output in Secure Formats, *provided* that the means for reverse engineering, decompiling, or disassembling such Deliverables or Services Output is withheld from such disclosure, and the person or entity in receipt of such Deliverables or Services Output similarly agrees not to perform such acts or allow others to do so.

Except as provided in the preceding paragraph, Licensee shall not disclose any Deliverables or Services Output to employees or third parties without the advanced written consent of Esri. However, Licensee may, without such consent, make such disclosures to employees as are reasonably required for the Licensee's authorized use of the COTS Software, provided that such disclosure is strictly limited to the portions of the Deliverables or Services Output needed for that purpose. The disclosures permitted under this paragraph shall not relieve Licensee of its obligation to maintain the Deliverables or Services Output in confidence and comply with all applicable laws and regulations of the United States.

Licensee shall not have any obligation to protect any part of a Deliverable or Services Output that it can prove: (i) was in Licensee's possession before receipt from Esri; (ii) is or becomes a matter of public knowledge through no fault of Licensee; (iii) is rightfully disclosed by a third party without a duty of confidentiality; (iv) is disclosed by Esri to a third party without a duty of confidentiality; (v) is independently developed by Licensee; or (vi) is required to be disclosed by operation of law.

ARTICLE 6—ACCEPTANCE

- A. For Time and Materials Task Orders.** Services are provided strictly on a time and materials basis subject to the task order not-to-exceed funding limit. The Services delivered will be deemed accepted and in compliance with the professional and technical standards of the software industry unless Esri is notified otherwise by Licensee within ten (10) days after delivery.
- B. For Firm Fixed Price Task Orders.** Unless otherwise stated in a Task Order, Deliverables for fixed price Task Orders shall be categorized as follows:
- i. "DELIVERABLE ACCEPTED" means a Deliverable conforming to applicable Task Order(s) with no more than minor nonconformities. Licensee shall complete its acceptance review within ten (10) working days of receiving each Deliverable.
 - ii. "DELIVERABLE ACCEPTED WITH REWORK" means a deliverable substantially conforming to applicable Task Order(s), but having a significant number of identified nonconformities and accepted subject to rework by Esri. Esri shall rework the Deliverable for the identified nonconformities and resubmit it within thirty (30) days. Licensee will rerun its acceptance review for the nonconformities detected in the initial review within ten (10) working days of such resubmission and will reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.
 - iii. "DELIVERABLE REJECTED" means a Deliverable that fails to substantially conform to applicable Task Order(s). Esri shall rework the Deliverable and resubmit it to Licensee within thirty (30) days, at which time Licensee shall have ten (10) working days to rerun its acceptance review and reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.

Unless otherwise stated in a Task Order, Licensee agrees it shall not use any Deliverable in its business operations before acceptance as described in B.i. or B.ii. If Esri does not receive within ten (10) working days after delivery written notice that the Deliverable is "ACCEPTED WITH REWORK" or "REJECTED" in accordance with B.ii. or B.iii., or if Licensee uses the Deliverable in its business operations, the Deliverable shall be deemed, as of the first to occur of either of these events, to have been accepted.

ARTICLE 7—CHANGES TO SCOPE OF WORK

Licensee may, at any time, request changes within the general scope of an open Task Order. If the parties agree to such changes and such changes cause an increase or decrease in the cost or time required to provide a Deliverable under any Task Order (regardless of whether the Deliverable itself is changed), an equitable adjustment in the price or schedule, or both, shall be made, and this Agreement shall be modified accordingly in writing and signed by both parties.

ARTICLE 8—COMPENSATION; INVOICES

A. For Time and Materials Task Orders. Esri shall prepare and submit to Licensee written monthly invoices showing the compensation due for work performed, including travel time, under Task Orders to the Licensee address listed on the Task Order. The amount invoiced will be equal to the number of hours expended during the previous month multiplied by the rates for labor categories set forth in Attachment B, plus other burdened direct costs (ODCs), such as travel-related expenses. Meals and incidental expenses will be invoiced on a "per diem" basis in accordance with the limits stated in the most current Federal Travel Regulations.

Esri may reallocate the budget between activities, labor categories, and ODCs as necessary to facilitate the work effort, provided the overall price is not exceeded. In the event Esri reaches the funded not-to-exceed Task Order value and the activities are not completed, Licensee may increase the order funding to allow additional work to be performed, or Esri may stop work without further obligation or liability.

B. For Firm Fixed Price Task Orders. Unless otherwise specified in a Task Order, Esri shall prepare and submit monthly invoices based on the percent complete for each Deliverable as of the end of the preceding month. Upon acceptance of all Deliverables under a Task Order, the unpaid balance of the total Task Order value is due.

C. Payment. Licensee shall pay each invoice no later than thirty (30) days after receipt thereof. Payment shall be made to the Esri address identified on original Esri invoices.

ARTICLE 9—LIMITED WARRANTY AND DISCLAIMER OF WARRANTIES

A. For Time and Materials Task Orders

i. **Limited Warranty.** Esri warrants that for a period of thirty (30) days from the date of acceptance that the Services will conform to the professional and technical standards in the software industry. During the limited warranty period, Licensee may require Esri to reperform the Services, at no additional cost to the Licensee, which do not substantially conform to such standards. Services Output is provided "AS IS" without warranty of any kind.

ii. **Disclaimer of Warranties**

(a) WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN SECTION A.i. OF THIS ARTICLE 9, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

B. For Firm Fixed Price Task Orders

i. **Limited Warranty.** Esri warrants that for a period of thirty (30) days after acceptance of a Deliverable that the Deliverable will conform, in a manner consistent with professional and technical standards in the software industry, with the applicable written specifications that are included in, or delivered by Esri pursuant to, the corresponding Task Order.

ii. **Disclaimer of Warranties**

(a) WITH THE EXCEPTION OF THE LIMITED WARRANTY SET FORTH IN SECTION B.i. OF THIS ARTICLE 9, ESRI DISCLAIMS, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER OBLIGATIONS TO CORRECT OR REPLACE DELIVERABLES AND OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION: (i) ANY WARRANTY THAT DELIVERABLES ARE ERROR-FREE, FAULT-TOLERANT, OR FAIL-SAFE; WILL OPERATE WITHOUT INTERRUPTION, ARE COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED; (ii) ANY WARRANTY THAT THE DELIVERABLES ARE DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY DAMAGE OR ENVIRONMENTAL DAMAGE (ANY SUCH USE BY LICENSEE SHALL BE AT LICENSEE'S OWN RISK AND COST); (iii) ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

- C. **Map Data Disclaimer.** ESRI DOES NOT WARRANT IN ANY WAY THE MAP DATA, WHETHER SUPPLIED BY LICENSEE OR ESRI, OR THE VENDORS OF EITHER OF THEM. IF SUPPLIED BY ESRI OR ITS VENDORS, ESRI BELIEVES SUCH MAP DATA IS RELIABLE, BUT IT MAY NOT BE FREE OF NONCONFORMITIES, DEFECTS, ERRORS, OR OMISSIONS; BE AVAILABLE WITHOUT INTERRUPTION, BE CORRECTED IF ERRORS ARE DISCOVERED; OR MEET LICENSEE'S NEEDS OR EXPECTATIONS. ESRI IS NOT INVITING RELIANCE ON MAP DATA, AND LICENSEE SHOULD ALWAYS VERIFY ACTUAL DATA FROM DOCUMENTS OF RECORD, FIELD MEASUREMENT, OR OBSERVATION.

ARTICLE 10—LIMITATION OF LIABILITY

- A. **Disclaimer of Certain Types of Liability.** IN NO EVENT SHALL ESRI OR ITS LICENSOR(S) BE LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS; LOST SALES OR BUSINESS EXPENDITURES; INVESTMENTS; OR COMMITMENTS IN CONNECTION WITH ANY BUSINESS, LOSS OF ANY GOODWILL, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE DELIVERABLES OR SERVICES OUTPUT, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT ESRI OR ITS LICENSOR(S) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.
- B. **General Limitation of Liability.** IN NO EVENT WILL ESRI'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR USE OF THE DELIVERABLES OR SERVICES OUTPUT, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISREPRESENTATION, OR OTHERWISE, EXCEED THE AMOUNTS PAID TO ESRI BY LICENSEE FOR THE DELIVERABLES OR SERVICES OUTPUT FROM WHICH THE LIABILITY DIRECTLY AROSE. THIS LIMITATION WILL NOT APPLY TO CLAIMS BY THE CLIENT FOR BODILY INJURY OR DAMAGE(S) TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY, FOR WHICH ESRI IS LEGALLY LIABLE OR FOR ERRORS AND OMISSIONS COVERED BY ESRI'S INSURANCE TO THE EXTENT OF THE VALUE OF THE INSURANCE COVERAGE REQUIRED BY ATTACHMENT C.
- C. **Applicability of Disclaimers and Limitations.** Licensee agrees that the limitations of liability and disclaimers set forth in this Agreement will apply regardless of whether Licensee has accepted the Deliverables, or any other product or service delivered by Esri. The parties agree that Esri has set its prices and entered into this Agreement in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose or cause consequential loss), and that the same form an essential basis of the bargain between the parties.

ARTICLE 11—EXPORT CONTROL REGULATIONS

Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, transfer, or release COTS Software, Services Output, or Deliverables in whole or in part, to (i) any U.S. embargoed country (or to a national or resident of any U.S. embargoed country); (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Table of Denial Orders; or (iv) any person or entity where such export, reexport, or provision violates any U.S. export control laws or regulations including, but not limited to, the terms of any export license or licensing provision and any amendments and supplemental additions to U.S. export laws as they may occur from time to time.

ARTICLE 12—TERM AND TERMINATION

- A. **Term.** Unless terminated earlier pursuant to Sections B, C, or D of this Article, the term of this Agreement shall expire upon the later to occur of (i) the delivery of the last scheduled Deliverable or Service as specified in the Task Orders executed under this Agreement or (ii) the expiration of a two (2)-year period commencing on the effective date of this Agreement. This Agreement may be extended by the mutual written agreement of both parties.
- B. **Termination for Convenience by Licensee.** Licensee may terminate this Agreement or any Task Order at any time on thirty (30) days' written notice to Esri and upon payment to Esri of all amounts due to date pursuant to this Agreement, including reasonable termination expenses and the pro rata contract price for the Task Orders affected.

- C. Termination for Cause by Licensee.** Licensee shall have the right, in addition and without prejudice to any other rights or remedies, to terminate this Agreement or any Task Order for any material breach of this Agreement by Esri that is not cured within fifteen (15) days of receipt by Esri of a notice specifying the breach and requiring its cure.
- D. Termination for Cause by Esri.** Esri may terminate this Agreement immediately upon written notice to Licensee in the event that one or more of the following occur:

Insolvency of Licensee

- i. Licensee becomes insolvent, ceases to pay its debts in the ordinary course of business, is unable to pay its debts as they become due, or makes an assignment for the benefit of creditors;
- ii. A trustee or receiver is appointed for any or all of Licensee's assets;
- iii. Any bankruptcy or insolvency proceeding under any federal or state bankruptcy or insolvency code, or similar law, whether voluntary or involuntary, is commenced by or against Licensee;
- iv. Licensee is dissolved or liquidated;
- v. There is any
 - a. Material change in the management or control of Licensee;
 - b. Transfer of any substantial part of Licensee's business; or
 - c. Bulk transfer by Licensee pursuant to the Uniform Commercial Code or similar law.

Default or Breach by Licensee

- vi. Licensee defaults under this Agreement three (3) or more times within any six (6)-month period, regardless of whether such defaults are cured;
- vii. Licensee engages in the unauthorized use of the COTS Software;
- viii. Licensee engages in the unauthorized use, reproduction, or disclosure of Deliverables or Services Output;
- ix. Licensee breaches any provision of this Agreement and there is no possibility of cure;
- x. Licensee fails to pay after ten (10) days' written notice the **amounts** due to Esri pursuant to the "Compensation; Invoices" Article 8 of this Agreement.

E. Obligations upon Termination

- i. Upon termination by Esri, all outstanding Task Orders shall be subject to cancellation, acceptance, or rejection, at the sole discretion of Esri.
- ii. In the event of termination by Esri pursuant to Subsections v-x of Section D of this Article, the due dates of all invoices for amounts owed by Licensee to Esri shall be accelerated automatically so that such amounts become due and payable on the effective date of the termination, regardless of the payment term provisions set forth in this Agreement.
- iii. Upon termination of this Agreement, the parties shall have no further obligations pursuant to its terms, except that Articles 1, 4, 5, 8, 9.A.ii., 9.B.ii., 9.C., 10-14, 17, and 20-27 shall survive termination. Unless Licensee has materially breached its obligations under this Agreement, Articles 3, 9.A.i., and 9.B.i. shall also survive termination. Except where specifically stated otherwise, any current or future cause of action or claim of one party because of any breach or default of the other party and any accrued license rights shall survive to the degree necessary to permit the complete fulfillment or discharge of the cause of action.

ARTICLE 13—RESTRICTIONS ON SOLICITATION

Licensee shall not solicit for hire any Esri employee who is associated with efforts called for under this Agreement during the term of this Agreement and for a period of one (1) year thereafter. In the event the foregoing provision is breached, Licensee shall pay Esri liquidated damages for recruiting and training costs equal to twelve (12) months of the employee's compensation plus any legal expenses associated with the enforcement of this provision. The foregoing shall in no way restrict Licensee from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

ARTICLE 14—TAXES

Values specified in Task Orders are exclusive of state, local, and other taxes or charges (including, without limitation, custom duties, tariffs, and value-added taxes, but excluding income taxes payable by Esri). In the event such taxes or charges become applicable to Deliverables or Services Output, Licensee shall pay any such taxes upon receipt of written notice that they are due.

ARTICLE 15—INDEPENDENT CONTRACTOR

Esri is, and at all times will be, an independent contractor. Nothing in this Agreement shall be deemed to create an employer/employee, principal/agent, or joint venture relationship. Neither party has the authority to enter into any contracts on behalf of the other party or otherwise act on behalf of the other party.

ARTICLE 16—FORCE MAJEURE

If the performance of this Agreement, or any obligation except the making of payments, is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war, terrorist act, cyberattack, or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency; or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction, or interference.

ARTICLE 17—NOTICE

All notice required by this Agreement shall be in writing to the parties at the following respective addresses, or to such other address as a party may subsequently specify in a notice provided in the manner described in this Article, and shall be deemed to have been received (i) upon delivery in person; (ii) upon the passage of three (3) days following post by first class registered or certified mail, return receipt requested, with postage prepaid; (iii) upon the passage of two (2) days following post by overnight receipted courier service; or (iv) upon transmittal by confirmed e-mail or facsimile, provided that if sent by e-mail or facsimile, a copy of such notice shall be concurrently sent by U.S. certified mail, return receipt requested and postage prepaid, with an indication that the original was sent by e-mail or facsimile and the date of its transmittal:

Licensee: Office of the City Attorney
City of Lodi
221 West Pine Street
Lodi, CA 95240

Esri: Environmental Systems Research Institute, Inc.
380 New York Street
Redlands, CA 92373-8100
USA
Project/Technical Notice—Attn.: John Perry,
Contracts Manager – Esri Professional Services Division
Tel.: 909-793-2853, extension 1133
Fax: 909-307-3034
Legal Notice—Attn.: Contract Manager
Tel.: 909-793-2853, extension 1133
Fax: 909-307-3020
With a copy to John Perry, Contracts Manager – Esri Professional Services Division

Notice for non-U.S. Licensees shall be deemed to have been received (i) upon delivery in person; (ii) upon the passage of seven (7) days following post by international courier service with shipment tracking provisions; or (iii) upon transmittal by confirmed e-mail or facsimile, provided that if sent by e-mail or facsimile, a copy of such notice shall be concurrently sent by receipted international courier service, with an indication that the original was sent by e-mail or facsimile and the date of its transmittal.

ARTICLE 18—ASSIGNMENT AND DELEGATION

Esri may, in whole or in part, assign any of its rights or delegate any performance under this Agreement, provided that Esri shall remain responsible for the performance it delegates. This Agreement binds and benefits successors or assigns permitted under this Article 18.

ARTICLE 19—SUCCESSOR AND ASSIGNS

Licensee shall not assign, sublicense, or transfer Licensee's rights or delegate its obligations under this Agreement without Esri's prior written consent, and any attempt to do so without consent shall be void. This Agreement shall be binding upon the respective successors and assigns of the parties to this Agreement.

ARTICLE 20—IMPLIED WAIVER

The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

ARTICLE 21—SEVERABILITY

The parties mutually agree that if any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

ARTICLE 22—COUNTERPARTS

This Agreement may be executed in counterparts, all of which, taken together, shall be deemed one (1) original document.

ARTICLE 23—ORDER OF PRECEDENCE AND AMENDMENTS

The terms and conditions of this Agreement and executed Task Orders supersede any terms and conditions outlined in any ordering or authorizing documents of Licensee such as purchase orders. In the event of a conflict between this Agreement and an executed Task Order, the Task Order shall govern. Any additional terms or conditions in ordering or authorizing documents of Licensee, modifications, or amendments to this Agreement must be in writing and signed by an authorized representative of each party to be binding.

ARTICLE 24—EQUITABLE RELIEF

Licensee agrees that any breach of this Agreement by Licensee will cause irreparable damage and that, in the event of such breach, in addition to any and all remedies at law, Esri shall have the right to an injunction, specific performance, or other equitable relief in any court of competent jurisdiction to prevent violation of these terms and without the requirement of posting a bond or undertaking or proving injury as a condition for relief.

ARTICLE 25—CLAIM MUST BE FILED WITHIN ONE (1) YEAR

Any claim related to this Agreement or the Services or Deliverables may not be brought unless brought within one (1) year. The one (1)-year period begins on the date when a party knew or should have known of the claim. If it is not filed during the one (1)-year period, then that claim is permanently barred. This applies to Licensee and Licensee's successors and/or assigns. It also applies to Esri and/or Esri's successors and assigns.

ARTICLE 26—INSURANCE

Esri will maintain the insurance coverages stated in Attachment C – Insurance Requirements for Consultant during the term of this Agreement.

ARTICLE 27—GOVERNING LAW AND ARBITRATION

- A. Licensees in the United States of America, Its Possessions, and Territories.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to conflict of laws principles. Except as provided in Article 24, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, which cannot be settled through negotiation, shall be finally settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. If Licensee is a U.S. Government agency, this Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613), in lieu of the Arbitration provisions of this clause.
- B. All Other Licensees.** All disputes arising in connection with the present Agreement that cannot be settled through negotiation shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one (1) arbitrator appointed in accordance with said Rules. The language of the arbitration shall be in English. The place of the arbitration shall be a mutually agreed location. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Either party shall, at the request of the other, make available documents or witnesses relevant to the material aspects of the dispute.

ARTICLE 28—ENTIRE AGREEMENT

This Agreement constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, understandings, and arrangements, written or oral, between the parties relating to such subject matter.

The parties acknowledge that they have read and understand this Agreement and agree to be bound by its terms and conditions. The undersigned hereby acknowledges and represents that he/she has the authority to bind his/her organization to these terms and conditions. An executed Agreement shall constitute a duplicate if it is transmitted through electronic means, such as fax or e-mail, and reflects the signing of the document by the Licensee. Duplicates are valid and binding even if the original paper document bearing Licensee's original signature is not delivered.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective as of the last date written below.

CITY OF LODI, a municipal corporation
(Licensee)

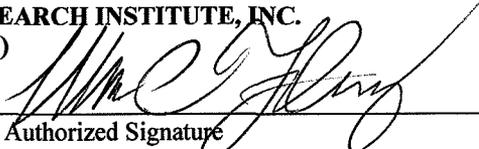
By: _____
Authorized Signature

Printed Name: KONRADT BARTLAM

Title: CITY MANAGER

Date: _____

**ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.**
(Esri)

By:  _____
Authorized Signature

Printed Name: William C. Fleming
Managing Business Attorney

Title: _____

Date: JUN 05 2012

APPROVED AS TO FORM:
D. STEPHEN SCHWABAUER, City Attorney
JANICE D. MAGDICH, Deputy City Attorney

By: _____
Authorized Signature 

Date: _____

ATTEST:

By: _____
Authorized Signature

Printed Name: RANDI JOHL

Title: CITY CLERK

Date: _____

Attachments

- Attachment A—Sample Task Order (Scope of Work and Pricing Summary)
- Attachment B—Time and Materials Rate-Schedule
- Attachment C – Insurance Requirements

ATTACHMENT A
SAMPLE TASK ORDER
 Esri Agreement No. 2011C1482
 Task Order No. _____

In accordance with the terms and conditions of the above-referenced Agreement between Environmental Systems Research Institute, Inc. (Esri), and _____ (Licensee), _____ (Licensee Address), this Task Order authorizes preparation and provision of the Services Output and/or Deliverables described and in accordance with the terms, schedule, and start/end date(s) specified below.

1. Scope of Work [As applicable, specifically identify and describe Services Output or Deliverables including Custom Code, Map Data, and Technical Data (including Technical Assistance) and the resources to be provided by Licensee (including Licensee-supplied personnel, software, hardware, and digital or hard-copy data), and place of delivery and location where technical assistance will be provided.] The scope of work may be an Exhibit to the Task Order.

In addition to the foregoing, Licensee agrees that its employees, representatives, and subcontractors will cooperate and communicate with Esri during performance of this Task Order. Without cost to Esri, Licensee shall provide, allow access to, or assist Esri in obtaining all data Esri requests for performance of this Task Order, including, but not limited to, (1) copies of previously prepared reports, maps, plans, surveys, records, and other documents in the control or possession of Licensee and (2) copies of ordinances, codes, regulations, or other governmental documents.

2. Contract Type [Firm Fixed-Price (FFP) or Time and Materials (T&M)]:
3. Total Task Order Value (if FFP) or Not-to-Exceed Value (if T&M):
4. Licensee Address for the Receipt of Esri Invoices:
5. Delivery Schedule or Start/End Date(s) for Each Deliverable:
6. Special Considerations:
7. Esri Project Manager: (insert name, telephone, fax, and e-mail address)
 Esri Senior Contract Administrator: (insert name, telephone, fax, and e-mail address)
 Licensee Project Manager: (insert name, telephone, fax, and e-mail address)
 Licensee Senior Contract Administrator: (insert name, telephone, fax, and e-mail address)
 Licensee Accounts Payable Contact: (insert name, telephone, fax, and e-mail address)

ACCEPTED AND AGREED:

 (Licensee)
 Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____

ENVIRONMENTAL SYSTEMS
 RESEARCH INSTITUTE, INC.
 (Esri)
 Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____

APPROVED AS TO FORM:
 D. STEPHEN SCHWABAUER, City Attorney
 JANICE D. MAGDICH, Deputy City Attorney

By: _____
 Authorized Signature
 Date: _____

ATTEST:
 By: _____
 Authorized Signature
 Printed Name: RANDI JOHL
 Title: CITY CLERK
 Date: _____

**ATTACHMENT B
TIME AND MATERIALS RATE SCHEDULE**

Effective January 1, 2012

Hourly time and materials labor rates have been provided for each labor category for calendar year 2012. The hourly labor rates for services that are performed after 2012 may be escalated in an amount not to exceed five percent (5%) each year. Other direct costs, such as travel, reproduction, subcontractor, telecommunication/freight, or materials, will be charged a material handling fee and invoiced.

GIS Technical Specialist/Engineer (S1)

Hourly Rate: \$184

Staff members in this labor category work collaboratively with software designers to perform software coding and the writing of software documentation according to design specifications developed by senior technical staff described below. As a group, these staff members are experienced in the coding of software and the creation of digital databases, as well as in software development associated with Esri's commercial off-the-shelf (COTS) software products; web, desktop, or server software development languages; geospatial data formats; and other technologies. These individuals also develop effective database designs, implement data conversion processes and procedures, and perform software and database quality control.

GIS System/Software Developer (S2)

Hourly Rate: \$238

Staff members in this labor category support the design of technical project specifications for the implementation of application software projects and database development projects. They support the day-to-day technical activities of the project team and ensure that standard system methodologies are employed. They also perform detailed software design and detailed database conversion design and are directly involved in the coding and implementation of complex and strategic portions of application software and database conversion projects. As a group, these staff members are proficient in Esri COTS software products; web, desktop, and server software development languages; geospatial data formats; and other technologies. These staff members design and develop QA/QC programs and support design and code reviews, database reviews, and other QAJQC activities throughout the project life cycle.

Senior GIS System/Software Architect (S3)

Hourly Rate: \$292

Staff members in this labor category provide the overall technical vision and system architecture for large, complex systems. They support the application of sound software engineering principles and life cycle methodologies to programs/projects. These individuals are actively involved in systems architecture design, application software design, database process design, and the directing of coding development including the supervision of design and code reviews. These staff members may serve as principal investigators in focused studies or research and development projects. Individuals in this labor category have broad technical knowledge of geographic information system (GIS) applications and related information technologies and may also provide specific expertise in areas such as web-based software applications, service-oriented architectures, data warehousing, spatial analysis, and modeling. As a group, these staff members are proficient with Esri COTS software products; software and database design methodologies; web, desktop, and server software development languages; geospatial data formats; and other technologies.

GIS Consultant/Project Manager (M1)

Hourly Rate: \$224

Staff members in this labor category provide day-to-day consulting and management for contracted projects within Esri. These individuals work under the guidance of senior Esri managers described herein and support the design and implementation of project work plans. These staff members may provide consulting services and design and management support to software application development projects and database conversion projects. They may also conduct detailed requirements interviews, document application requirements, develop logical and physical database designs using standard engineering diagramming methodologies, design software and database QAJQC programs, and provide management oversight of daily technical activities. These staff members work with senior consulting and technical staff to design comprehensive work plans that employ standard system methodologies that define project deliverables and milestones and realistic schedules. These individuals work with Esri administrative staff to ensure that progress and financial reporting is provided according to contract requirements.

Senior GIS Consultant/Project Manager (M2)**Hourly Rate: \$283**

Staff members in this labor category work as project managers or project advisers, providing strategic consulting and project management activities for GIS and information technology (IT) projects. These staff members have market/application domain expertise using extensive experience in GIS and related geospatial technologies to support the successful completion of a project. Consulting activities may include strategic planning, GIS workshops and seminars development, requirements definition, application and database design, and system integration. Management activities may include defining project requirements and objectives, establishing budgets and schedules, allocating staff and other resources, and managing and overseeing subcontractor activities. These individuals may also design comprehensive work plans that employ standard system methodologies that define project deliverables and milestones and realistic schedules.

Principal GIS Consultant/Program Manager (M3)**Hourly Rate: \$373**

Staff members in this labor category work as program directors or project advisers, providing project vision, strategic consulting, and program management activities for GIS and IT projects. These staff members apply market/application domain expertise using extensive experience in GIS and related geospatial technologies to support the successful completion of the program. Consulting activities may include strategic planning, review and oversight of requirements definitions, application and database design, and system integration. Management activities may include defining program requirements and objectives, establishing budgets and schedules, allocating staff and other resources, and managing and overseeing subcontractor activities. Staff members in this labor category work with senior client staff in coordination with Esri senior management to resolve issues and support successful project completion.

GIS Database Specialist/Analyst (DB)**Hourly Rate: \$155**

Staff members in this labor category provide database development support in creating cartographic and digital data products. These staff members have expertise that includes the performance of hard copy to digital data conversion tasks, data migration, and translation activities utilizing advanced processing techniques in ArcGIS. These individuals design, develop, and implement efficient production tools and workflows in accordance with approved project plans and design parameters.

ATTACHMENT C INSURANCE

Insurance Requirements for Consultant The Consultant shall take out and maintain during the life of this contract, insurance coverage as listed below. These insurance policies shall protect the Consultant and any subcontractor performing work covered by this contract from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from Consultant's operations under this contract, whether such operations be by Consultant or by any subcontractor or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

1. **COMPREHENSIVE GENERAL LIABILITY**

\$1,000,000 Ea. Occurrence
\$2,000,000 Aggregate

2. **COMPREHENSIVE AUTOMOBILE LIABILITY**

Proof of coverage with limits not less than \$1,000,000 combined single limit and naming the CITY, by separate endorsement, as an additional insured.

3. **PROFESSIONAL ERRORS AND OMISSIONS**

Not less than \$50,000 per Claim./\$1,000,000 Aggregate. Certificate of Insurance only required.

NOTE: Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage for at least two (2) years after termination or expiration of this Agreement.

A copy of the certificate of insurance with the following endorsements shall be furnished to the City:

(a) **Additional Named Insured Endorsement**

Such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents, Employees, and Volunteers as additional named insureds.

(This endorsement shall be on a form furnished to the City and shall be included with Contractor's policies. The Consultant may provide confirmation of blanket endorsements in satisfaction of this requirement.)

(b) **Primary Insurance Endorsement**

Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the insurance afforded by this endorsement.

(c) **Severability of Interest Clause**

The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.

(d) **Notice of Cancellation or Change in Coverage Endorsement**

This policy may not be canceled nor the coverage reduced by the company without **30** days' prior written notice of such cancellation or reduction in coverage (10 days in case of cancellation for non-payment of premium) to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240. The Consultant may provide confirmation of blanket endorsements in satisfaction of this requirement.

Compensation Insurance The Contractor shall take out and maintain during the life of this contract, Worker's Compensation Insurance for all of Contractor's employees employed at the site of the project and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. This policy may not be canceled nor the coverage reduced by the company without **30** days' prior written notice of such cancellation or reduction in coverage (10 days in case of cancellation for non-payment of premium) to the Risk Manager, City of Lodi, 221 W. Pine St., Lodi, CA 95240.



TASK ORDER NO. 1

Issued Under
Esri Agreement No. 2011C1482

In accordance with the terms and conditions of the above-referenced Agreement between **Environmental Systems Research Institute, Inc. (Esri)**, and the **City of Lodi (Licensee)**, 221 W. Pine Street, Lodi, CA, 95240 (Licensee Address), this Task Order authorizes preparation and provision of the Deliverables described and in accordance with the terms, schedule, and start/end date(s) specified below.

- 1. **Scope of Work:** See Exhibit 1, which is attached hereto and incorporated herein by this reference.

In addition to the foregoing, Licensee agrees that its employees, representatives, and subcontractors will cooperate and communicate with Esri during performance of this Task Order. Without cost to Esri, Licensee shall provide, allow access to, or assist Esri in obtaining all data Esri requests for performance of this Task Order, including, but not limited to, (1) copies of previously prepared reports, maps, plans, surveys, records, and other documents in the control or possession of Licensee and (2) copies of ordinances, codes, regulations, or other governmental documents.

- 2. **Contract Type:** Firm Fixed-Price (FFP).

3.

Tasks	Price (USD)
Task 1 - GIS Implementation Workshop	\$10,500
Task 2 - Prepare GIS Implementation Findings Report	\$13,850
Task 3 - Develop and Perform Initial Data Migration	\$37,850
Task 4 - Conduct Data Migration Technology Transfer and Training Workshop	\$9,800
Total Firm Fixed Price	\$72,000

- 4. **Licensee Address for the Receipt of Esri Invoices:** City of Lodi, Electric Utility Department, 1331 S. Ham Lane, Lodi, CA, 95242

- 5. **Delivery Schedule:** November 8, 2012 through June 30, 2013 or as otherwise mutually agreed between the parties in writing.

- 6. **Special Considerations:** None.

- 7. **Esri Project Manager:** Bala Mullachery, Tel: (909) 793-2853, Ext. 1747, E-mail: bmullachery@esri.com

Esri Contract Administrator: M Carberry, Tel: (909) 793-2853, Ext. 3446, E-mail: mcarberry@esri.com

Licensee Project Manager: Carl Wohl, Tel: 209-333-6800 ext. 2547, cwohl@lodielectric.com

Licensee Contract Administrator: Danielle Rogers, Tel: 209-333-6800 ext. 2418, drogers@lodielectric.com

Licensee Accounts Payable Contact: Accounts Payable, Tel: 209-333-6721, Fax: 209-333-6795

ACCEPTED AND AGREED:

CITY OF LODI, a municipal corporation
(Licensee)

By: _____
Authorized Signature

Printed Name: KONRADT BARTLAM

Title: CITY MANAGER

Date: _____

APPROVED AS TO FORM:
D. STEPHEN SCHWABAUER, City Attorney
JANICE D. MAGDICH, Deputy City Attorney

By: _____
Authorized Signature

Date: _____

**ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.**

(Esri)

By: _____
Authorized Signature

Printed Name: John Perry

Title: Contracts Manager – Esri Professional Services

Date: 15 OCT 12

ATTEST:

By: _____
Authorized Signature

Printed Name: RANDI JOHL

Title: CITY CLERK

Date: _____



**Exhibit 1
to Task Order No. 1
Issued under
Agreement No. 2011C1482**

Scope of Work

This Scope of Work covers the first phase of a 3 phase GIS implementation at Lodi Electric Utility. The identified 3 phases are:

- Phase 1 : **Preliminary GIS Implementation**
- Phase 2 : **GIS Data Integration and Cleanup**
- Phase 3 : **GIS Integration with other Systems**

Key Assumptions

This Scope of Work described herein is based on the following key assumptions:

- Unless otherwise specified, Esri off-site work will be performed at our offices in Redlands, California.
- All on-site tasks will occur over consecutive business days. The definition of a business days is eight (8) hours.
- Timely review and acceptance of project deliverables by Lodi Electric Utility
- ArcGIS version 10.0 will be implemented. Lodi Electric Utility is responsible for procuring and obtaining the necessary software licenses at its own cost.

Phase 1 Preliminary GIS Implementation

Task 1 –GIS Implementation Workshop

Under the scope of this task, Esri will conduct a GIS Implementation Workshop to be held at the Lodi Electric Utility facility located in Lodi, CA. During the workshop, Esri will perform an evaluation of GIS system needs, discuss implementation plan options, and the data model for potential electric department functional and operational improvements.

Prior to initiation of the on-site workshop, Esri will develop a draft source data mapping matrix based on the ArcGIS Electric MultiSpeak data model. This draft version of the spreadsheet will be provided to the Lodi Electric Utility project manager ten (10) business days in advance of the on-site workshop with instructions. The Lodi Electric Utility project manager will distribute this spreadsheet and instructions to the relevant Lodi Electric Utility staff in order to maximize the workshop efficiency and to make staff aware of the scope of the workshop sessions.

In order to facilitate workshop discussions, Lodi Electric Utility will be responsible for providing documentation of relevant Lodi Electric Utility existing data sources (CAD, paper maps, databases, reports, etc.) and application details to Esri at least ten (10) business days in advance of the workshop.

An Esri Senior Technical Lead will travel to Lodi Electric Utility offices in Lodi, CA for two (2) business days to conduct a GIS Implementation Workshop. The purpose of the workshop is to hold a series of informal interviews with relevant Lodi Electric Utility staff to identify the geographic information and analysis requirements of Lodi Electric Utility GIS users. The interviews will focus on the tasks, functions, data usage, and needs of each department or group. In addition to the interview activities, Esri will deliver a brief presentation on the agenda, procedures and purpose of the workshop.

During the workshop, Esri will meet with the appropriate Lodi Electric Utility department heads, managers, and selected technical staff to discuss:

- Proposed GIS implementation and related business processes, including:
 - GIS usage in the enterprise
 - Overall architecture and workflow
 - Hardware and network configuration
 - Data, data models, data maintenance, and data distribution workflows

Esri Deliverables:

- Prepare a draft version of the Source Data Mapping Matrix.
- Travel to Lodi Electric Utility offices in Lodi, CA for two (2) business days to conduct an on-site GIS Implementation Workshop.

Lodi Electric Utility Responsibilities:

- Provide Esri with the relevant existing documentation at least ten (10) days prior to initiation of the on-site workshop.
- Ensure attendance and participation of appropriate staff in the workshop.
- Provide meeting facilities and equipment to host workshop activities.
- Provide Esri with access to Lodi Electric Utility staff to address follow-up questions as required.

Task 2 – Prepare GIS Implementation Findings Report

Following the on-site GIS System Implementation Workshop conducted in Task 1, Esri will prepare a summary of the workshop findings in a GIS Implementation Findings Report. The summary report will include the following:

- Existing spatial data and related data sources; interrelationships between data and different departments at Lodi
- Summary of the current environment including hardware, software, and data source/ database issues
- Recommendations for additional data needs
- Recommendations/options for 3rd party Electric ArcGIS software solutions acquisition and deployment
- Source Data Mapping Matrix
- ArcGIS MultiSpeak Data Model

ESRI will provide Lodi Electric Utility with a draft version of the GIS Implementation Findings Report for its review. Lodi Electric Utility is responsible for reviewing the draft document and providing written consolidated comments to Esri within ten (10) business days of receipt. Upon receipt of Lodi Electric

Utility comments, Esri will lead a two (2) hour webcast via Adobe Connect (web conference) to review the comments. Upon completion of the webcast review, Esri will revise the GIS Implementation Findings Report, as mutually agreed and submit a final version to Lodi Electric Utility. Lodi Electric Utility is responsible for reviewing and providing Esri with written acceptance of the Final GIS Implementation Findings Report within ten (10) business day of receipt.

Esri Deliverables:

- Draft and final versions of the GIS Implementation Findings Report.
- Lead a GIS Implementation Findings Report review web conference of up to two (2) hours.

Lodi Electric Utility Responsibilities:

- Provide Esri with access to Lodi Electric Utility staff to address follow-up questions as required.
- Provide Esri with consolidated written comments to the draft GIS Implementation Findings Report within ten (10) business days of receipt.
- Participate in a two (2) hour web conference to review comments on the draft GIS Implementation Findings Report.
- Provide meeting facilities and equipment to host presentation activities.
- Provide Esri with written acceptance of the final GIS Implementation Findings Report within ten (10) business days of receipt.

Task 3 – Develop and Perform Initial Data Migration

Once Lodi Electric Utility approves the GIS Implementation Findings Report, Esri will design and develop a Data Migration Tool Design Workflows and QA/QC Plan. Esri will provide Lodi Electric utility with a draft version of the Data Migration Tool Design Workflows and QA/QC Plan for its review. Lodi Electric Utility is responsible for reviewing the draft document and providing written consolidated comments to Esri within ten (10) business days of receipt. Esri will revise the Data Migration Tool Design Workflows and QA/QC Plan, as mutually agreed and submit a final version. Lodi Electric Utility is responsible for reviewing and providing Esri with written acceptance of the Final Data Migration Tool Design Workflows and QA/QC Plan document within ten (10) business day of receipt.

During this task Esri will configure data migration ModelBuilder tools using ArcGIS core geo-processing tools and ArcGIS Interoperability extension, develop/configure data cleanup tool(s) to execute in auto mode, and configure GIS Data Reviewer tools for data validation. These tools will be delivered to Lodi Electric Utility as part of Task 4 – Conduct Data Migration Technology Transfer and Training Workshop. The data migration tools will perform batch data migration and loading of AutoCAD DWG files/Transformer DB/Material DB attribute information in to ArcGIS MultiSpeak Electric Data Model. The migrated data will have several inherited connectivity issues from the CAD geometries. A custom tool(s) will be developed in ArcGIS to execute automatically and fix rule based connectivity issues. Once the data is migrated and executed with the connectivity cleanup tools, Esri will run custom configured GIS Data Reviewer QA/QC tools to identify anomalies related to the geodatabase integrity, geometry, connectivity, relationships, and attribute validation on the entire geodatabase. The errors identified will be summarized in to a QA/QC Report and delivered to Lodi Electric Utility for the potential manual cleanup and also will be recommended possible auto/mass correction using existing tools available within ArcGIS.

Lodi Electric Utility will package source data files and will either send them to Esri in a DVD or upload them into the Esri secured FTP site (as mutually agreed with Esri) ten (10) business days before the data

migration. The source data file package will include DWG files, Transformer DB and Material DB. During the data migration, Esri will be communicating with Lodi Electric Utility through emails to clarify and resolve source data queries or issues found. Lodi Electric Utility will be responsible for reviewing and resolving these source data queries or issues within five (5) business days of receipt, unless Lodi Electric Utility and Esri agree to a longer period of time for issues that may require more time. The two days review and response requirement is intended to reduce delays caused by unresolved issues, which could ultimately affect the project schedule.

As part of this task, Esri will configure an ArcMap MXD file that symbolizes Lodi Electric Utility's electric facilities using symbology that cartographically resembles to the Lodi Electric Utility existing symbology. Esri will be leveraging the existing symbol libraries available in ArcGIS and will be performing minor adjustment to the symbology to create a comparable look and feel similar to the existing Lodi Electric Utility feature symbology.

Esri Deliverables:

- Draft and final Data Migration Tool Design Workflows and QAIQC Plan.
- Migrated Geodatabase in ArcGIS Electric MultiSpeak Model.
- Configured ArcMap MXD file.
- QAIQC Reports.

Lodi Electric Utility Responsibilities:

- Review the draft Data Migration Tool Design Workflows and QA/QC Plan and provide written consolidated comments to Esri within ten (10) business days of receipt.
- Provide Esri with written acceptance of the Final Data Migration Tool Design Workflows and QA/QC Plan within ten (10) business days of receipt.
- Provide Source Data files (DWG, Transformer DB and Material DB) to Esri ten (10) business days before the migration process to Esri.
- Provide Esri with a response within five (5) business days to the clarifications, queries and issues raised by Esri during this task.

Assumptions:

- ESRI will migrate and populate the source data attributes based on the Source Data Mapping Matrix, Data Model and other rules provided and approved by the Lodi Electric Utility during the Task 2 – Prepare GIS Implementation Findings Report.
- There is no manual data processing or connectivity cleanup to be performed by Esri included in this scope of work.

Task 4 – Conduct Data Migration Technology Transfer and Training Workshop

During this task an Esri Senior Technical Lead will travel to Lodi Electric Utility offices in Lodi, CA for two (2) business days to conduct a Data Migration Technology Transfer and Training Workshop. The tools used for data migration and data loading, connectivity cleanup, and QA/QC tools from task 3 will be installed on one (1) to a maximum of five (5) computers at Lodi Electric Utility offices. The workshop agenda will be circulated by Esri to Lodi Electric Utility five (5) days before the workshop start date. The following training will be conducted for a maximum of five (5) Lodi Electric Utility staff during this workshop:

- Data Migration Model builder tools
- Custom cleanup tools developed in ArcGIS

- GIS Data Reviewer QA/QC configuration
- QNQC Report and Manual data editing (cleanup) process

Esri Deliverables:

- Technology transfer workshop agenda.
- Two (2) days onsite Data Migration Technology Transfer and Training Workshop to train a maximum of five (5) Lodi Electric Utility technical staff on the following 4 major items:
 - Data Migration Model builder tools.
 - Custom cleanup tools developed in ArcGIS
 - GIS Data Reviewer QNQC configuration
 - QNQC Report and Manual data editing (cleanup) process

Lodi Electric Utility Responsibilities:

- Identify the technical staff to attend the technology transfer workshop, circulate the workshop agenda and ensure attendance and participation.
- Provide meeting facilities and necessary equipment to host workshop activities.

Assumptions:

- Participants in this technology workshop will have prior ArcGIS Desktop working experience.
- The Data Migration Technology Transfer and Training Workshop is limited to the services that Esri is providing to Lodi Electric Utility in this scope of work for the data migration and QNQC. The workshop will not be covering the different ArcGIS Desktop applications and geodatabase training.
- Esri will train the Lodi Electric Utility staff to configure new symbology. The creation of new symbology to match the Lodi Electric Utility existing symbology by Esri is not part of this scope of work.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/06/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Marsh Risk & Insurance Services
4695 MacArthur Court, Suite 700
(949) 399-5800
License #0437153
Newport Beach, CA 92660
J17700-ESRI-GAWUE-11-12

APPROVED
Risk Management

JUN 11 2012

By: *[Signature]*

CONTACT NAME:		FAX (A/C, No):
PHONE (A/C, No, Ext):		
E-MAIL ADDRESS:		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Travelers Property Casualty Co. Of America	A+ ⁺ XV ⁺ .YES	25674
INSURER B: Travelers Indemnity Co Of CT	" "	25682
INSURER C: St. Paul Fire & Marine Ins Co	" "	24767
INSURER D: N/A		N/A
INSURER E: N/A		N/A
INSURER F:		

INSURED
Environmental Systems
Research Institute, Inc.
380 New York Street
Redlands, CA 92373

COVERAGES **CERTIFICATE NUMBER:** LOS-001509579-01 **REVISION NUMBER:** 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> BLANKET CONTRACTUAL <input checked="" type="checkbox"/> OWNERS & CONTRACTORS GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	X		6600130P85A	12/15/2011	12/15/2012	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
							MED EXP (Any one person)	\$ 10,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			BA3167P651	12/15/2011	12/15/2012	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
							COMP/COLL DEDS:	\$ 1,000
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			QK04501360	12/15/2011	12/15/2012	EACH OCCURRENCE	\$ 5,000,000
							AGGREGATE	\$ 5,000,000
								\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	HJUB8A84328711	12/15/2011	12/15/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
A	Errors & Omissions Claims Made Retro Date 7/16/1987			TE06103286	12/15/2011	12/15/2012	Limit	1,000,000
							Deductible	100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

RE: ESRI Agreement No. 2011C1482

City of Lodi, its elected and appointed Boards, Commissions, Officers, Agents Employees and Volunteers are named as Additional Insured per written contract with the named insured. Primary wording applies as required by written contract.

Subject to policy terms, conditions, limitations and exclusions. 10 day notice of cancellation for non-payment of premium.

CERTIFICATE HOLDER

City of Lodi
221 W. Pine Street
Lodi, CA 95240

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh Risk & Insurance Services

John Graef

[Signature]

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

DESIGNATED ENTITY – NOTICE OF

CANCELLATION/NONRENEWAL PROVIDED BY US

This endorsement modifies insurance provided under the following:

ALL COVERAGE PARTS INCLUDED IN THIS POLICY

SCHEDULE

CANCELLATION: Number of Days Notice of Cancellation: 30

NONRENEWAL: Number of Days Notice of Nonrenewal: 10

PERSON OR ORGANIZATION:

ANY PERSON OR ORGANIZATION TO WHOM YOU HAVE AGREED IN A WRITTEN CONTRACT THAT NO-TICE OF CANCELLATION OR NONRENEWAL OF THIS POLICY WILL BE GIVEN, BUT ONLY IF:

1. YOU SEND US A WRITTEN REQUEST TO PROVIDE SUCH NOTICE, INCLUDING THE NAME AND ADDRESS OF SUCH PERSON OR ORGANIZATION, AFTER THE FIRST NAMED INSURED RECEIVES NOTICE FROM US OF THE CANCELLATION OR NONRENEWAL OF THIS POLICY; AND

2. WE RECEIVE SUCH WRITTEN REQUEST AT LEAST 14 DAYS BEFORE THE BEGINNING OF THE APPLICABLE NUMBER OF DAYS SHOWN IN THIS SCHEDULE.

ADDRESS:

THE ADDRESS FOR THAT PERSON OR ORGANIZATION INCLUDED IN SUCH WRITTEN REQUEST FROM YOU TO US.

PROVISIONS:

- A. If we cancel this policy for any statutorily permitted reason other than nonpayment of premium, and a number of days is shown for cancellation in the schedule above, we will mail notice of cancellation to the person or organization shown in the schedule above. We will mail such notice to the address shown in the schedule above at least the number of days shown for cancellation in the schedule above before the effective date of cancellation.
- B. If we decide to not renew this policy for any statutorily permitted reason, and a number of days is shown for nonrenewal in the schedule above, we will mail notice of the nonrenewal to the person or organization shown in the schedule above. We will mail such notice to the address shown in the schedule above at least the number of days shown for nonrenewal in the schedule above before the expiration date.

or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
- (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

- (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

- (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section I – Coverage **A** – Bodily Injury And Property Damage Liability.

- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contrib-

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

TECHNOLOGY XTEND ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE -- This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|--|
| <p>A. Reasonable Force Property Damage – Exception To Expected Or Intended Injury Exclusion</p> <p>B. Non-Owned Watercraft Less Than 75 Feet</p> <p>C. Aircraft Chartered With Pilot</p> <p>D. Damage To Premises Rented To You</p> <p>E. Increased Supplementary Payments</p> <p>F. Who Is An Insured – Employees And Volunteer Workers – First Aid</p> <p>G. Who Is An Insured – Employees – Supervisory Positions</p> <p>H. Who Is An Insured – Newly Acquired Or Formed Organizations</p> <p>I. Blanket Additional Insured – Owners, Managers Or Lessors Of Premises</p> | <p>J. Blanket Additional Insured – Lessors Of Leased Equipment</p> <p>K. Blanket Additional Insured – Persons Or Organizations For Your Ongoing Operations As Required By Written Contract Or Agreement</p> <p>L. Blanket Additional Insured – Broad Form Vendors</p> <p>M. Who Is An Insured – Unnamed Subsidiaries</p> <p>N. Who Is An Insured – Liability For Conduct Of Unnamed Partnerships Or Joint Ventures</p> <p>O. Contractual Liability – Railroads</p> <p>P. Knowledge And Notice Of Occurrence Or Offense</p> <p>Q. Unintentional Omission</p> <p>R. Blanket Waiver Of Subrogation</p> |
|---|--|

PROVISIONS

A REASONABLE FORCE PROPERTY DAMAGE – EXCEPTION TO EXPECTED OR INTENDED INJURY EXCLUSION

The following replaces Exclusion **a., Expected Or Intended Injury**, in Paragraph 2., of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

a. Expected Or Intended Injury Or Damage

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect any person or property.

B NON-OWNED WATERCRAFT LESS THAN 75 FEET

The following replaces Paragraph (2) of Exclusion **g., Aircraft, Auto Or Watercraft**, in Paragraph 2.

of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

(2) A watercraft you do not own that is:

- (a) Less than 75 feet long; and
- (b) Not being used to carry any person or property for a charge.

C. AIRCRAFT CHARTERED WITH PILOT

The following is added to Exclusion **g., Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

This exclusion does not apply to an aircraft that is:

- (a) Chartered with a pilot to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

D. DAMAGE TO PREMISES RENTED TO YOU

1. The first paragraph of the exceptions in Exclusion **j.**, **Damage To Property**, in Paragraph **2.** of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is deleted.
2. The following replaces the last paragraph of Paragraph **2.**, **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Exclusions **c.**, **g.** and **h.**, and Paragraphs **(1)**, **(3)** and **(4)** of Exclusion **j.**, do not apply to "premises damage". Exclusion **f.(1)(a)** does not apply to "premises damage" caused by fire unless Exclusion **f.** of Section **I - Coverage A - Bodily Injury And Property Damage Liability** is replaced by another endorsement to this Coverage Part that has Exclusion - All Pollution injury Or Damage or Total Pollution Exclusion in its title. A separate limit of insurance applies to "premises damage" as described in Paragraph **6.** of Section **III - Limits Of Insurance**.

3. The following replaces Paragraph **6.** of **SECTION III - LIMITS OF INSURANCE**:
 6. Subject to **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "premises damage" to any one premises.

The Damage To Premises Rented To You Limit will be:

- a. The amount shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part; or
 - b. \$100,000 if no amount is shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part.
4. The following replaces Paragraph **a.** of the definition of "insured contract" in the **DEFINITIONS** Section:
 - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "premises damage" is not an "insured contract";

5. The following is added to the **DEFINITIONS** Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
 - b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.
6. The following replaces Paragraph **4.b.(1)(b)** of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**:
 - (b)** That is insurance for "premises damage"; or
 7. Paragraph **4.b.(1)(c)** of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted.

E. INCREASED SUPPLEMENTARY PAYMENTS

1. The following replaces Paragraph **1.b.** of **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** of **SECTION I - COVERAGES**:

- b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. The following replaces Paragraph **1.d.** of **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** of **SECTION I - COVERAGES**:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

F. WHO IS AN INSURED - EMPLOYEES AND VOLUNTEER WORKERS - FIRST AID

1. The following is added to the definition of "occurrence" in the **DEFINITIONS** Section:

Unless you are in the business or occupation of providing professional health care services, "occurrence" also means an act or omission committed by any of your "employees" or "volunteer workers", other than an employed

or volunteer doctor, in providing or failing to provide first aid or "Good Samaritan services" to a person.

2. The following is added to Paragraph **2.a.(1)** of **SECTION II - WHO IS AN INSURED:**

Unless you are in the business or occupation of providing professional health care services, Paragraphs **(1)(a), (b), (c)** and **(d)** above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any of your "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following is added to Paragraph **5.** of **SECTION III - LIMITS OF INSURANCE:**

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed by any of your "employees" or "volunteer workers" in providing or failing to provide first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following is added to the **DEFINITIONS** Section:

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

G. WHO IS AN INSURED - EMPLOYEES - SUPERVISORY POSITIONS

The following is added to Paragraph **2.a.(1)** of **SECTION II - WHO IS AN INSURED:**

Paragraphs **(1)(a), (b)** and **(c)** above do not apply to "bodily injury" or "personal injury" to a co-"employee" in the course of the co-"employee's" employment by you arising out of work by any of your "employees" who hold a supervisory position.

H. WHO IS AN INSURED - NEWLY ACQUIRED OR FORMED ORGANIZATIONS

The following replaces Paragraph **4.** of **SECTION II - WHO IS AN INSURED:**

4. Any organization you newly acquire or form, other than a partnership or joint venture, of which you are the sole owner

or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

- a. Coverage under this provision is afforded only:

(1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

(2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;

- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage **B** does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

I. BLANKET ADDITIONAL INSURED - OWNERS, MANAGERS OR LESSORS OF PREMISES

The following is added to **SECTION II - WHO IS AN INSURED:**

Any person or organization that is a premises owner, manager or lessor is an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor does not apply to:

- a. Any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or

COMMERCIAL GENERAL LIABILITY

- b. Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.

J. BLANKET ADDITIONAL INSURED - LESSORS OF LEASED EQUIPMENT

The following is added to **SECTION II - WHO IS AN INSURED:**

Any person or organization that is an equipment lessor *is* an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by your acts or omissions in the maintenance, operation or use by you of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.

K. BLANKET ADDITIONAL INSURED - PERSONS OR ORGANIZATIONS FOR YOUR ONGOING OPERATIONS AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

The following is added to **SECTION II - WHO IS AN INSURED:**

Any person or organization that is not otherwise an insured under this Coverage Part and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Is caused, in whole or in part, by your acts or omissions in the performance of your ongoing operations to which that contract or agreement applies or the acts or omissions of any person or organization performing such operations on your behalf.

The limits of insurance provided to such insured will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

L. BLANKET ADDITIONAL INSURED - BROAD FORM VENDORS

The following is added to **SECTION II - WHO IS AN INSURED:**

Any person or organization that is a vendor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Arises out of "your products" which are distributed or sold in the regular course of such vendor's business.

The insurance provided to such vendor *is* subject to the following provisions:

- a. The limits of insurance provided to such vendor will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
 - (1) Any express warranty not authorized by you;
 - (2) Any change in "your products" made by such vendor;
 - (3) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (4) Any failure to make such inspections, adjustments, tests or servicing as vendors agree to perform or normally undertake to perform in the regular course of business, in connection with the distribution or sale of "your products";
 - (5) Demonstration, installation, servicing or repair operations, except such operations performed at such vendor's premises in connection with the sale of "your products"; or
 - (6) "Your products" which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part or ingredient of any other thing or substance by or on behalf of such vendor.

Coverage under this provision does not apply to:

- a. Any person or organization from whom you have acquired "your products", or any ingre-

dient, part or container entering into, accompanying or containing such products; or

- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

M WHO IS AN INSURED – UNNAMED SUBSIDIARIES

The following is added to **SECTION II – WHO IS AN INSURED:**

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period; and
- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

N. WHO IS AN INSURED – LIABILITY FOR CONDUCT OF UNNAMED PARTNERSHIPS OR JOINT VENTURES

The following replaces the last paragraph of **SECTION II – WHO IS AN INSURED:**

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership or joint venture that otherwise qualifies as an insured under **Section II – Who Is An Insured.**

O CONTRACTUAL LIABILITY – RAILROADS

- 1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:

c. Any easement or license agreement;

- 2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

P. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE

The following is added to Paragraph 2., **Duties In The Event of Occurrence, Offense, Claim or Suit, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

- e. The following provisions apply to Paragraph **a.** above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph **1.** or 2. of **Section II – Who Is An Insured:**

- (4) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your trustees who is an individual (if you are a trust), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, limited liability company or trust) or any "employee" authorized by you to give notice of an "occurrence" or offense.

- (2) If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:

- (a) Any individual who is:

- (i) A partner or member of any partnership or joint venture;
- (ii) A manager of any limited liability company;
- (iii) A trustee of any trust; or
- (iv) An executive officer or director of any other organization;

that is your partner, joint venture member, manager or trustee; or

- (b) Any "employee" authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.

COMMERCIAL GENERAL LIABILITY

- (3) Notice to us of such "occurrence" or offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e. (b) (2) above discovers that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

However, if this policy includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its abrupt commencement, this Paragraph e. does not affect that requirement.

Q. UNINTENTIONAL OMISSION

The following is added to Paragraph 6., **Representations**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

R. BLANKET WAIVER OF SUBROGATION

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" caused by an "occurrence" that takes place; or
- b. "Personal injury" or "advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.

RESOLUTION NO. 2012-182

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE A
PROFESSIONAL SERVICES AGREEMENT FOR
GEOGRAPHICAL INFORMATION SYSTEM SERVICES

=====

WHEREAS, on March 21, 2012, the City Council authorized the City Manager to execute a professional services agreement with Environmental Systems Research Institute, Inc. (ESRI) for Geographical Information System (GIS) software to provide a standard mapping platform citywide; and

WHEREAS, the ESRI GIS software is capable of much more complex uses and is intended to be the foundation to expand department specific GIS capabilities; and

WHEREAS, the GIS project for the Electric Utility Department (EUD) will have three phases: phase 1 – data collection and migration to ESRI platform; phase 2 – GIS model building; and phase 3 – integration of EUD's existing Milsoft engineering software and Supervisory Control and Automatic Data Acquisition (SCADA) system into the GIS model; and

WHEREAS, this contract will provide implementation of phase 1 as outlined in the agreement; and

WHEREAS, staff recommends approval of this agreement and appropriation of funds.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Professional Services Agreement with Environmental Systems Research Institute, Inc., of Redlands, for GIS services in an amount not to exceed \$72,000; and

BE IT FURTHER RESOLVED that funds in the amount of \$72,000 will be appropriated for this contract from the Electric Utility Operating Fund 160.

Dated: November 21, 2012

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I hereby certify that Resolution No. 2012-182 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 21, 2012, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Katzakian, Nakanishi, and Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk