



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute Service Maintenance Agreement with Sungard Public Sector, Inc., of Lake Mary, Florida (\$136,201.65)

MEETING DATE: March 5, 2014

PREPARED BY: Chief of Police

RECOMMENDED ACTION: Adopt resolution authorizing City Manager to execute service maintenance agreement with Sungard Public Sector, Inc., of Lake Mary, Florida, in the amount of \$136,201.65.

BACKGROUND INFORMATION: Since 2009 the Lodi Police Department has utilized Sungard Public Sector, Inc. as the provider of our department computer aided dispatch system.

The Sungard OSSI system provides records management, computer-aided dispatching, in-field reporting, mobile computing, and statistical data that enhance the department's ability to function more efficiently. An annual maintenance agreement is required; and provides software and hardware support to address software issues and system malfunctions.

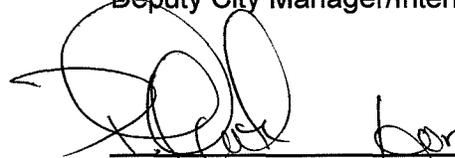
The City extended the agreement from October 2012 through September 2013 at a cost of \$133,376.82. The service contract for October 2013 through September 2014 was increased by 3% to \$136,201.65. The maintenance agreement provides ongoing technical support that will minimize any disruption in the department's ability to provide service.

FISCAL IMPACT: \$136,201.65 is included in the FY 2013/14 budget.

FUNDING AVAILABLE: \$136,201.65 from Account 101032.7335



Jordan Ayers
Deputy City Manager/Internal Services Director



Mark Helms
Chief of Police

MH:po
cc: City Attorney

APPROVED: 

Stephen Schwabauer, Interim City Manager

AGREEMENT FOR PROFESSIONAL SERVICES

ARTICLE 1 PARTIES AND PURPOSE

Section 1.1 Parties

THIS AGREEMENT is entered into on October 1, 2013, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY" or "Customer"), and SunGard Public Sector Inc., a Florida Corporation (hereinafter "CONTRACTOR" or "SunGard Public Sector").

Section 1.2 Purpose

CITY selected the CONTRACTOR to provide the services required in accordance with attached Exhibit A - Scope of Services & Fee Proposal attached hereto and incorporated by this reference.

CITY wishes to enter into an agreement with CONTRACTOR for support and maintenance services (hereinafter "Support") as set forth in the Scope of Services and the related terms and conditions attached here as Exhibit A. CONTRACTOR acknowledges that it is qualified to provide such services to CITY.

ARTICLE 2 SCOPE OF SERVICES

Section 2.1 Scope of Services

CONTRACTOR, for the benefit and at the direction of CITY, shall perform the Scope of Services as set forth in Exhibit A.

Section 2.2 Time For Commencement and Completion of Work

CONTRACTOR shall commence work pursuant to this Agreement on the date set forth in Section 2.6 and shall perform all services in a commercially reasonable manner and complete work under this Agreement as designated in Section 2.6.

CONTRACTOR shall submit to CITY such reports, diagrams, drawings and other work products as may be designated in the Scope of Services.

CONTRACTOR shall not be responsible for delays caused by the failure of CITY staff to provide required data or review documents within the appropriate time frames. The review time by CITY shall not be counted against CONTRACTOR's contract performance period. Also, any delays due to weather, vandalism, acts of God, etc., shall not be counted. CONTRACTOR shall remain in contact with Customer and make commercially reasonable efforts to review and return all comments.

Section 2.3 Meetings

CONTRACTOR and CITY shall attend meetings as may be set forth in the Scope of Services.

Section 2.4 Representations, Indemnification

The Scope of Services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing. CONTRACTOR represents it is prepared to and can perform all services within the Scope of Services (Exhibit A) and is prepared to and can perform all services specified therein.

CONTRACTOR represents that it has, or will have at the time this Agreement is executed, all licenses, permits, qualifications, insurance and approvals of whatsoever nature are legally required for CONTRACTOR to practice its profession, and that CONTRACTOR shall, at its own cost and expense,

keep in effect during the life of this Agreement all such licenses, permits, qualifications, insurance and approvals. CONTRATOR will defend, indemnify and hold CITY harmless from and against any loss, cost and expense that CITY incurs because of a claim that use of a Licensed Program, as hereinafter defined, infringes any United States copyright of others. CONTRATOR's obligations under this indemnification are expressly conditioned on the following: (i) CITY must promptly notify CONTRATOR of any such claim; (ii) CITY must in writing grant CONTRATOR sole control of the defense of any such claim and of all negotiations for its settlement or compromise (if CITY chooses to represent its own interests in any such action, CITY may do so at its own expense, but such representation must not prejudice CONTRATOR's right to control the defense of the claim and negotiate its settlement or compromise); (iii) CITY must cooperate with CONTRATOR to facilitate the settlement or defense of the claim; (iv) the claim must not arise from modifications or (with the express exception of the other Licensed Programs and third party hardware and software specified by CONTRATOR in writing as necessary for use with the Licensed Program(s) giving rise to the infringement claim) from the use or combination of products provided by CONTRATOR with items provided by CITY or others. If any Licensed Program is, or in CONTRATOR's opinion is likely to become, the subject of a United States copyright infringement claim, then CONTRATOR, at its sole option and expense, will either: (A) obtain for CITY the right to continue using the Licensed Program under the terms of this Agreement; (B) replace the Licensed Program with products that are substantially equivalent in function, or modify the Licensed Program so that it becomes non-infringing and substantially equivalent in function; or (C) refund to CITY the portion of the license fee paid to CONTRATOR for the Licensed Program(s) giving rise to the infringement claim, less a charge for use by CITY based on straight line depreciation assuming a useful life of five (5) years.

Section 2.5 Subcontracts

Unless prior written approval of CITY is obtained, CONTRACTOR shall not enter into any subcontract with any other party for purposes of providing any work or services covered by this Agreement.

Section 2.6 Term

The term of this Agreement commences on October 1, 2013 and concludes on September 30, 2014. The Term is renewable as provided in Exhibit A.

**ARTICLE 3
COMPENSATION**

Section 3.1 Compensation

CONTRACTOR's compensation for all work under this Agreement shall conform to the provisions of Exhibit A.

CONTRACTOR shall not undertake any work beyond the scope of this Agreement unless such additional work is approved in advance and in writing by CITY.

Section 3.2 Method of Payment

As provided in Exhibit A.

Section 3.3 Costs

As provided in Exhibit A.

Section 3.4 Auditing

CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under this Agreement. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with reasonably necessary information and assistance needed to conduct such an audit.

CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of this Agreement. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under this Agreement.

**ARTICLE 4
MISCELLANEOUS PROVISIONS**

Section 4.1 Nondiscrimination

In performing services under this Agreement, CONTRACTOR shall not discriminate in the employment of its employees or in the engagement of any sub CONTRACTOR on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 4.2 ADA Compliance

In performing services under this Agreement, CONTRACTOR shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

Section 4.3 Indemnification and Responsibility for Damage

To the fullest extent permitted by law, and to the extent provided for under this Agreement, for claims related to bodily injury, death and damage to real property and tangible personal property, as well as fines, assessments and penalties imposed by any authority, Contractor shall indemnify and hold harmless the CITY from and against all direct damages and costs of any kind, including but not limited to reasonable attorney fees, arising out of or resulting from any negligent acts, or negligent omissions of Contractor, regardless of whether such claims are caused in part by any party indemnified hereunder, but not to the extent that the CITY is legally liable for such damages and costs. In no event, however, will Contractor be liable for any consequential damages, including lost profits, savings or procurement costs, even if Contractor has been advised of their possibility.

Section 4.4 No Personal Liability

Neither the City Council, nor any other officer or authorized assistant or agent or City employee shall be personally responsible for any liability arising under this Agreement.

Section 4.5 Responsibility of CITY

CITY shall not be held responsible for the care or protection of any material or parts of the work described in the Scope of Services, except as expressly provided herein.

Section 4.6 Intentionally left blank.

Section 4.7 Successors and Assigns

CITY and CONTRACTOR each bind themselves, their partners, successors, assigns, and legal representatives to this Agreement without the written consent of the others. CONTRACTOR shall not assign or transfer any interest in this Agreement without the prior written consent of CITY. Consent to any such transfer shall be at the sole discretion of CITY. Notwithstanding, CONTRACTOR reserves the right to assignment of this Agreement to CONTRACTOR's successor by merger or consolidation or to any person or entity that acquires all or substantially all of its capital stock or assets

Section 4.8 Notices

Any notice required to be given by the terms of this Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

To CITY: City of Lodi
 221 West Pine Street
 P.O. Box 3006
 Lodi, CA 95241-1910
 Attn: Paula O'Keefe

To CONTRACTOR: SunGard Public Sector Inc.
 1000 Business Center Drive
 Lake Mary, FL 32746
 Attn: Vice-President

Section 4.9 Cooperation of CITY

CITY shall cooperate fully and in a timely manner in providing relevant information it has at its disposal relevant to the Scope of Services.

Section 4.10 CONTRACTOR is Not an Employee of CITY

CONTRACTOR agrees that in undertaking the duties to be performed under this Agreement, it shall act as an independent contractor for and on behalf of CITY and not an employee of CITY. CITY shall not direct the work and means for accomplishment of the services and work to be performed hereunder. CITY, however, retains the right to require that work performed by CONTRACTOR meet specific standards without regard to the manner and means of accomplishment thereof.

Section 4.11 Termination

See Exhibit A, Section 9.

Section 4.12 Confidentiality

CONTRACTOR agrees to maintain confidentiality of all work and work products produced under this Agreement, except to the extent otherwise required by law or permitted in writing by CITY. CITY agrees to maintain confidentiality of any documents owned by CONTRACTOR and clearly marked by

CONTRACTOR as "Confidential" or "Proprietary", except to the extent otherwise required by law or permitted in writing by CONTRACTOR. CONTRACTOR acknowledges that CITY is subject to the California Public Records Act.

Section 4.13 Applicable Law, Jurisdiction, Severability, and Attorney's Fees

This Agreement shall be governed by the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be venued with the San Joaquin County Superior Court. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in force and effect. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation of the dispute shall be entitled to reasonable attorney's fees from the party who does not prevail as determined by the San Joaquin County Superior Court.

Section 4.14 City Business License Requirement

CONTRACTOR acknowledges that Lodi Municipal Code Section 3.01.020 requires CONTRACTOR to have a city business license and CONTRACTOR agrees to secure such license and pay the appropriate fees prior to performing any work hereunder.

Section 4.15 Captions

The captions of the sections and subsections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question or interpretation or intent hereunder.

Section 4.16 Integration and Modification

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by both parties.

Section 4.17 Contract Terms Prevail

All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and the attached exhibits, the terms of this Agreement shall prevail.

Section 4.18 Severability

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Section 4.19 Ownership of Documents

All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, shall be deemed the property of CITY. Upon CITY's request, CONTRACTOR shall allow CITY to inspect all such documents during CONTRACTOR's regular business hours. Upon termination or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONTRACTOR to CITY within ten (10) calendar days.

CITY agrees to indemnify, defend and hold CONTRACTOR harmless from any liability resulting from CITY's use of such documents for any purpose other than the purpose for which they were intended.

Notwithstanding any contrary terms contained in this Section 4.19, all Vendor Programs are and shall remain the sole property of SunGard Public Sector as provided under Exhibit A, Section 7.

Section 4.20 Authority

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement as of the date first above written.

CITY OF LODI, a municipal corporation

ATTEST:

RANDI JOHL
City Clerk

STEPHEN SCHWABAUER
Interim City Manager

APPROVED AS TO FORM:
JANICE D. MAGDICH, Interim City Attorney

CONTRACTOR: SunGard Public Sector Inc.

By: _____


By: _____
Name:
Title:

Attachments:
Exhibit A – Scope of Services & Fee Proposal

Funding Source: 101032.7335
(Business Unit & Account No.)

Doc ID:

CA:rev.09.2011

SUNGARD PUBLIC SECTOR INC.
LICENSED PROGRAM(S) SUPPORT AGREEMENT

WITNESSETH:

WHEREAS, SunGard Public Sector and Customer entered into that certain SunGard Public Sector Software License Agreement dated September 2, 2008 (the "License Agreement") under which Customer obtained a perpetual, non-exclusive, nontransferable license to use certain computer software in object code form and related user documentation on certain terms and conditions;

WHEREAS, Customer desires to receive the Support, as defined herein, from SunGard Public Sector and SunGard Public Sector desires to render the Support to Customer with respect to the Licensed Program (as hereinafter defined) on the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the premises hereof, and the mutual obligations herein, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1

DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply to the respective capitalized terms:

- 1.1 "Licensed Program." "Licensed Program" means the software identified in a schedule, supplement or amendment to the License Agreement between the parties (Schedules), including any extracts from such software, derivative works of such software, or collective works constituting such software (such as subsequent Releases) to the extent offered to Customer under this Agreement or License Agreement. This excludes computer software not developed by SunGard Public Sector which might be used in conjunction with the SunGard Public Sector Public Safety Licensed Program, such as word processors, spreadsheets, terminal emulators, etc.
- 1.2 "Modification." "Modification" means a change to the Licensed Program requested by Customer to meet its specific needs and use, adding value, functionality and/or desirability for Customer.
- 1.3 "Agreement Term." An initial period shall commence upon the Maintenance Plan Start Date reflected on Attachment 1 and extend for a period of one year. Thereafter, the Agreement Term shall automatically renew for successive periods of one year each unless and until terminated pursuant to Section 9 hereof or otherwise superseded by the execution of a new Licensed Program Support Agreement. In no event, however, shall the Agreement Term extend beyond the prescribed term of the License Agreement.
- 1.4 "Error." Any failure of the Licensed Program to conform in all material respects to the functional specifications for the Licensed Program published from time to time by SunGard Public Sector. However, any nonconformity resulting from Customer's misuse or improper use of the Licensed Program or combining or merging the Licensed Program with any hardware or software not supplied by SunGard Public Sector, or not authorized to be so combined or merged by SunGard Public Sector, shall not be considered an Error.

Nor shall Licensed Program or data file damage resulting from unauthorized software alterations (including problems, errors, or malfunctions caused or created by the operator), customizing of programs, accident, neglect, power surge or failure, lightning, operating environment not in conformance with the manufacturer's specifications (for electric power, air quality, humidity or temperature), operating system errors, or hardware malfunction be considered an Error.

- 1.5 "Error Correction." Either a software modification or addition that, when made or added to the Licensed Program, establishes material conformity of the Licensed Program to the functional specifications, or a procedure or routine that, when observed in the regular operation of the Licensed Program, eliminates the practical adverse effect on Customer of such nonconformity. Not covered under Error Correction is the responsibility for data file damage due to software or hardware malfunction.
- 1.6 "Enhancement." Any modification or addition that, when made or added to the Licensed Program, materially changes its utility, efficiency, functional capability, or application, but that does not constitute solely an Error Correction. Enhancements may be designated by SunGard Public Sector as minor or major, depending on SunGard Public Sector's assessment of their value and of the function added to the preexisting Licensed Program.
- 1.7 "Coverage Hours." Monday through Friday 7:00 A.M. to 6:00 P.M. Eastern Standard Time excluding holidays for any questions regarding the Licensed Program(s) included in this Agreement. For a Major Application Problem on SunGard Public Sector's Base Computer Aided Dispatch System (Base CAD) only, SunGard Public Sector coverage hours will be 24-hours per day, 7-days per week.
- 1.8 "Response Time." Within Eight (8) hours of the Coverage Hours from the time that SunGard Public Sector verifies that an Error is present, SunGard Public Sector will initiate work toward development of an Error Correction for a Major Application Problem. Minor Application Problems will be fixed with the next scheduled Licensed Program Release.
- 1.9 "Licensed Program Releases." New versions of the Licensed Program, which new versions may include both Error Corrections and Enhancements.
- 1.10 "System Administrator." An agent of Customer with sufficient training and/or experience with the Licensed Program to communicate effectively with the SunGard Public Sector Support personnel.
- 1.11 "Major Application Problem." The Licensed Program is not functioning to the point that the Licensed Program is the cause of the Customer not being able to enter CAD calls, dispatch units, or update unit status in the Base CAD system. Therefore, the Base CAD system is down or non-operational because of the Licensed Program as determined by SunGard Public Sector.
- 1.12 "Minor Application Problem." The Licensed Program functions with inconveniences or programmatic error; however, the Licensed Program has not stopped Customers' daily operations.
- 1.13 "Non-Application Problem" is a problem, which is determined by SunGard Public Sector to have been caused by a source other than the Licensed Program, such as hardware failure, network malfunction, etc.

Section 2

ELIGIBILITY FOR SUPPORT

To be eligible for support for a Licensed Program, Customer must meet the following requirements. Acceptance of this Agreement by SunGard Public Sector is conditioned upon confirmation by SunGard Public Sector that the Licensed Program is eligible for support. Customer agrees that the obligation of SunGard Public Sector to continue to provide Services with respect to a Licensed Program shall terminate if, at any time during the term of this Agreement, these requirements are not met. To be eligible for Support for a Licensed Program, Customer must meet all of the following requirements:

- a. Customer has a valid Software License Agreement for the Licensed Program.
- b. Customer has a System Administrator.
- c. The hardware configuration on which the Licensed Program is to be used is supported by SunGard Public Sector.
- d. Customer is, and remains, in compliance with the schedule of payments.

SunGard Public Sector may require Customer to appoint a new System Administrator if SunGard Public Sector determines that the System Administrator does not have the training or experience necessary to communicate effectively with the SunGard Public Sector support personnel.

Section 3

SCOPE OF SERVICES

3.1 During the Agreement Term, SunGard Public Sector shall render the following services in support of the Licensed Program, during Coverage Hours, subject to the compensation fixed for each type of service in SunGard Public Sector's current rate schedule:

- a. SunGard Public Sector shall maintain a program control center capable of receiving by telephone any operator reports of system irregularities.
- b. SunGard Public Sector shall maintain a telephone hot line that allows Customer to report system problems and seek assistance in use of the Licensed Program.
- c. SunGard Public Sector shall maintain a trained staff capable of rendering the services set forth in this Agreement.
- d. SunGard Public Sector shall be responsible for using all reasonable diligence in correcting verifiable and reproducible Errors when reported to SunGard Public Sector in accordance with SunGard Public Sector's standard reporting procedures. SunGard Public Sector shall, after verifying that such an Error is present, initiate work, within Response Time, in a diligent manner toward development of an Error Correction. Following completion of the Error Correction, SunGard Public Sector shall provide the Error Correction through a "temporary fix" consisting of sufficient programming and operating instructions to implement the Error Correction, and SunGard Public Sector shall include the Error Correction in all subsequent Releases of the Licensed Program. SunGard Public Sector shall not be responsible for correcting Errors in any version of the Licensed Program other than the most recent Release of the Licensed Program, provided that SunGard Public Sector shall continue to support prior Releases superseded by recent Releases for a reasonable period sufficient to allow Customer to implement the newest Release, not to exceed 180 days.
- e. SunGard Public Sector may, from time to time, issue new Releases of the Licensed Program to its customers generally, containing Error Corrections, minor Enhancements, and, in certain instances if SunGard Public Sector so elects, major Enhancements. SunGard Public Sector shall provide Customer with one copy of each new Release, without additional charge. SunGard Public Sector shall provide reasonable assistance to help Customer install and operate each new Release, provided that such assistance, if required to be provided at Customer's facility, shall be subject to the supplemental charges set forth in SunGard Public Sector's current rate schedule.
- f. Subject to space availability and training fees, Customer may enroll its employees in SunGard Public Sector's training classes.
- g. SunGard Public Sector shall consider and evaluate the development of Enhancements for the specific use of Customer and shall respond to Customer's requests for additional services pertaining to the Licensed Program (including, without limitation, data conversion and report-formatting assistance), provided that such assistance, if agreed to be provided, shall be subject to supplemental charges mutually agreed to by SunGard Public Sector and Customer.
- h. SunGard Public Sector's software support is intended exclusively for SunGard Public Sector's Licensed Program(s); however, SunGard Public Sector can optionally provide first line support for selected operating systems where SunGard Public Sector has an agreement with the supplier. When the Customer contracts for this service, SunGard Public Sector will

make a good faith effort to find solutions to operating system problems. However, Customer must be aware of the following facts:

1. In some cases, Customer is in a much better position to deal with operating system issues because they are on-site and because of technical expertise they may have. In these cases, SunGard Public Sector recommends that they work directly with the appropriate operating system vendor on these matters. SunGard Public Sector will still be available to provide assistance whenever needed.
2. SunGard Public Sector is required to work with the company that supplied the operating system. If that company fails to provide quality support, SunGard Public Sector will not be able to provide quality support to our customers.
3. Some operating system problems can only be solved on-site. If and when this situation occurs, SunGard Public Sector personnel will travel to Customer's site with Customer's approval. Customer will be billed according to the SunGard Public Sector's professional services fee schedule plus the Customer will be billed for travel expenses and comprehensive per diem.
4. In the event that a bug is identified in the operating system, SunGard Public Sector will immediately report the problem directly to the provider. However, SunGard Public Sector and the Customer will be required to accept their schedule for fixing the problem.
5. If enhancement requests are made to SunGard Public Sector for changes to the operating system, SunGard Public Sector will pass them along to the provider. SunGard Public Sector can make no commitments as to when, or if, the enhancements will be included in future releases.
6. SunGard Public Sector will provide assistance with operating system upgrades via phone but Customer is responsible for obtaining the upgrade from the vendor and paying any required fee.
7. Most operating system upgrades require on-site assistance. The fee for on-site assistance is not included with SunGard Public Sector software support.
8. SunGard Public Sector must approve all operating system upgrades in advance to verify that the upgrade is necessary and compatible with the SunGard Public Sector Licensed Program(s).

3.2 The following items are specifically not covered by this Agreement:

- a. Any hardware failure including, but not limited to, failure caused by wiring, multiplexers, modems, phone lines, power, or connectors. Also, any hardware limitations due to insufficient memory, disk storage or processing power.
- b. Any problems caused by hardware failure.
- c. Any work required to restore or recover the operating system and/or data files.
- d. Any problem caused by an operator.
- e. Configuring, maintaining, and upgrading the operating system including, but not limited to, backups and restores, fixes, and patches.
- f. Any problems caused by incorrectly installed, configured, or maintained operating system, or versions of the operating system not supported by SunGard Public Sector.
- g. Problems with, or caused by any software not supported by SunGard Public Sector, including, but not limited to, SNA, word processors, terminal emulators, etc.

- h. System software installations made by the Customer without authorization of SunGard Public Sector such as installing a new Windows SQL version.

Section 4

OBLIGATION OF CUSTOMER

- 4.1 Customer shall provide, without charge to SunGard Public Sector, access to its facilities in connection with the performance of SunGard Public Sector of its obligations hereunder. It is agreed that prior notification will be given when access is required.
- 4.2 Customer must provide SunGard Public Sector with information sufficient for SunGard Public Sector to duplicate the circumstances under which a Problem in a Licensed Program became apparent.
- 4.3 Customer must maintain a current license of pcAnywhere, the SunGard Public Sector OSSI services workstation, and a 128K internet connection (Cable, DSL or similar) for support of the Licensed Programs. These items will connect to the active OSSI application data set(s) using a Licensed Program maintained by SunGard Public Sector hereunder. If desired, the Customer may install a dedicated 56K modem and phone line as a backup support option via dial-up. The customer shall provide access to a voice grade local telephone line for communication with the SunGard Public Sector support staff. SunGard Public Sector strongly recommends PC Anywhere and modem connection as a backup solution in the event Customer loses the broadband connection. In the event Customer elects not to maintain such, Customer acknowledges that SunGard Public Sector will not be able to provide support and will be relieved from all obligations hereunder for providing support.
- 4.4 A representative of Customer must be present when any on-site support is provided. Customer agrees that if such representative is not present when the SunGard Public Sector representative arrives on site, no work will be performed and Customer will be charged for such SunGard Public Sector representative.
- 4.5 All communications by Customer to SunGard Public Sector must be in the English language.
- 4.6 Customer is responsible for providing one or more qualified System Administrators as described in Section 5. At least one of these System Administrators must be available at all times.
- 4.7 Customer is responsible to support and maintain all system software. Customer shall NOT upgrade the operating system or third party software identified as integral to the operation of SunGard Public Sector's Licensed Programs without approval from SunGard Public Sector.

Section 5

SYSTEM ADMINISTRATOR REQUIREMENTS

- 5.1 Each System Administrator must be certified by SunGard Public Sector by completing the following:
 - a. Operating System training by either SunGard Public Sector or by a certified Microsoft training organization. This course work must include Administrating Windows 2000 Workstation, Administrating Windows 2000 Server, Windows SQL Administration (or the most current version supported by SunGard Public Sector at the time of installation) and other courses determined at the installation planning session based on the experience of the individuals.
 - b. SunGard Public Sector's application administration and code file course for each Licensed Program.
 - c. SunGard Public Sector's application training courses for each Licensed Program.
- 5.2 Each System Administrator must meet with a SunGard Public Sector Project Manager to review and sign on each of SunGard Public Sector's "Licensed Program(s) and/or Services Delivered" list.

- 5.3 Each System Administrator must be identified by Customer to SunGard Public Sector.
- 5.4 Each System Administrator must be qualified to address, without the aid of SunGard Public Sector, all problems relating to any hardware, software or operating system not directly associated with the Licensed Program(s).
- 5.5 Calls received by anyone who has not identified as a System Administrator are not covered by this Agreement and are therefore subject to hourly fees, and are not subject to minimum Response Time.
- 5.6 Each System Administrator must attend all of SunGard Public Sector's Licensed Program training.

Section 6
FEES AND CHARGES

- 6.1 Customer shall pay SunGard Public Sector Support fees and charges as outlined in the table attached hereto as Attachment 1 - Support Fees. Additional Licensed Programs may be added to this Agreement by the Schedules. SunGard Public Sector reserves the right to change its Support fees, provided that no such change will be effective until at least 30 days after SunGard Public Sector has given Customer written notice of such change by means of an invoice. In addition to the foregoing changes in Support Fees, fee changes will also result from changes in (1) Software prices, (2) Increases in the number of modules of a Licensed Program, (3) Increases in the number of users on the system, (4) Changes in the computer hardware or (5) Selection by Customer of different Coverage Hours.
- 6.2 SunGard Public Sector shall invoice Customer at the beginning of each contract year for all Support fees. All reimbursable expenses incurred shall be invoiced at the beginning of the next calendar month. Customer shall pay the invoiced amounts immediately upon receipt of such invoices. Any amount not paid within thirty (30) days after the invoice date shall bear interest at the highest rate allowed by applicable law.
- 6.3 Customer shall be responsible for procuring, installing, and maintaining all equipment, telephone lines, modems, communications interfaces, and other hardware necessary to operate the Licensed Program and to obtain from SunGard Public Sector the Services called for by this Agreement.
- 6.4 Customer agrees to pay additional charges according to the SunGard Public Sector fee schedule for all work performed outside of Coverage Hours. These charges are applicable for any work performed after hours regardless of cause even if it was reported and/or initiated during Coverage Hours. Customer will be required to authorize any work outside of coverage hours that results in additional charges.
- 6.5 On-site assistance will be performed as requested by Customer. However, Customer will be billed according to the SunGard Public Sector fee schedule for travel expenses and comprehensive per diem.
- 6.6 Customer is responsible for paying all taxes (except for taxes based on SunGard Public Sector's net income or capital stock) relating to this Agreement, the Improvements, any services provided or payments made under this Agreement. If Customer is exempt from the payment of any such taxes, Customer must provide SunGard Public Sector with a valid tax exemption certificate; otherwise, absent proof of Customer's direct payment of such tax amounts to the applicable taxing authority, SunGard Public Sector will invoice Customer for and Customer will pay to SunGard Public Sector all such tax amounts.

Section 7
PROPRIETARY RIGHTS

- 7.1 To the extent that SunGard Public Sector may provide Customer with any Error Corrections or Enhancements or any other software, including any new software programs or components, or any compilations or derivative works prepared by SunGard Public Sector (collectively, "Vendor Programs"), Customer may (1) install one set of the Vendor Programs in the most current form provided by SunGard Public Sector, in Customer's own facility; (2) use such Vendor Programs in connection with the Licensed Programs, and in a manner consistent with the requirements of the License Agreement, for purposes of serving Customer's internal business needs; and (3) make one copy of the Vendor Programs in machine-readable form for nonproductive backup purposes only. Customer may not use, copy, or modify the Vendor Programs, or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by SunGard Public Sector. Upon termination of such License Agreement, Customer shall return or destroy the Vendor Programs, and returning the Vendor Programs in the manner required by the License Agreement shall be sufficient for such purposes.
- 7.2 The Vendor Programs are and shall remain the sole property of SunGard Public Sector, regardless of whether Customer, its employees, or contractors may have contributed to the conception of such work, joined in the effort of its development, or paid SunGard Public Sector for the use of the work product. Customer shall from time to time take any further action and execute any further instrument, including documents of assignment or acknowledgment that SunGard Public Sector may reasonably request in order to establish and protect its exclusive ownership rights in such works. Customer shall not assert any right, title, or interest in such works, except for the non-exclusive right of use granted to Customer at the time of its delivery or on-site development.

Section 8

DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

- 8.1 SUNGARD PUBLIC SECTOR DISCLAIMS ALL WARRANTIES EITHER EXPRESSED OR IMPLIED AND REPRESENTATIONS WITH RESPECT TO THE LICENSED PROGRAM, INCLUDING ITS CONDITION, ITS CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, AND ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.
- 8.2 In no event shall SunGard Public Sector's cumulative liability for any claim arising in connection with this Agreement exceed the total fees and charges paid to SunGard Public Sector by Customer within the last twelve (12) months.
- 8.3 No action, whether based on contract, strict liability, or tort, including any action based on negligence, arising out of the performance of services under this Agreement, may be brought by either party more than one (1) year after such cause of action accrued.

Section 9

TERMINATION

- 9.1 This Agreement may be terminated as follows:
 - a. This Agreement shall immediately terminate upon the termination of the License Agreement;
 - b. This Agreement may be terminated by Customer upon the expiration of the then-current term of this Agreement, provided that at least ninety (90) days prior written notice is given to SunGard Public Sector. SunGard Public Sector may terminate this Agreement upon the expiration of the second term of this Agreement, provided that at least ninety (90) days prior written notice is given to Customer; or
 - c. This Agreement may be terminated by either party upon thirty (30) days prior written notice if the other party has materially breached the provisions of this Agreement and has not cured such breach within such notice period.

9.2 Following termination of this Agreement, SunGard Public Sector shall immediately invoice Customer for all accrued fees and charges and all reimbursable expenses, and Customer shall pay the invoiced amount immediately upon receipt of such invoice. Customer may continue to use any work supplied to Customer by SunGard Public Sector for the remaining term of the License Agreement. Any amount not paid within thirty (30) days after the invoice date shall bear interest at the rate allowed by applicable law.

LICENSED PROGRAM(S) SUPPORT AGREEMENT
ATTACHMENT 1 - SUPPORT FEES

Per SunGard Public Sector Invoice Document No. 70729 which is dated August 29, 2013 and which is attached hereto and incorporated herein by this reference.

RESOLUTION NO. 2014-27

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE THE
SERVICE MAINTENANCE AGREEMENT WITH
SUNGARD PUBLIC SECTOR, INC.

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WHEREAS, in 2009 the Lodi Police Department purchased a new computer system from Sungard Public Sector, Inc.; and

WHEREAS, the new Sungard OSSI system provides records management, computer aided dispatching, field reporting, mobile computing, and other functions that allow the department to function more efficiently; and

WHEREAS, the annual service maintenance agreement between the Lodi Police Department and Sungard Public Sector provides for software and hardware support in the event of system malfunctions and minimizes any disruption in the department's ability to provide service to the public.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute the Service Maintenance Agreement for current police information systems with Sungard Public Sector, Inc., of Lake Mary, Florida, and authorize payment in the amount of \$136,201.65 from the 2013/14 Lodi Police Department Operating Budget.

Dated: March 5, 2014

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I hereby certify that Resolution No. 2014-27 was passed and adopted by the City Council of the City of Lodi in a regular meeting held March 5, 2014, by the following vote:

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

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Nakanishi

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL-OLSON
City Clerk