



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt Resolutions Approving the Purchase of GO! Sync Mobile Software (\$13,755) and Authorizing the City Manager to Execute a Professional Services Agreement for Software Implementation and Training Services (\$18,000) with TC Technology of Carlsbad, for Phase II.I Integration of the Electric Utility's Geographical Information System

**MEETING DATE:** May 7, 2014

**PREPARED BY:** Electric Utility Director

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**RECOMMENDED ACTION:** Adopt resolutions approving the purchase of GO! Sync Mobile Software in an amount not to exceed \$13,755 and authorizing the City Manager to execute a professional services agreement for software implementation and training services in an amount not to exceed \$18,000 with TC Technology of Carlsbad, for Phase II.I integration of the Electric Utility's geographical information system.

**BACKGROUND INFORMATION:** The Electric Utility (EU) is continuing the multi-phase project with Environmental Systems Research Institute, Inc. (ESRI) for the geographical information system (GIS). As part of the next phase, staff recommends the purchase of a mobile inspection/reporting software to provide time and cost savings for regulatory mandated inspection cycles of the electric system by automating the inspection processes.

In order to enable the mobile solutions implementation, staff undertook an extensive process to research and evaluate potential software solutions. As a result, staff has determined that GO! Sync Mobile Software from TC Technology will address EU's needs and is the product predominantly being used by other public power utilities nationwide for the purpose of automating their system inspection processes, enhancing the data collection from inspections, and integrating that information into a GIS system. TC Technology has provided a quote of \$13,755 for the software and \$18,000 for implementation and training services, as shown on the attached exhibits.

The bidding process for this software purchase and associated services may be dispensed per Lodi Municipal Code 3.20.075 Professional/technical services contracts, 8. Computer consulting services.

Staff recommends the City Council approve the purchase of GO! Sync Mobile Software and authorize the City Manager to execute a professional services agreement with TC Technology of Carlsbad, for Phase II.I mobile inspection/reporting and integration of the EU's GIS.

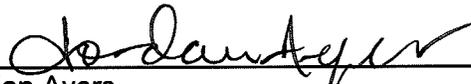
**FISCAL IMPACT:** Implementation of mobile inspection/reporting software will provide cost savings through improved operational efficiency of the electrical distribution system, increased safety, and create a more reliable electric system by mitigating electrical outages.

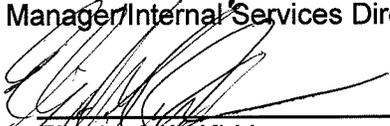
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APPROVED:   
Stephen Schwabauer, Interim City Manager

Adopt Resolutions Approving the Purchase of GO! Sync Mobile Software (\$13,755) and Authorizing the City Manager to Execute a Professional Services Agreement for Software Implementation and Training Services (\$18,000) with TC Technology of Carlsbad, for Phase II.I Integration of the Electric Utility's Geographical Information System  
May 7, 2014  
Page 2 of 2

**FUNDING AVAILABLE:** Included in FY 2013/14 Budget Account Numbers 160612.7313 and 160612.7323.

  
\_\_\_\_\_  
Jordan Ayers  
Deputy City Manager/Internal Services Director

  
\_\_\_\_\_  
Elizabeth A. Kirkley  
Electric Utility Director

**PREPARED BY:** Carl Wohl, Electrical Drafting Technician

EAK/JM/CW/lst

**AGREEMENT FOR PROFESSIONAL SERVICES**

**ARTICLE 1  
PARTIES AND PURPOSE**

**Section 1.1 Parties**

THIS AGREEMENT is entered into on \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF LODI, a municipal corporation (hereinafter "CITY"), and Tadpole Cartesia, Inc. doing business as TC Technology (hereinafter "CONTRACTOR").

**Section 1.2 Purpose**

CITY selected the CONTRACTOR to provide the services required in accordance with attached Scope of Services, Exhibit A, attached and incorporated by this reference.

CITY wishes to enter into an agreement with CONTRACTOR for providing Mobile Inspection/Reporting Software Implementation Services and Training (hereinafter "Project") as set forth in the Scope of Services 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, upon receipt of a written notice to proceed from CITY or on the date set forth in Section 2.6, whichever occurs first, and shall perform all services diligently and complete work under this Agreement based on a mutually agreed upon timeline or as otherwise designated in the Scope of Services.

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 and any other agencies involved in the project 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 reviewing agencies and make all efforts to review and return all comments.

**Section 2.3 Meetings**

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

**Section 2.4 Staffing**

CONTRACTOR acknowledges that CITY has relied on CONTRACTOR's capabilities and on the qualifications of CONTRACTOR's principals and staff as identified in its proposal to CITY. The Scope of Services shall be performed by CONTRACTOR, unless agreed to otherwise by CITY in writing. CITY shall be notified by CONTRACTOR of any change of Project Manager and CITY is granted the right of approval of all original, additional and replacement personnel at CITY's sole discretion and shall be notified by CONTRACTOR of any changes of CONTRACTOR's project staff prior to any change.

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, and shall indemnify, defend and hold harmless CITY against any costs associated with such licenses, permits, qualifications, insurance and approvals which may be imposed against CITY under this Agreement.

**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 May 7, 2014 and terminates upon the completion of the Scope of Services or on December 31, 2014, whichever occurs first.

**ARTICLE 3**  
**COMPENSATION**

**Section 3.1 Compensation**

CONTRACTOR's compensation for all work under this Agreement shall conform to the provisions of the Fee Proposal, attached hereto as Exhibit B and incorporated by this reference.

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**

CONTRACTOR shall submit invoices for completed work on a monthly basis, or as otherwise agreed, providing, without limitation, details as to amount of hours, individual performing said work, hourly rate, and indicating to what aspect of the Scope of Services said work is attributable. CONTRACTOR's compensation for all work under this Agreement shall not exceed the amount of the Fee Proposal.

**Section 3.3 Costs**

The Fee Proposal shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved in advanced and in writing, by CITY.

**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 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**

CONTRACTOR to the fullest extent permitted by law, shall indemnify and hold harmless CITY, its elected and appointed officials, directors, officers, employees and volunteers from and against any claims, damages, losses, and expenses (including reasonable attorney's fees and costs), arising out of performance of the services to be performed under this Agreement, provided that any such claim, damage, loss, or expense is caused by the negligent acts, errors or omissions of CONTRACTOR, any subcontractor employed directly by CONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, except those injuries or damages arising out of the active negligence, sole negligence, or sole willful misconduct of the City of Lodi, its elected and appointed officials, directors, officers, employees and volunteers. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CONTRACTOR shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs. The defense and indemnification obligations required by this Agreement are undertaken in addition to, and shall not in any way be limited by the insurance obligations set forth herein.

**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 prior to final acceptance by CITY, except as expressly provided herein.

**Section 4.6 Insurance Requirements for CONTRACTOR**

CONTRACTOR shall take out and maintain during the life of this Agreement, insurance coverage as set forth in Exhibit C attached hereto and incorporated by this reference.

**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.

**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: Carl Wohl, Electrical Drafting Tech

To CONTRACTOR:      TC Technology  
   2231 Faraday Avenue, Suite 140  
   Carlsbad, CA 92008  
   Jason Linley, 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**

CITY may terminate this Agreement, with or without cause, by giving CONTRACTOR at least ten (10) days written notice. Where phases are anticipated within the Scope of Services, at which an intermediate decision is required concerning whether to proceed further, CITY may terminate at the conclusion of any such phase. Upon termination, CONTRACTOR shall be entitled to payment as set forth in the attached Exhibit B to the extent that the work has been performed. Upon termination, CONTRACTOR shall immediately suspend all work on the Project and deliver any documents or work in progress to CITY. However, CITY shall assume no liability for costs, expenses or lost profits resulting from services not completed or for contracts entered into by CONTRACTOR with third parties in reliance upon this Agreement.

**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 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 4.15 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 4.16 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 4.17 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 4.18 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.

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**Section 4.19 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-OLSON  
City Clerk

\_\_\_\_\_  
STEPHEN SCHWABAUER  
Interim City Manager

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

TADPOLE CARTESIA, INC.(TC Technology)

By: \_\_\_\_\_  


By: \_\_\_\_\_  
Name: JASON LINLEY  
Title: President

**Attachments:**  
**Exhibit A – Scope of Services**  
**Exhibit B – Fee Proposal**  
**Exhibit C – Insurance Requirements**

**Funding Source: 160612.7323**  
**(Business Unit & Account No.)**

Doc ID:

CA:Rev.03.2014

# EXHIBIT A & B



QUOTATION #:

LE\_042214\_SERVICES

DATE: April 22, 2014

CUSTOMER:

Lodi Electric Utility  
1331 South Ham Lane  
Lodi, CA 95242

CONTACT: Carl Wohl

PHONE: (209) 333 6800 x2547

Product Code	Description	Price	QTY	Extended
<b>Standard Implementation Services</b>				
PS_STD_IE	GO! Sync Mobile GIS Standard Implementation Services (Mapbook, Inspection and Sketching)	\$12,000.00	1	\$12,000.00
PS_STD_PE	Patrol Inspection Standard Implementation Services	\$ 4,500.00	1	\$ 4,500.00
<b>Training Options</b>				
PS_TRN_USER	GO! Sync Mobile GIS End-User Training (Agreed to 10 per class) (Onsite or remote training class – travel expenses not included in price)	\$ 1,500.00	1	\$ 1,500.00
<b>TOTAL</b>				<b>\$18,000.00</b>

1. Quote valid for 60 days
2. All prices are quoted in US Dollars and are subject to change without notice.
3. Standard Implementation includes configuration of up to 5 inspections.
4. Applicable travel, shipping charges and taxes will be billed at cost.

*This Quotation is made in confidence of your review. It may not be disclosed to third parties, except as required by law.*

Quoted By: Carrie Turner  
Email: carrie.turner@tctechnology.com

Account Manager: Carrie Turner  
Email: carrie.turner@tctechnology.com



**Insurance Requirements for Consultant** The Consultant shall take out and maintain during the life of this Agreement, insurance coverage as listed below. These insurance policies shall protect Consultant and any subcontractor performing work covered by this Agreement 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 Agreement, 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 Each Occurrence  
 \$2,000,000 Aggregate
2. **COMPREHENSIVE AUTOMOBILE LIABILITY**  
 Proof of coverage with limits not less than \$1,000,000 combined single limit  
 Such insurance shall cover liability arising out of any vehicle (including, owned, hired and non-hired vehicles) operated in performing any and all services pursuant to this Agreement. Coverage shall be written on ISO form CA 00 01 12 90, or a later version of this form, or an equivalent form providing equivalent liability coverage.
3. **PROFESSIONAL LIABILITY / ERRORS AND OMISSIONS**  
 Not less than \$1,000,000 per claim

All limits are to be designated strictly for the City of Lodi, its elected and appointed boards, commissions, officers, agents, employees, and volunteers. All deductibles or self-insured retentions (SIR) must be disclosed to City's Risk Manager for approval and shall not reduce the limits of liability set forth hereinabove. Insurance policies containing any deductible or SIR provision shall provide, or be endorsed to provide, that the deductible or SIR may be satisfied by either the Named Insured(s) or the City of Lodi.

It is required that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth above, shall be available to City as an additional insured. Furthermore, the requirements for coverage and limits shall be (i) the minimum coverage and limits specified in these insurance requirements; or (ii) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Consultant; whichever is greater.

Consultant agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

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

- (a) **Additional Named Insured Endorsement**  
 Pursuant to a separate endorsement (ISO form CG 2010 (11/85) or equivalent form) 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.
- (b) **Primary and Non-Contributory Insurance Endorsement**  
 Additional insurance coverage under the Consultant's policy shall be "primary and non-contributory" and will not seek contribution from City's insurance or self-insurance and shall be at least as broad as ISO form CG 20 01 04 13.

**NOTE:** (1) The street address of the **CITY OF LODI** must be shown along with (a) and (b) above: 221 West Pine Street, Lodi, California, 95240; (2) The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.

**Insurance Requirements for Consultant** (continued)

- (c) Limits of Coverage  
The limits of insurance coverage required may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance of Consultant shall contain, or be endorsed to contain, a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect the City as a named insured.
- (d) Completed Operations Endorsement  
For three years after completion of project, a certificate of insurance with a Completed Operations Endorsement, CG 20 37 07 04, will be provided to the City of Lodi.
- (e) 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.
- (f) 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 to the Risk Manager, City of Lodi, 221 West Pine St., Lodi, CA 95240.
- (g) Continuity of Coverage  
All policies shall be in effect on or before the first day of the Term of this Agreement. At least thirty (30) days prior to the expiration of each insurance policy, Consultant shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the minimum requirements of this Agreement. Consultant shall provide proof of continuing insurance on at least an annual basis during the Term. If Consultant's insurance lapses or is discontinued for any reason, Consultant shall immediately notify the City and immediately obtain replacement insurance.
- (h) Failure to Comply  
If Consultant fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, the City may obtain the insurance. Consultant shall reimburse the City for premiums paid, with interest on the premium paid by the City at the maximum allowable legal rate then in effect in California. The City shall notify Consultant of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. Consultant shall pay such reimbursement and interest on the first (1<sup>st</sup>) day of the month following the City's notice. Notwithstanding and other provision of this Agreement, if Consultant fails or refuses to obtain or maintain insurance as required by this agreement, or fails to provide proof of insurance, the City may terminate this Agreement upon such breach. Upon such termination, Consultant shall immediately cease use of the Site or facilities and commence and diligently pursue the removal of any and all of its personal property from the site or facilities.
- (i) Qualified Insurer(s)  
All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the AM Best Ratings Guide, and which are acceptable to the City. Non-admitted surplus lines carriers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.

**Workers Compensation Insurance** The Consultant shall take out and maintain during the life of this Agreement, Worker's Compensation Insurance for all of Consultant's employees employed at the site of the project and, if any work is sublet, Consultant 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 Consultant. In case any class of employees engaged in hazardous work under this Agreement at the site of the project is not protected under the Worker's Compensation Statute, the Consultant shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. A waiver of subrogation is required for workers compensation insurance. This policy may not be canceled nor the coverage reduced without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 West Pine St., Lodi, CA 95240.

**NOTE: The City reserves the right to obtain a full certified copy of any insurance policy or endorsements required. Failure to exercise this right shall not constitute a waiver of the City's right to exercise after the effective date.**

# EXHIBIT D



Carlsbad, CA 92008  
Phone: (760) 929 8345  
Fax: (760) 692 0484

QUOTATION #:

LE\_042214\_LICENSES

DATE: April 22, 2014

CUSTOMER:

Lodi Electric Utility  
1331 South Ham Lane  
Lodi, CA 95242

CONTACT: Carl Wohl

PHONE: (209) 333 6800 x2547

Product Code	Description	Price	QTY	Extended
<b>Licenses</b>				
GS_MBE_IE	GO! Sync Mapbook with Inspection and Sketching extension with embedded ArcGIS Engine (Client)	\$ 1,195.00	9	\$10,755.00
GS_MGS	GO! Sync Server (includes Inspection and Sketching Server)	\$ 3,000.00	1	\$ 3,000.00
<b>TOTAL</b>				<b>\$13,755.00</b>

1. Quote valid for 60 days
2. All prices are quoted in US Dollars and are subject to change without notice.
3. All software quotes are inclusive of complimentary support and maintenance for the first 12 months. Eligibility for support and maintenance beyond the first 12 months requires additional subscription fees.
4. GO! Sync Mapbook requires ArcGIS Engine (embedded option included in quote above)
5. MIMS Server (previously known as GO! Sync Mobile GIS Server) requires either Esri ArcGIS Editor or ArcGIS Engine with Geodatabase Update Extension (embedded option NOT included in quote above).
6. GO! Sync Standard Remote Implementation Services estimated; scope adjustment could alter estimate.

*This Quotation is made in confidence of your review. It may not be disclosed to third parties, except as required by law.*

Quoted By: Carrie Turner  
Email: carrie.turner@tctechnology.com

Account Manager: Carrie Turner  
Email: carrie.turner@tctechnology.com

# LICENSE AND SERVICE AGREEMENT

END USER SOFTWARE LICENSE AGREEMENT and TERMS OF SERVICE AGREEMENT

THIS SOFTWARE LICENSE and SERVICE AGREEMENT

is made by and between

CITY OF LODI  
P.O. Box 3006  
Lodi CA 95241-1910  
(hereinafter referred to as 'LICENSEE')

AND

**Tadpole Cartesia, Inc.**  
doing business as TC Technology  
with principal place of business at  
2231 Faraday Avenue Suite 140  
Carlsbad, CA, 92008, U.S.A.  
(hereinafter referred to as 'LICENSOR').

Agreement Number: LE\_042214\_SERVICES

## 1. Definitions applicable to this license

1.1 LICENSED SOFTWARE: refers singularly and/or collectively to computer programs provided by the LICENSOR (not including 3rd party software) and shall include any improvements modifications or developments provided by the LICENSOR under the terms of this Agreement.

1.2 OBJECT CODE: means the compiled form of the LICENSED SOFTWARE.

1.3 SOURCE CODE: means textual source form of the LICENSED SOFTWARE.

1.4 PROGRAM DOCUMENTATION: means any material or documentation relating to the LICENSED SOFTWARE provided by the LICENSOR.

1.5 SECURITY DEVICE: A software license manager that may be supplied with the program. When the LICENSED SOFTWARE includes the requirement to use a SECURITY DEVICE, the program will run only when the SECURITY DEVICE is correctly used and all references to the LICENSED SOFTWARE herein shall include and assume use of the SECURITY DEVICE

1.6 A DEFECT is defined as a failure to perform any function specified in the current published documentation of the LICENSED SOFTWARE. A limitation in performance shall not be construed as a DEFECT.

## 2. Term

This Agreement shall be effective from the date of installation of LICENSED SOFTWARE and shall remain in force indefinitely unless issued for a fixed period.

## 3. Software License

3.1 Right to Use: In consideration of the payment of an annual license fee by the LICENSEE to the LICENSOR as provided in this agreement, LICENSOR grants to LICENSEE, a non-exclusive, right to use the LICENSED SOFTWARE and the PROGRAM DOCUMENTATION for a one year period subject to the terms and conditions herein. The license is for use throughout the LICENSEE's organization.

3.2 Use of the LICENSED SOFTWARE obligates LICENSEE to pay a mandatory annual update fee and failure to pay the mandatory annual update fee results in termination of the right to use the LICENSED SOFTWARE. Refer to paragraph 7.4 for the effects of termination of Software.

3.2 Title: Title, copyright and all other proprietary rights in the LICENSED SOFTWARE, manuals and all parts and copies thereof shall remain vested in the LICENSOR. No ownership of the LICENSED SOFTWARE is transferred to the LICENSEE.

3.3 No Transfer: The program may not be transferred, assigned, rented, leased, sold or otherwise disposed of or made available except as expressly provided herein.

3.4 Number of Users: The LICENSE granted under this Agreement authorizes the LICENSEE to use, subject to the obligations of confidence set forth in this Agreement, and to permit others to use in accordance with the provisions of paragraph 3.7 of this Clause of the LICENSED SOFTWARE for users within the LICENSEE'S organization.

3.5 No Reverse Engineering: The right to reverse engineer or disassemble the LICENSED SOFTWARE (which is provided in OBJECT CODE format only) is specifically excluded, except to the extent that such exclusion is not permitted under the law of the country of authorized use. LICENSEE will do nothing to dis-enable any SECURITY DEVICE.

3.6 Limited Right to Copy: The LICENSEE may copy the LICENSED SOFTWARE for the purpose of making back-up copies of the LICENSED SOFTWARE supplied under this Agreement. Software may not be copied for the purpose of error correction.

3.7 Third Party Access: The LICENSEE may grant access to the LICENSED SOFTWARE to consultants and contractors acting on behalf of LICENSEE who agree to substantially similar obligations and conditions of confidence as those binding the LICENSEE under this Agreement.

3.8 No Derivative Works: The LICENSEE may not create derivative works based on the LICENSED SOFTWARE and PROGRAM DOCUMENTATION without the written consent of the LICENSOR.

3.9 Documentation: The LICENSEE will hold the LICENSED SOFTWARE and PROGRAM DOCUMENTATION in confidence. The foregoing obligation of confidence will not apply to information in the public domain or information derived or received by the LICENSEE independently of this Agreement.

3.10 Audit Right: Promptly on request, LICENSEE will permit LICENSOR to have access to LICENSEE systems and to use software tools on LICENSEE's systems to ensure LICENSEE is using its software in accordance with its license terms

#### 4. Warranty

4.1 Warranty: The LICENSOR warrants that for a period of ninety (90) days from delivery the LICENSED SOFTWARE shall perform substantially in accordance with the published specification of the LICENSED SOFTWARE, current at the time of delivery. Further, the LICENSOR warrants that use of the LICENSED SOFTWARE by the LICENSEE will not infringe any copyright, trade secret or proprietary interest of any third party.

4.2 Warranty Exclusions: **THE LICENSOR DOES NOT WARRANT THAT THE FUNCTIONS OF THE SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE ENTIRELY ERROR-FREE OR THAT ALL PROGRAM DEFECTS ARE CAPABLE OF CORRECTION OR IMPROVEMENT. ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR PURPOSE OR ABILITY TO ACHIEVE A PARTICULAR RESULT ARE HEREBY EXCLUDED. IN THE ABSENCE OF FRAUD, NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE LICENSOR OR ITS AGENTS, DISTRIBUTORS, OR DEALERS SHALL CREATE A WARRANTY OR GIVE RISE TO ANY OTHER LIABILITY OTHER THAN IS GIVEN IN THIS AGREEMENT. LICENSEE'S STATUTORY RIGHTS AS A CONSUMER (IF ANY) ARE NOT AFFECTED BY THESE TERMS AND CONDITIONS.**

#### 5. Maintenance and Support

5.1 Service: Subject to the terms and conditions herein the LICENSOR agrees to provide the Maintenance and Support Service as described below for the LICENSED SOFTWARE provided that the annual license fee for the period has been fully paid.

5.2 Service Description: The Maintenance and Support Service to be provided by the LICENSOR is as follows:

5.2.1 The Maintenance and Support Service support shall be provided by the LICENSOR and its agents designated as qualified for the purpose by telephone, mail, E-mail or fax during normal working hours (local time) of the LICENSOR or its agents on Mondays to Fridays. The LICENSOR'S normal working hours are 8.00 am to 6.00 p.m., United States Pacific time, from Monday to Friday but excluding public holidays.

5.2.2 The correction of detected defects in the LICENSED SOFTWARE.

5.2.3 The incorporation of improvements to the LICENSED SOFTWARE, together with supporting documentation, which are or will be part of the LICENSED SOFTWARE itself and not part of separately identifiable tasks, modules or packages to be licensed under separate agreements.

5.2.4 The LICENSOR will use reasonable endeavors to deal promptly with DEFECTS in the LICENSED SOFTWARE by making available its personnel.

5.2.5 When the LICENSEE requests support on site, agreed travel, accommodation and subsistence expenses incurred by personnel working away from the LICENSOR'S offices in the execution of these obligations shall be for the LICENSEE'S account and shall be payable within thirty (30) days of invoicing of the LICENSEE by the LICENSOR at the invoice address set forth herein.

5.2.6 Updates or replacements of the technical manuals relating to the LICENSED SOFTWARE will be forwarded to the LICENSEE as they become available, at the agreed costs of reproduction and postage. Obligations of confidence set forth above apply to such updates.

### 6. Liability

6.1 Personal Injury & Death: LICENSOR will indemnify LICENSEE for personal injury or death caused by the negligence of its employees in connection with the performance of their duties hereunder, or by defects in any product supplied pursuant to this Agreement.

6.2 Tangible Property: LICENSOR will indemnify LICENSEE for direct damage to tangible property caused by the negligence of its employees in connection with the performance of their duties hereunder, or by defects in any product supplied pursuant to this Agreement. LICENSOR'S TOTAL LIABILITY UNDER THIS CLAUSE SHALL BE LIMITED TO ONE MILLION DOLLARS FOR ANY ONE EVENT OR SERIES OF CONNECTED EVENTS.

6.3 Delay: While LICENSOR shall use reasonable commercial efforts to meet delivery times, LICENSEE's only remedy for unreasonable delay in delivery will be the right to terminate this Agreement after service of notice of breach as set out below, plus a refund of any fees paid by LICENSEE for no benefit.

6.4 Other Exclusions: **SAVE IN RESPECT OF CLAIMS FOR DEATH OR PERSONAL INJURY ARISING FROM LICENSOR'S NEGLIGENCE, IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF DATA OR USE, LOST PROFITS, LOSS OF ANTICIPATED SAVINGS, NOR FOR ANY DAMAGES THAT ARE AN INDIRECT OR SECONDARY CONSEQUENCE OF ANY ACT OR OMISSION OF LICENSOR, WHETHER SUCH DAMAGES WERE REASONABLY FORESEEABLE OR ACTUALLY FORESEEN.**

6.5 Maximum Liability: **EXCEPT AS PROVIDED ABOVE IN THE CASE OF PERSONAL INJURY, DEATH, AND DAMAGE TO TANGIBLE PROPERTY, LICENSOR'S MAXIMUM LIABILITY TO LICENSEE FOR ANY CAUSE WHATSOEVER (WHETHER IN THE FORM OF THE ADDITIONAL COST OF REMEDIAL SERVICES OR OTHERWISE) WILL BE FOR DIRECT COSTS AND DAMAGES ONLY, AND WILL BE LIMITED TO A SUM EQUIVALENT TO THE PRICE PAID TO LICENSOR FOR THE PRODUCTS OR SERVICES THAT ARE THE SUBJECT OF LICENSEE'S CLAIM, PLUS DAMAGES LIMITED TO TWENTY-FIVE PER CENT (25%) OF THE SAME AMOUNT FOR ANY ADDITIONAL COSTS DIRECTLY, REASONABLY AND NECESSARILY INCURRED BY LICENSEE IN OBTAINING ALTERNATIVE PRODUCTS AND/OR SERVICES.**

6.6 General: LICENSEE's statutory rights as a consumer (if any) are not affected. All liability that is not expressly assumed in this Agreement is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this Clause, "LICENSOR" includes its employees, sub-contractors and suppliers. LICENSEE acknowledges that LICENSOR has been appointed as the agent of its employees, sub-contractors and suppliers to agree the provisions of this on their behalf.

## 7. Termination

7.1 Routine Termination: The LICENSEE and the LICENSOR shall each have the right to terminate this License and Agreement and / or the Maintenance and Support Service subject to the terms of this Agreement without prejudice to the other rights and obligations of this Agreement.

7.2 Termination for Non-Payment of Fees: The LICENSOR shall have the right to terminate the annual license if the current annual license fee has not been received by the LICENSOR within thirty days after the expiry of the previous annual period.

7.3 Termination for Breach: The LICENSOR shall have the right to terminate this License and Agreement in the event of the LICENSEE'S breach of copyright or other terms thereof provided the LICENSOR has given the LICENSEE not less than thirty days prior written notice of breach and the LICENSEE shall have failed to remedy the same.

7.4 Consequences of Termination: In the event of termination of this License and Agreement, the LICENSED SOFTWARE and PROGRAM DOCUMENTATION shall be returned immediately to the LICENSOR, and all copies of the LICENSED SOFTWARE shall be erased from the computer system and its back-up media. The LICENSEE shall confirm within thirty (30) days in writing that all copies and the operational copy of the LICENSED SOFTWARE have been erased or are in process of return to the LICENSOR. The expiry of this Agreement or the termination thereof for whatever reasons shall be without prejudice to the respective rights and liabilities of either of the parties accrued prior to such termination.

## 8. Confidential Information of LICENSEE

8.1 All information relating to the LICENSEE and the LICENSEE'S operations, including information relating to third parties which is made available to the LICENSOR in connection with this License and Agreement, shall be held strictly confidential by the LICENSOR notwithstanding termination of the License and Agreement. The foregoing obligation of confidence will not apply to information in the public domain or information derived or received by the LICENSOR independently of this License and Agreement.

8.2 The LICENSOR will not use the name of the LICENSEE in connection with any advertising nor any publication without LICENSEE'S prior written consent.

## 9. Confidential Information of LICENSOR

All information relating to the LICENSOR and the LICENSOR'S operations, including but not limited to SOURCE CODE and PROGRAM DOCUMENTATION which is made available to the LICENSEE in connection with this License and Agreement, shall be held strictly confidential by the LICENSEE notwithstanding termination of the License and Agreement. The foregoing obligation of confidence will not apply to information in the public domain or information derived or received by the LICENSEE independently of this License and Agreement.

## 10. Construction and Applicable Law

10.1 Law & Disputes: This Agreement shall be governed and construed in accordance with the laws of the state of California and any actions seeking to enforce the terms and conditions of this Agreement or any claim for damages arising from a breach of this Agreement shall be filed in California save that Licensor shall have the right at its absolute discretion to initiate proceedings to recover sums owing to it and/or to enforce its intellectual property rights in the courts of any jurisdiction in which its Licensee carries on business, in which assets of Licensee are located, or, in which Licensor's software is used. If either party shall invoke legal proceedings, of any nature, to enforce the terms and conditions of this Agreement, or to impose a claim for damages against a breaching party, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

10.2 Headings: The headings of Clauses in this License and Agreement are included herein for convenience and shall not be considered in construing this License and Agreement.

10.3 Severability: In the event that any of these terms, conditions, or provisions shall be determined invalid, unlawful, or unenforceable to any extent, such term, condition, or provision shall be severed from the remaining terms, conditions, or provisions which shall continue to be valid to the fullest extent permitted by law.

### **11. Notices**

Any notice given hereunder shall be deemed to have been sufficiently served if sent in writing by prepaid certified mail or communicated by fax addressed to the last known address of the addressee and the same shall be deemed to have been served when in the ordinary course of transmission it would have been received.

### **12. Miscellaneous:**

12.1 Force Majeure: LICENSOR is not responsible for delay or failure to perform due to causes beyond its reasonable control, including but not limited to, fire, flood, act of God or insolvency of subcontractors or suppliers or inability to obtain products, licenses or services from third party suppliers.

12.2 Waiver: No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto.

12.3 Amendment: This Agreement shall not be modified or amended except by agreement in writing by an authorized representative of each of the parties.

# LICENSE AND SERVICE AGREEMENT

## Schedule A

This Schedule is attached to and becomes, upon execution by both parties below, a part of the Software License and Maintenance Agreement Number LE\_042214\_SERVICES between the parties and sets forth the specific terms and conditions relating to the Licenses Software listed below. This replaces any previous Schedule A attached to the above Agreement.

Effective Date:            May 7, 2014

Invoice Address	Installation Address
Company Name: CITY OF LODI - EU	Company Name: CITY OF LODI - EU
Street Address: PO BOX 3006	Street Address: 1331 S. Ham Lane Lodi, CA 95242
Attention: Carl Wohl	Attention: Carl Wohl

Product Name	Qty.	Unit Price	Extended Price
GO! Sync Mobile GIS Standard Implementation Services (Mapbook, Inspection and Sketching)	1	\$12,000.00	\$12,000.00
Patrol Inspection Standard Implementation Services	1	\$4,500.00	\$4,500.00
GO! Sync Mobile GIS End-User Training (Agreed to 10 per class) (Onsite or remote training class-travel expenses not included in price)	1	\$1,500.00	\$1,500.00
<b>Total</b>			<b>\$18,000.00</b>

**LICENSE AND SERVICE AGREEMENT**

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives as of the Effective Date.

**CITY OF LODI, a municipal corporation**

By: \_\_\_\_\_  
Stephen Schwabauer, Interim City Attorney *Manager*

**APPROVED AS TO FORM**

Janice D. Magdich, Interim City Attorney:

By: \_\_\_\_\_ *[Signature]*

**ATTEST**

By: \_\_\_\_\_  
Randi Johl-Olson  
City Clerk

**ATTEST**

**Tadpole Cartesia, Inc.**

By: \_\_\_\_\_  
Jason Linley, President

RESOLUTION NO. 2014-58

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING THE PURCHASE OF GO! SYNC MOBILE SOFTWARE WITH TC TECHNOLOGY, OF CARLSBAD, FOR PHASE II.I INTEGRATION OF THE ELECTRIC UTILITY'S GEOGRAPHICAL INFORMATION SYSTEM

WHEREAS, the Electric Utility (EU) is continuing the multi-phase project with Environmental Systems Research Institute, Inc. (ESRI) for the geographical information system (GIS); and

WHEREAS, as part of the next phase, staff recommends the purchase of a mobile inspection/reporting software to provide time and cost savings for regulatory mandated inspection cycles of the electric system by automating the inspection processes; and

WHEREAS, in order to enable the mobile solutions implementation, staff undertook an extensive process to research and evaluate potential software solutions and determined that GO! Sync Mobile Software from TC Technology will address EU's needs and is the product predominantly being used by other public power utilities nationwide for the purpose of automating their system inspection processes, enhancing the data collection from inspections, and integrating that information into a GIS system; and

WHEREAS, TC Technology has provided a quote of \$13,755 for the software and \$18,000 for implementation and training services, as shown on the attached exhibits; and

WHEREAS, the bidding process for this software purchase and associated services may be dispensed per Lodi Municipal Code 3.20.075, Professional/technical services contracts, 8. Computer consulting services; and

WHEREAS, implementation of mobile inspection/reporting software will provide cost savings through improved operational efficiency of the electrical distribution system, increased safety, and create a more reliable electric system by mitigating electrical outages; and

WHEREAS, funding is included in Fiscal Year 2013/14 Budget Account No. 160612.7313; and

WHEREAS, staff recommends the City Council approve the purchase of GO! Sync Mobile Software from TC Technology, of Carlsbad, for Phase II.I mobile inspection/reporting and integration of the EU's GIS.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the purchase of GO! Sync Mobile Software from TC Technology, of Carlsbad, for Phase II.I mobile inspections/reporting and integration of the Electric Utility's geographical information system in an amount not to exceed \$13,755.

Dated: May 7, 2014

I hereby certify that Resolution No. 2014-58 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 7, 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

# EXHIBIT A

 **TCTC Technology**  
Carlsbad, CA 92008  
Phone: (760) 929 8345  
Fax: (760) 692 0484

QUOTATION #:

LE\_042214\_LICENSES

DATE: April 22, 2014

CUSTOMER:

Lodi Electric Utility  
1331 South Ham Lane  
Lodi, CA 95242

CONTACT: Carl Wohl

PHONE: (209) 333 6800 x2547

Product Code	Description	Price	QTY	Extended
<b>Licenses</b>				
GS_MBE_IE	GO! Sync Mapbook with Inspection and Sketching extension with embedded ArcGIS Engine (Client)	\$ 1,195.00	9	\$10,755.00
GS_MGS	GO! Sync Server (includes Inspection and Sketching Server)	\$ 3,000.00	1	\$ 3,000.00
			<b>TOTAL</b>	<b>\$13,755.00</b>

1. Quote valid for 60 days
2. All prices are quoted in US Dollars and are subject to change without notice.
3. All software quotes are inclusive of complimentary support and maintenance for the first 12 months. Eligibility for support and maintenance beyond the first 12 months requires additional subscription fees.
4. GO! Sync Mapbook requires ArcGIS Engine (embedded option included in quote above)
5. MIMS Server (previously known as GO! Sync Mobile GIS Server) requires either Esri ArcGIS Editor or ArcGIS Engine with Geodatabase Update Extension (embedded option NOT included in quote above).
6. GO! Sync Standard Remote Implementation Services estimated; scope adjustment could alter estimate.

*This Quotation is made in confidence of your review. It may not be disclosed to third parties, except as required by law.*

Quoted By: Carrie Turner  
Email: carrie.turner@tcttechnology.com

Account Manager: Carrie Turner  
Email: carrie.turner@tcttechnology.com

# LICENSE AND SERVICE AGREEMENT

END USER SOFTWARE LICENSE AGREEMENT and TERMS OF SERVICE AGREEMENT

THIS SOFTWARE LICENSE and SERVICE AGREEMENT

is made by and between

CITY OF LODI  
P.O. Box 3006  
Lodi CA 95241-1910  
(hereinafter referred to as 'LICENSEE')

AND

**Tadpole Cartesia, Inc.**  
doing business as TC Technology  
with principal place of business at  
2231 Faraday Avenue Suite 140  
Carlsbad, CA, 92008, U.S.A.  
(hereinafter referred to as 'LICENSOR').

Agreement Number: LE\_042214\_SERVICES

# LICENSE AND SERVICE AGREEMENT

## 1. Definitions applicable to this license

1.1 LICENSED SOFTWARE: refers singularly and/or collectively to computer programs provided by the LICENSOR (not including 3rd party software) and shall include any improvements modifications or developments provided by the LICENSOR under the terms of this Agreement.

1.2 OBJECT CODE: means the compiled form of the LICENSED SOFTWARE.

1.3 SOURCE CODE: means textual source form of the LICENSED SOFTWARE.

1.4 PROGRAM DOCUMENTATION: means any material or documentation relating to the LICENSED SOFTWARE provided by the LICENSOR.

1.5 SECURITY DEVICE: A software license manager that may be supplied with the program. When the LICENSED SOFTWARE includes the requirement to use a SECURITY DEVICE, the program will run only when the SECURITY DEVICE is correctly used and all references to the LICENSED SOFTWARE herein shall include and assume use of the SECURITY DEVICE

1.6 A DEFECT is defined as a failure to perform any function specified in the current published documentation of the LICENSED SOFTWARE. A limitation in performance shall not be construed as a DEFECT.

## 2. Term

This Agreement shall be effective from the date of installation of LICENSED SOFTWARE and shall remain in force indefinitely unless issued for a fixed period.

## 3. Software License

3.1 Right to Use: In consideration of the payment of an annual license fee by the LICENSEE to the LICENSOR as provided in this agreement, LICENSOR grants to LICENSEE, a non-exclusive, right to use the LICENSED SOFTWARE and the PROGRAM DOCUMENTATION for a one year period subject to the terms and conditions herein. The license is for use throughout the LICENSEE's organization.

3.2 Use of the LICENSED SOFTWARE obligates LICENSEE to pay a mandatory annual update fee and failure to pay the mandatory annual update fee results in termination of the right to use the LICENSED SOFTWARE. Refer to paragraph 7.4 for the effects of termination of Software.

3.2 Title: Title, copyright and all other proprietary rights in the LICENSED SOFTWARE, manuals and all parts and copies thereof shall remain vested in the LICENSOR. No ownership of the LICENSED SOFTWARE is transferred to the LICENSEE.

3.3 No Transfer: The program may not be transferred, assigned, rented, leased, sold or otherwise disposed of or made available except as expressly provided herein.

3.4 Number of Users: The LICENSE granted under this Agreement authorizes the LICENSEE to use, subject to the obligations of confidence set forth in this Agreement, and to permit others to use in accordance with the provisions of paragraph 3.7 of this Clause of the LICENSED SOFTWARE for users within the LICENSEE'S organization.

3.5 No Reverse Engineering: The right to reverse engineer or disassemble the LICENSED SOFTWARE (which is provided in OBJECT CODE format only) is specifically excluded, except to the extent that such exclusion is not permitted under the law of the country of authorized use. LICENSEE will do nothing to dis-enable any SECURITY DEVICE.

## LICENSE AND SERVICE AGREEMENT

3.6 Limited Right to Copy: The LICENSEE may copy the LICENSED SOFTWARE for the purpose of making back-up copies of the LICENSED SOFTWARE supplied under this Agreement. Software may not be copied for the purpose of error correction.

3.7 Third Party Access: The LICENSEE may grant access to the LICENSED SOFTWARE to consultants and contractors acting on behalf of LICENSEE who agree to substantially similar obligations and conditions of confidence as those binding the LICENSEE under this Agreement.

3.8 No Derivative Works: The LICENSEE may not create derivative works based on the LICENSED SOFTWARE and PROGRAM DOCUMENTATION without the written consent of the LICENSOR.

3.9 Documentation: The LICENSEE will hold the LICENSED SOFTWARE and PROGRAM DOCUMENTATION in confidence. The foregoing obligation of confidence will not apply to information in the public domain or information derived or received by the LICENSEE independently of this Agreement.

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## LICENSE AND SERVICE AGREEMENT

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6.6 General: LICENSEE's statutory rights as a consumer (if any) are not affected. All liability that is not expressly assumed in this Agreement is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this Clause, "LICENSOR" includes its employees, sub-contractors and suppliers. LICENSEE acknowledges that LICENSOR has been appointed as the agent of its employees, sub-contractors and suppliers to agree the provisions of this on their behalf.

# LICENSE AND SERVICE AGREEMENT

## 7. Termination

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## 10. Construction and Applicable Law

10.1 Law & Disputes: This Agreement shall be governed and construed in accordance with the laws of the state of California and any actions seeking to enforce the terms and conditions of this Agreement or any claim for damages arising from a breach of this Agreement shall be filed in California save that Licensor shall have the right at its absolute discretion to initiate proceedings to recover sums owing to it and/or to enforce its intellectual property rights in the courts of any jurisdiction in which its Licensee carries on business, in which assets of Licensee are located, or, in which Licensor's software is used. If either party shall invoke legal proceedings, of any nature, to enforce the terms and conditions of this Agreement, or to impose a claim for damages against a breaching party, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

## LICENSE AND SERVICE AGREEMENT

10.2 Headings: The headings of Clauses in this License and Agreement are included herein for convenience and shall not be considered in construing this License and Agreement.

10.3 Severability: In the event that any of these terms, conditions, or provisions shall be determined invalid, unlawful, or unenforceable to any extent, such term, condition, or provision shall be severed from the remaining terms, conditions, or provisions which shall continue to be valid to the fullest extent permitted by law.

### 11. Notices

Any notice given hereunder shall be deemed to have been sufficiently served if sent in writing by prepaid certified mail or communicated by fax addressed to the last known address of the addressee and the same shall be deemed to have been served when in the ordinary course of transmission it would have been received.

### 12. Miscellaneous:

12.1 Force Majeure: LICENSOR is not responsible for delay or failure to perform due to causes beyond its reasonable control, including but not limited to, fire, flood, act of God or insolvency of subcontractors or suppliers or inability to obtain products, licenses or services from third party suppliers.

12.2 Waiver: No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto.

12.3 Amendment: This Agreement shall not be modified or amended except by agreement in writing by an authorized representative of each of the parties.

# LICENSE AND SERVICE AGREEMENT

## Schedule A

This Schedule is attached to and becomes, upon execution by both parties below, a part of the Software License and Maintenance Agreement Number LE\_042214\_SERVICES between the parties and sets forth the specific terms and conditions relating to the Licenses Software listed below. This replaces any previous Schedule A attached to the above Agreement.

Effective Date:            May 7, 2014

Invoice Address	Installation Address
Company Name: CITY OF LODI - EU	Company Name: CITY OF LODI - EU
Street Address: PO BOX 3006	Street Address: 1331 S. Ham Lane Lodi, CA 95242
Attention: Carl Wohl	Attention: Carl Wohl

Product Name	Qty.	Unit Price	Extended Price
GO! Sync Mobile GIS Standard Implementation Services (Mapbook, Inspection and Sketching)	1	\$12,000.00	\$12,000.00
Patrol Inspection Standard Implementation Services	1	\$4,500.00	\$4,500.00
GO! Sync Mobile GIS End-User Training (Agreed to 10 per class) (Onsite or remote training class-travel expenses not included in price)	1	\$1,500.00	\$1,500.00
<b>Total</b>			<b>\$18,000.00</b>

# LICENSE AND SERVICE AGREEMENT

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives as of the Effective Date.

**CITY OF LODI, a municipal corporation**

By: \_\_\_\_\_  
Stephen Schwabauer, Interim City Attorney Manager

**APPROVED AS TO FORM**

Janice D. Magdich, Interim City Attorney:

By: \_\_\_\_\_ 

**ATTEST**

By: \_\_\_\_\_  
Randi Johl-Olson  
City Clerk

**ATTEST**

**Tadpole Cartesia, Inc.**

By: \_\_\_\_\_  
Jason Linley, President

RESOLUTION NO. 2014-59

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH TC TECHNOLOGY, OF CARLSBAD, FOR SOFTWARE IMPLEMENTATION AND TRAINING SERVICES FOR PHASE II.I INTEGRATION OF THE ELECTRIC UTILITY'S GEOGRAPHICAL INFORMATION SYSTEM

WHEREAS, the Electric Utility (EU) is continuing the multi-phase project with Environmental Systems Research Institute, Inc. (ESRI) for the geographical information system (GIS); and

WHEREAS, as part of the next phase, staff recommends the purchase of a mobile inspection/reporting software to provide time and cost savings for regulatory mandated inspection cycles of the electric system by automating the inspection processes; and

WHEREAS, in order to enable the mobile solutions implementation, staff undertook an extensive process to research and evaluate potential software solutions and determined that GO! Sync Mobile Software from TC Technology will address EU's needs and is the product predominantly being used by other public power utilities nationwide for the purpose of automating their system inspection processes, enhancing the data collection from inspections, and integrating that information into a GIS system; and

WHEREAS, TC Technology has provided a quote of \$13,755 for the software and \$18,000 for implementation and training services, as shown on the attached exhibits; and

WHEREAS, the bidding process for this software purchase and associated services may be dispensed per Lodi Municipal Code 3.20.075, Professional/technical services contracts, 8. Computer consulting services; and

WHEREAS, implementation of mobile inspection/reporting software will provide cost savings through improved operational efficiency of the electrical distribution system, increased safety, and create a more reliable electric system by mitigating electrical outages; and

WHEREAS, funding is included in Fiscal Year 2013/14 Budget Account No. 160612.7323; and

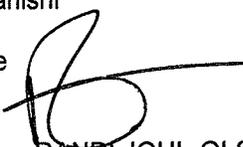
WHEREAS, staff recommends the City Council authorize the City Manager to execute a Professional Services Agreement with TC Technology, of Carlsbad, for Phase II.I mobile inspection/reporting and integration of the EU's GIS.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Professional Services Agreement with TC Technology, of Carlsbad, for Phase II.I mobile inspections/reporting and integration of the Electric Utility's geographical information system in an amount not to exceed \$18,000.

Dated: May 7, 2014

I hereby certify that Resolution No. 2014-59 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 7, 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

# EXHIBIT A



Carlsbad, CA 92008  
Phone: (760) 929 8345  
Fax: (760) 692 0484

QUOTATION #:

LE\_042214\_LICENSES

DATE: April 22, 2014

CUSTOMER:

Lodi Electric Utility  
1331 South Ham Lane  
Lodi, CA 95242

CONTACT: Carl Wohl

PHONE: (209) 333 6800 x2547

Product Code	Description	Price	QTY	Extended
Licenses				
GS_MBE_IE	GO! Sync Mapbook with Inspection and Sketching extension with embedded ArcGIS Engine (Client)	\$ 1,195.00	9	\$10,755.00
GS_MGS	GO! Sync Server (includes Inspection and Sketching Server)	\$ 3,000.00	1	\$ 3,000.00
			TOTAL	\$13,755.00

1. Quote valid for 60 days
2. All prices are quoted in US Dollars and are subject to change without notice.
3. All software quotes are inclusive of complimentary support and maintenance for the first 12 months. Eligibility for support and maintenance beyond the first 12 months requires additional subscription fees.
4. GO! Sync Mapbook requires ArcGIS Engine (embedded option included in quote above)
5. MIMS Server (previously known as GO! Sync Mobile GIS Server) requires either Esri ArcGIS Editor or ArcGIS Engine with Geodatabase Update Extension (embedded option NOT included in quote above).
6. GO! Sync Standard Remote Implementation Services estimated; scope adjustment could alter estimate.

*This Quotation is made in confidence of your review. It may not be disclosed to third parties, except as required by law.*

Quoted By: Carrie Turner  
Email: carrie.turner@tcttechnology.com

Account Manager: Carrie Turner  
Email: carrie.turner@tcttechnology.com

# LICENSE AND SERVICE AGREEMENT

END USER SOFTWARE LICENSE AGREEMENT and TERMS OF SERVICE AGREEMENT

THIS SOFTWARE LICENSE and SERVICE AGREEMENT

is made by and between

CITY OF LODI  
P.O. Box 3006  
Lodi CA 95241-1910  
(hereinafter referred to as 'LICENSEE')

AND

**Tadpole Cartesia, Inc.**  
doing business as TC Technology  
with principal place of business at  
2231 Faraday Avenue Suite 140  
Carlsbad, CA, 92008, U.S.A.  
(hereinafter referred to as 'LICENSOR').

Agreement Number: LE\_042214\_SERVICES

# LICENSE AND SERVICE AGREEMENT

## 1. Definitions applicable to this license

1.1 LICENSED SOFTWARE: refers singularly and/or collectively to computer programs provided by the LICENSOR (not including 3rd party software) and shall include any improvements modifications or developments provided by the LICENSOR under the terms of this Agreement.

1.2 OBJECT CODE: means the compiled form of the LICENSED SOFTWARE.

1.3 SOURCE CODE: means textual source form of the LICENSED SOFTWARE.

1.4 PROGRAM DOCUMENTATION: means any material or documentation relating to the LICENSED SOFTWARE provided by the LICENSOR.

1.5 SECURITY DEVICE: A software license manager that may be supplied with the program. When the LICENSED SOFTWARE includes the requirement to use a SECURITY DEVICE, the program will run only when the SECURITY DEVICE is correctly used and all references to the LICENSED SOFTWARE herein shall include and assume use of the SECURITY DEVICE

1.6 A DEFECT is defined as a failure to perform any function specified in the current published documentation of the LICENSED SOFTWARE. A limitation in performance shall not be construed as a DEFECT.

## 2. Term

This Agreement shall be effective from the date of installation of LICENSED SOFTWARE and shall remain in force indefinitely unless issued for a fixed period.

## 3. Software License

3.1 Right to Use: In consideration of the payment of an annual license fee by the LICENSEE to the LICENSOR as provided in this agreement, LICENSOR grants to LICENSEE, a non-exclusive, right to use the LICENSED SOFTWARE and the PROGRAM DOCUMENTATION for a one year period subject to the terms and conditions herein. The license is for use throughout the LICENSEE's organization.

3.2 Use of the LICENSED SOFTWARE obligates LICENSEE to pay a mandatory annual update fee and failure to pay the mandatory annual update fee results in termination of the right to use the LICENSED SOFTWARE. Refer to paragraph 7.4 for the effects of termination of Software.

3.2 Title: Title, copyright and all other proprietary rights in the LICENSED SOFTWARE, manuals and all parts and copies thereof shall remain vested in the LICENSOR. No ownership of the LICENSED SOFTWARE is transferred to the LICENSEE.

3.3 No Transfer: The program may not be transferred, assigned, rented, leased, sold or otherwise disposed of or made available except as expressly provided herein.

3.4 Number of Users: The LICENSE granted under this Agreement authorizes the LICENSEE to use, subject to the obligations of confidence set forth in this Agreement, and to permit others to use in accordance with the provisions of paragraph 3.7 of this Clause of the LICENSED SOFTWARE for users within the LICENSEE'S organization.

3.5 No Reverse Engineering: The right to reverse engineer or disassemble the LICENSED SOFTWARE (which is provided in OBJECT CODE format only) is specifically excluded, except to the extent that such exclusion is not permitted under the law of the country of authorized use. LICENSEE will do nothing to dis-enable any SECURITY DEVICE.

## LICENSE AND SERVICE AGREEMENT

3.6 Limited Right to Copy: The LICENSEE may copy the LICENSED SOFTWARE for the purpose of making back-up copies of the LICENSED SOFTWARE supplied under this Agreement. Software may not be copied for the purpose of error correction.

3.7 Third Party Access: The LICENSEE may grant access to the LICENSED SOFTWARE to consultants and contractors acting on behalf of LICENSEE who agree to substantially similar obligations and conditions of confidence as those binding the LICENSEE under this Agreement.

3.8 No Derivative Works: The LICENSEE may not create derivative works based on the LICENSED SOFTWARE and PROGRAM DOCUMENTATION without the written consent of the LICENSOR.

3.9 Documentation: The LICENSEE will hold the LICENSED SOFTWARE and PROGRAM DOCUMENTATION in confidence. The foregoing obligation of confidence will not apply to information in the public domain or information derived or received by the LICENSEE independently of this Agreement.

3.10 Audit Right: Promptly on request, LICENSEE will permit LICENSOR to have access to LICENSEE systems and to use software tools on LICENSEE's systems to ensure LICENSEE is using its software in accordance with its license terms

### 4. Warranty

4.1 Warranty: The LICENSOR warrants that for a period of ninety (90) days from delivery the LICENSED SOFTWARE shall perform substantially in accordance with the published specification of the LICENSED SOFTWARE, current at the time of delivery. Further, the LICENSOR warrants that use of the LICENSED SOFTWARE by the LICENSEE will not infringe any copyright, trade secret or proprietary interest of any third party.

4.2 Warranty Exclusions: **THE LICENSOR DOES NOT WARRANT THAT THE FUNCTIONS OF THE SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE ENTIRELY ERROR-FREE OR THAT ALL PROGRAM DEFECTS ARE CAPABLE OF CORRECTION OR IMPROVEMENT. ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR PURPOSE OR ABILITY TO ACHIEVE A PARTICULAR RESULT ARE HEREBY EXCLUDED. IN THE ABSENCE OF FRAUD, NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE LICENSOR OR ITS AGENTS, DISTRIBUTORS, OR DEALERS SHALL CREATE A WARRANTOR GIVE RISE TO ANY OTHER LIABILITY OTHER THAN IS GIVEN IN THIS AGREEMENT. LICENSEE'S STATUTORY RIGHTS AS A CONSUMER (IF ANY) ARE NOT AFFECTED BY THESE TERMS AND CONDITIONS.**

### 5. Maintenance and Support

5.1 Service: Subject to the terms and conditions herein the LICENSOR agrees to provide the Maintenance and Support Service as described below for the LICENSED SOFTWARE provided that the annual license fee for the period has been fully paid.

5.2 Service Description: The Maintenance and Support Service to be provided by the LICENSOR is as follows:

5.2.1 The Maintenance and Support Service support shall be provided by the LICENSOR and its agents designated as qualified for the purpose by telephone, mail, E-mail or fax during normal working hours (local time) of the LICENSOR or its agents on Mondays to Fridays. The LICENSOR'S normal working hours are 8.00 am to 6.00 p.m., United States Pacific time, from Monday to Friday but excluding public holidays.

5.2.2 The correction of detected defects in the LICENSED SOFTWARE.

## LICENSE AND SERVICE AGREEMENT

5.2.3 The incorporation of improvements to the LICENSED SOFTWARE, together with supporting documentation, which are or will be part of the LICENSED SOFTWARE itself and not part of separately identifiable tasks, modules or packages to be licensed under separate agreements.

5.2.4 The LICENSOR will use reasonable endeavors to deal promptly with DEFECTS in the LICENSED SOFTWARE by making available its personnel.

5.2.5 When the LICENSEE requests support on site, agreed travel, accommodation and subsistence expenses incurred by personnel working away from the LICENSOR'S offices in the execution of these obligations shall be for the LICENSEE'S account and shall be payable within thirty (30) days of invoicing of the LICENSEE by the LICENSOR at the invoice address set forth herein.

5.2.6 Updates or replacements of the technical manuals relating to the LICENSED SOFTWARE will be forwarded to the LICENSEE as they become available, at the agreed costs of reproduction and postage. Obligations of confidence set forth above apply to such updates.

### 6. Liability

6.1 Personal Injury & Death: LICENSOR will indemnify LICENSEE for personal injury or death caused by the negligence of its employees in connection with the performance of their duties hereunder, or by defects in any product supplied pursuant to this Agreement.

6.2 Tangible Property: LICENSOR will indemnify LICENSEE for direct damage to tangible property caused by the negligence of its employees in connection with the performance of their duties hereunder, or by defects in any product supplied pursuant to this Agreement. LICENSOR'S TOTAL LIABILITY UNDER THIS CLAUSE SHALL BE LIMITED TO ONE MILLION DOLLARS FOR ANY ONE EVENT OR SERIES OF CONNECTED EVENTS.

6.3 Delay: While LICENSOR shall use reasonable commercial efforts to meet delivery times, LICENSEE's only remedy for unreasonable delay in delivery will be the right to terminate this Agreement after service of notice of breach as set out below, plus a refund of any fees paid by LICENSEE for no benefit.

6.4 Other Exclusions: **SAVE IN RESPECT OF CLAIMS FOR DEATH OR PERSONAL INJURY ARISING FROM LICENSOR'S NEGLIGENCE, IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF DATA OR USE, LOST PROFITS, LOSS OF ANTICIPATED SAVINGS, NOR FOR ANY DAMAGES THAT ARE AN INDIRECT OR SECONDARY CONSEQUENCE OF ANY ACT OR OMISSION OF LICENSOR, WHETHER SUCH DAMAGES WERE REASONABLY FORESEEABLE OR ACTUALLY FORESEEN.**

6.5 Maximum Liability: **EXCEPT AS PROVIDED ABOVE IN THE CASE OF PERSONAL INJURY, DEATH, AND DAMAGE TO TANGIBLE PROPERTY, LICENSOR'S MAXIMUM LIABILITY TO LICENSEE FOR ANY CAUSE WHATSOEVER (WHETHER IN THE FORM OF THE ADDITIONAL COST OF REMEDIAL SERVICES OR OTHERWISE) WILL BE FOR DIRECT COSTS AND DAMAGES ONLY, AND WILL BE LIMITED TO A SUM EQUIVALENT TO THE PRICE PAID TO LICENSOR FOR THE PRODUCTS OR SERVICES THAT ARE THE SUBJECT OF LICENSEE'S CLAIM, PLUS DAMAGES LIMITED TO TWENTY-FIVE PER CENT (25%) OF THE SAME AMOUNT FOR ANY ADDITIONAL COSTS DIRECTLY, REASONABLY AND NECESSARILY INCURRED BY LICENSEE IN OBTAINING ALTERNATIVE PRODUCTS AND/OR SERVICES.**

6.6 General: LICENSEE's statutory rights as a consumer (if any) are not affected. All liability that is not expressly assumed in this Agreement is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this Clause, "LICENSOR" includes its employees, sub-contractors and suppliers. LICENSEE acknowledges that LICENSOR has been appointed as the agent of its employees, sub-contractors and suppliers to agree the provisions of this on their behalf.

# LICENSE AND SERVICE AGREEMENT

## 7. Termination

7.1 Routine Termination: The LICENSEE and the LICENSOR shall each have the right to terminate this License and Agreement and / or the Maintenance and Support Service subject to the terms of this Agreement without prejudice to the other rights and obligations of this Agreement.

7.2 Termination for Non-Payment of Fees: The LICENSOR shall have the right to terminate the annual license if the current annual license fee has not been received by the LICENSOR within thirty days after the expiry of the previous annual period.

7.3 Termination for Breach: The LICENSOR shall have the right to terminate this License and Agreement in the event of the LICENSEE'S breach of copyright or other terms thereof provided the LICENSOR has given the LICENSEE not less than thirty days prior written notice of breach and the LICENSEE shall have failed to remedy the same.

7.4 Consequences of Termination: In the event of termination of this License and Agreement, the LICENSED SOFTWARE and PROGRAM DOCUMENTATION shall be returned immediately to the LICENSOR, and all copies of the LICENSED SOFTWARE shall be erased from the computer system and its back-up media. The LICENSEE shall confirm within thirty (30) days in writing that all copies and the operational copy of the LICENSED SOFTWARE have been erased or are in process of return to the LICENSOR. The expiry of this Agreement or the termination thereof for whatever reasons shall be without prejudice to the respective rights and liabilities of either of the parties accrued prior to such termination.

## 8. Confidential Information of LICENSEE

8.1 All information relating to the LICENSEE and the LICENSEE'S operations, including information relating to third parties which is made available to the LICENSOR in connection with this License and Agreement, shall be held strictly confidential by the LICENSOR notwithstanding termination of the License and Agreement. The foregoing obligation of confidence will not apply to information in the public domain or information derived or received by the LICENSOR independently of this License and Agreement.

8.2 The LICENSOR will not use the name of the LICENSEE in connection with any advertising nor any publication without LICENSEE'S prior written consent.

## 9. Confidential Information of LICENSOR

All information relating to the LICENSOR and the LICENSOR'S operations, including but not limited to SOURCE CODE and PROGRAM DOCUMENTATION which is made available to the LICENSEE in connection with this License and Agreement, shall be held strictly confidential by the LICENSEE notwithstanding termination of the License and Agreement. The foregoing obligation of confidence will not apply to information in the public domain or information derived or received by the LICENSEE independently of this License and Agreement.

## 10. Construction and Applicable Law

10.1 Law & Disputes: This Agreement shall be governed and construed in accordance with the laws of the state of California and any actions seeking to enforce the terms and conditions of this Agreement or any claim for damages arising from a breach of this Agreement shall be filed in California save that Licensor shall have the right at its absolute discretion to initiate proceedings to recover sums owing to it and/or to enforce its intellectual property rights in the courts of any jurisdiction in which its Licensee carries on business, in which assets of Licensee are located, or, in which Licensor's software is used. If either party shall invoke legal proceedings, of any nature, to enforce the terms and conditions of this Agreement, or to impose a claim for damages against a breaching party, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

## LICENSE AND SERVICE AGREEMENT

10.2 Headings: The headings of Clauses in this License and Agreement are included herein for convenience and shall not be considered in construing this License and Agreement.

10.3 Severability: In the event that any of these terms, conditions, or provisions shall be determined invalid, unlawful, or unenforceable to any extent, such term, condition, or provision shall be severed from the remaining terms, conditions, or provisions which shall continue to be valid to the fullest extent permitted by law.

### 11. Notices

Any notice given hereunder shall be deemed to have been sufficiently served if sent in writing by prepaid certified mail or communicated by fax addressed to the last known address of the addressee and the same shall be deemed to have been served when in the ordinary course of transmission it would have been received.

### 12. Miscellaneous:

12.1 Force Majeure: LICENSOR is not responsible for delay or failure to perform due to causes beyond its reasonable control, including but not limited to, fire, flood, act of God or insolvency of subcontractors or suppliers or inability to obtain products, licenses or services from third party suppliers.

12.2 Waiver: No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto.

12.3 Amendment: This Agreement shall not be modified or amended except by agreement in writing by an authorized representative of each of the parties.

# LICENSE AND SERVICE AGREEMENT

## Schedule A

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Attention: Carl Wohl	Attention: Carl Wohl

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<b>Total</b>			<b>\$18,000.00</b>

# LICENSE AND SERVICE AGREEMENT

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**CITY OF LODI, a municipal corporation**

By: \_\_\_\_\_  
Stephen Schwabauer, Interim City Attorney *Manager*

**APPROVED AS TO FORM**

Janice D. Magdich, Interim City Attorney:

By: \_\_\_\_\_ 

**ATTEST**

By: \_\_\_\_\_  
Randi Johl-Olson  
City Clerk

**ATTEST**

**Tadpole Cartesia, Inc.**

By: \_\_\_\_\_  
Jason Linley, President