

Tyler Technologies, Inc.

**AES Prop 8
Software License Agreement**

County of Monterey

**TYLER TECHNOLOGIES, INC.
SOFTWARE LICENSE AGREEMENT**

This Software License Agreement (the Agreement) is made by and between Tyler Technologies, Inc. (Tyler/AES), located at 4100 Miller-Valentine Court Moraine, Ohio 45439, and the County of Monterey, Office of the Assessor, located at 168 W Alisal St, First Floor Salinas, CA 93901, Monterey, California (Licensee).

WHEREAS, Licensee desires a license to use the Tyler/AES software described as the AES Prop 8 module for properties located in Monterey County, California.

WHEREAS, Tyler/AES desires to license such software to Licensee.

NOW, THEREFORE, in consideration of the provisions and conditions recited below, the parties agree as follows:

1. DEFINITIONS

- 1.1** Effective Date means the date on which both parties sign this Agreement at the bottom; provided, however, if the parties sign this Agreement on different dates, Effective Date means the later of the two dates on which the Agreement is signed.
- 1.2** Software means the computer software developed and owned by Tyler/AES that Tyler/AES is licensing to Licensee. The Software consists of the AES Prop 8 module hereafter referred to as the "**Software**".
- 1.3** Property and Properties mean parcels of land in Monterey County on which single family homes and condominiums are built, but, for the scope of this contract, shall exclude all other types of property such as, but not limited to; commercial property, industrial property, and agricultural property.
- 1.4** Licensed Territory means the County of Monterey, California.
- 1.5** Installation Date means the date on which the Software is successfully installed on a computer at Licensee's facilities, and is tested and successfully operates within the Assessor's Office.
- 1.6** The term of this agreement shall run from the Effective Date through the completion of the project.

2. LICENSE TERMS

- 2.1** Tyler grants to Licensee a non-transferable, non-exclusive right and license to use the Software for Properties located within the Licensed Territory.
- 2.2** The License of Paragraph 2.1 above commences on the Installation Date and will remain in force for an indefinite period of time. This time period shall be at the sole discretion of Licensee.

3. OWNERSHIP RIGHTS

- 3.1 This Agreement is only a license to the Software. Tyler/AES retains title to and ownership of the Software. Moreover, any improvements, modifications, or enhancements to the Software conceived or developed by Licensee, while usable by Licensee, is covered and shall be included under the original license and is the property of Tyler/AES, without exception.
- 3.2 Licensee's rights in the Software under this Agreement may not be assigned, sublicensed, or otherwise transferred (whether voluntarily, by operation of law, or otherwise). **All data entered into the Software by Licensee relating to Properties processed by the Software, and all results obtained from processing such data by the Software, is the property of Licensee. Tyler/AES may use this information for demonstration purposes only.**

4. USE OF THE SOFTWARE AND CONFIDENTIAL INFORMATION

- 4.1 The Software may be used only for, by, or on behalf of Licensee, and only within the confines of the Licensed Territory.
- 4.2 Licensee must take all steps reasonably necessary to insure that no part of the Software, in its entirety, is made available by Licensee to anyone outside of the Monterey Assessor's Office without prior permission from a Principal at Tyler/AES. Licensee's obligations under this paragraph shall survive and continue after any discontinuance of use of the Software by the Licensee. Any violation of Licensee's obligations under this paragraph is a material breach of this Agreement.
- 4.3 **It is Licensee's responsibility to maintain regular and frequent backup copies of all data and programs used in conjunction with the Software for a sufficient time to restore any possible data or program loss by Licensee. Tyler/AES is not responsible for system, network, or data failure of any kind.**
- 4.4 All information related to the Software or any other non-public, technical or business information of either party, which is disclosed to the other, ("Confidential Information") shall be treated as highly confidential information. Both parties shall use at least the same degree of care to maintain the secrecy of the other's information as it uses in maintaining the secrecy of its' own proprietary, confidential and trade secret information. Both parties shall not disclose such information to any third party or use such information for any purpose except as expressly authorized in this Agreement. Both parties shall only disclose such information to those of its' employees who need such information to perform its' obligations under the terms of this agreement.

5. SOFTWARE INSPECTION

- 5.1** Tyler/AES has the right to physically inspect the Software at Tyler's discretion to determine proper use of the Software during the first year after successful installation. This shall apply to additional modules purchased or work completed for Monterey County after this original contract. Tyler/AES shall give Licensee reasonable prior notice of Tyler's desire to conduct such an inspection and shall do so only during regular business hours of Licensee, unless before the inspection the parties agree otherwise on the timing of such inspection.

6. COST OF SOFTWARE, PAYMENT MILESTONES, and SCOPE OF WORK

- 6.1** Licensee shall pay to Tyler/AES a total of One Hundred Forty Thousand Dollars (\$140,000.00) for the Tyler/AES Software project which shall include the "**Software**". Tyler/AES will modify the Software so that it will operate for Properties located in the Licensed Territory.
- 6.2** The following are the project milestones and payment provisions for this contract. The Scope of Work is detailed in the attached Exhibit A. The payment is due upon the completion of each milestone listed below:

"Software" - Work and Payment Milestones

Milestone #1 (\$70,000)

Site Preparation and Setup

- Configure and prepare test workstation and AES server environment
- Establish VPN Remote Connectivity
- Install Base AES Prop 8 software and database
- Establish development environment

Decline in Value Module Data Conversion and Business Rules

- County to supply Tyler/AES with production data and data conversion map
- Tyler/AES to create automated data conversion processes
- Define rules for comparable sales selection
- Establish adjustment schedules

Milestone #2 (\$70,000)

Installation of Prop 8 Module

- Install configured AES software without customizations on AES test workstation
- Configure software links to County Network and Servers

Decline in Value Design Review

- Tyler/AES will guide Assessor project team in areas of acceptable customization and conduct application design review meetings
- Tyler/AES and Assessor project team will agree upon final design document for acceptance by Assessor

Prop 8 Testing

- Assessor to establish Tyler/AES - Assessor Beta Test team
- Assessor to validate data conversion
- Assessor to perform all data clean up issues
- Assessor to perform Software Functional testing and work with Tyler/AES to correct issues
- Assessor to perform Acceptance Testing
- Tyler/AES and Assessor to perform disaster recovery testing and system stress testing

Prop 8 Module Deployment

- Assessor Deployment of Tyler/AES software to target users
- Tyler/AES to provide user training sessions
- Perform Production Run for 2011 Decline in Value analysis
- Tyler/AES to deliver full user documentation

**** Project Complete ****

7. MAINTENANCE

- 7.1** During the Software Installation and Maintenance Periods, Licensee shall make available to Tyler/AES, a VPN connection, or, another acceptable means of remote access. This will facilitate remote programming changes and decrease response time to software and program needs.
- 7.2** The training provided shall be sufficient for staff to become operationally proficient on the system installed. All training classes or sessions shall be held at the county or online. Licensee will provide an experienced software technician and Key Users for internal system support. Any inquiries to Tyler/AES will be coordinated through these personnel.
- 7.3** From time to time, Tyler/AES may develop new modules to the Software, which may be made available to Licensee, at a price agreed to by Tyler/AES and Licensee at that time.
- 7.5** **Licensee will appoint a project manager who shall coordinate all activities for licensee with Tyler/AES during installation and testing.**

8. MAINTENANCE & SUPPORT

- 8.1** Tyler/AES will provide maintenance for the Software at an additional cost of \$35,000 per year under a separate Support Agreement. The Support Agreement and billing will begin upon the Final Installation and Acceptance Date. The annual software maintenance cost is subject to an annual cost of living increase. This maintenance will be billed upfront and will remain in effect for twelve calendar months. Maintenance is defined as customary user support and maintenance of the Software, such as inquiries regarding installation and feature usage, general education and instruction about use of the Software, and maintenance releases of the Software to fix program defects. Support is defined as a Tyler/AES software malfunction that occurs with the software after final installation and Acceptance.

9. WARRANTY AND CONDITIONS

- 9.1** During the Initial Term, the Company shall, without any additional cost or expense to the County, design, test, document and deliver any amendments or alterations (the "Amendments") to the Company's software that are necessary to correct or avoid any defect in the Company's software which is present at the time of delivery, or is discovered during the County's usage of such software, and affects performance of the Company's software in accordance with the functions set forth in the Scope of Services. The Company shall only be responsible to correct defects, which are documented or otherwise submitted in writing by the County to the Company during the Initial Term and any applicable maintenance period. Oral notification or other unwritten complaints will not constitute notice under this section.

10. INSURANCE AND INDEMNIFICATION

10.1 Prior to the commencement of work, and as a precondition to this contract, Tyler/AES shall purchase and maintain the following types of insurance for the stated minimum limits indicated during the term of this Agreement. Tyler/AES shall provide a certificate of insurance and endorsements naming COUNTY as an additional insured on each policy. The insurance carrier shall be required to give COUNTY notice of termination at least 10 days prior to the intended termination of any specified policy. Each certificate of insurance shall specify if Tyler/AES has a SIR, and if so, Tyler/AES shall be required to provide the entire policy of insurance with which it has a SIR.

- a.) Commercial General Liability: \$1,000,000 per occurrence and \$3,000,000 annual aggregate covering bodily injury, personal injury and property damage. The COUNTY and its officers, employees and agents shall be endorsed to above policies as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026, as to any liability arising from the performance of this Agreement.
- b.) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage, or alternatively split limits of \$500,000 per person and \$1,000,000 per accident for bodily injury with \$250,000 per accident for property damage.
- c.) Workers Compensation: Statutory coverage, if and as required according to the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the COUNTY.
- d.) Professional Liability: \$1,000,000 limit per occurrence and \$5,000,000 annual aggregate limit covering CONTRACTOR'S wrongful acts, errors and omissions.

10.2. Insurance Conditions

- a.) Insurance is to be placed with admitted insurers rated by A.M. Best Co. as A:VII or higher. Lower rated, or approved but not admitted insurers, may be accepted if prior approval is given by the County's Risk Manager.
- b.) Each of the above required policies shall be endorsed to provide COUNTY with 30 days prior written notice of cancellation. COUNTY is not liable for the payment of premiums or assessments on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of CONTRACTOR to furnish insurance during the term of this Agreement.

10.3. INDEMNIFICATION

Except as specifically exempted, Tyler/AES has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless,

COUNTY, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract or otherwise. This duty shall include, but not be limited to, claims for bodily injury, property damage, personal injury, and contractual damages or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents and officers of Tyler/AES.

Tyler/AES's liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of the Tyler/AES, its agents, subcontractors and employees. The duty shall extend to any allegation or claim of liability except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of COUNTY. This duty shall arise at the first claim or allegation of liability against COUNTY. Tyler/AES will on request and at its expense, defend any action suit or proceeding arising hereunder. This clause for indemnification shall be interpreted to the broadest extent permitted by law."

Neither party shall be liable to the other party under this paragraph in excess of the annual contract amount paid.

11. ACCEPTANCE AND FINAL ACCEPTANCE

At intervals appropriate to the progress of the tailoring, enhancement, or development of the software provided as part of the System at dates as agreed upon in the Project Work Plan developed in Exhibit A, Milestone 1, the Company shall provide documents related to the work in progress to the County's Project Manager for approval prior to proceeding on the subject work. The County shall have a period of ten (10) business days from the receipt of the aforementioned documents requesting approval to notify the Company of work in progress that is not accepted. If written notice of any work in progress that is not accepted is not provided within such ten (10) business day period, all work in progress covered by the specific request for review shall be deemed accepted, however, such review of the activities within a Milestone shall not be deemed acceptance of a Milestone. Acceptance of a specific request for review shall not relieve the Company of any responsibility with respect to any products or services that are defective or fail to comply with the specifications and requirements pursuant to the terms of this Agreement.

Upon the completion of each of the identified Milestones 1 & 2, as described in Section 6, the County shall have a period of ten (10) business days to notify the Company of work that is not accepted. If written notice of any work that is not accepted is not provided within such ten (10) business day period, all work covered by the phase shall be deemed accepted. Acceptance of a Milestone shall not relieve the Company of any responsibility with respect to any products or services

that are defective or fail to comply with the specifications and requirements pursuant to the terms of this Agreement.

At the completion of Milestone 2, the County shall be provided twenty (20) business days to operate and test the System. During such twenty (20) day period, the Company at its sole cost and expense shall furnish to the County complete off-site telephone support in the form of consultation and/or remote diagnostic software support within four (4) hours of the County's support request. If the County notifies the Company of an error, defect or nonconformity in the software and if such error, defect, or nonconformity cannot be corrected by off-site telephone support within five (5) business days of when it was first reported to the Company during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m. PST), then the Company at its sole cost and expense shall provide on-site support service at the beginning of the next business week, or as otherwise agreed upon by the parties, including implementation of temporary procedures to sustain the computerized mass appraisal system.

The Company shall provide corrective measures for all reported errors within five (5) business days of the commencement of on-site service. If the System fails to meet the specifications and requirements provided for in this Agreement during the twenty (20) day period, then the County may, at its option, request modification of the software by the Company at no additional charge, cost, or expense to the County. At the conclusion of the twenty (20) day period, if the County has not notified the Company in writing of any such error, defect, nonconformity, or failure in the System, then the County will be deemed to have given final acceptance for the System.

12. GENERAL

- 12.1** Licensee must pay, if any, all taxes or fees of any kind with respect to the license or use of the Software. All such taxes or fees, if any, required to be collected by Tyler/AES shall be added to the payments due from Licensee to Tyler/AES under this Agreement.
- 12.2** This Agreement represents the entire agreement of Client and the Company with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied or statutory. The Client hereby acknowledges that in entering into this Agreement it did not rely on any information not explicitly set forth in this Agreement. This Agreement may not be altered or amended except in writing, executed, making specific references to this Agreement, by a duly authorized officer of the Company and by a duly authorized official of the Client.
- 12.3** Payment of billings is due within thirty (30) days after the date of each billing. Failure of the Client to make payment when due shall entitle the Company, in addition to its other rights and remedies, to suspend, temporarily, further performance of this Agreement without liability.

- 12.4** The parties agree that suit with respect to any facet of this Agreement may be brought or conducted only in Monterey County, California. Licensee waives all objections to venue and personal jurisdiction to the extent permitted by law.
- 12.5** Additional compensation that may be due the Company as the result of services requested by the Client that are beyond the scope of this Agreement will be invoiced in the month subsequent to the month in which the services were provided.
- 12.6** Any waiver, amendment, or modification to this Agreement must be made in writing signed by an authorized representative of the party against whom the waiver, amendment, or modification is sought to be enforced. No failure or delay by either party in exercising any right, power, or remedy under this Agreement shall operate as a waiver of the right, power, or remedy. No waiver of any provision, condition, or default of this Agreement shall be construed as a waiver of any other provision or condition, or of any other or subsequent default.
- 12.7** During the Period of Agreement and for a period of six months following the project completion date, the Client will not solicit for employment or hire any Company employee without the express written consent of the Company.
- 12.8** This Agreement may be terminated by either party by giving thirty (30) days written notice to the other, before the effective date of termination. In the event of termination or suspension, the Company shall be entitled to receive payment in full (at the amounts and rates set forth herein, or if not specifically set forth in this Agreement, at the Company's standard or published rates) for all services, software, licenses and/or bonding delivered by the Company up to the effective date of the termination or suspension, as the case may be, plus such other charges as may be agreed upon by the parties. Conversely, in the event of termination, this provision is mutual, and the County shall receive a pro rata refund for all services paid for but not performed.
- 12.9** This Agreement shall be interpreted under the substantive law of the State of California, as it existed and was interpreted on the effective date of this Agreement. In the event that the laws of the State of California change, so as to create additional work for the Company not provided for in this Agreement, the Client shall allow the Company a reasonable extension of the completion date and additional compensation to be negotiated.
- 12.10** If any provision of this Agreement is found to be invalid, unenforceable, or illegal, the parties agree that such provision will be severed from this Agreement, and the remaining provisions will remain in full force and effect, notwithstanding the severed provision.
- 12.11** Unless otherwise provided for in this Agreement, all notices or other communications required or permitted under this Agreement must be in writing and delivered by any means that provides written evidence of

transmittal and delivery. Any such communication shall be considered delivered upon actual receipt by the addressee.

12.12 For the convenience of the parties, this Agreement may be executed in multiple counterparts. Each party shall deliver to the other party a duplicate original of the counterpart executed by such party. Each party's signature page to a counterpart may be appended to any other counterpart to produce a complete agreement with all signatures. Each executed counterpart shall be considered an original of one and the same agreement if each party has executed at least one counterpart.

12.13 Neither party shall be liable to the other for any loss, damage, failure, delay, or breach in rendering any services or performing any obligations hereunder to the extent that such failure, delay, or breach results from any cause or event beyond the control of the party being released hereby (Force Majeure), including, but not limited to acts of God, acts or omissions of civil or military authorities (acting in their sovereign, but not in their contractual, capacity), floods, torrential rainfall, other severe or unusual weather or climatic conditions, which would exist for a substantial period of time and would have an affect so as to substantially impair the complete deadline, epidemics, quarantines, other medical restrictions or emergencies, defects or failures in equipment or materials owned or supplied by the other party, strikes or other labor actions, embargoes, wars, civil disobedience, riots, terrorism, extreme inflation (ten percent or greater per year) or of governmental rationing of fuel and/or power which would result in a severe shortage thereof, which would substantially impair the proposed completion deadline.

If either party is prevented or delayed in the performance of its obligations hereunder by Force Majeure, that party shall immediately notify the other party in writing of the reason for the delay or failure to perform, describing in as much detail as possible the event of Force Majeure causing the delay or failure and discussing the likely duration of the Force Majeure and any known prospects for overcoming or ameliorating it. Both parties agree to take any commercially reasonable measures to overcome or ameliorate the Force Majeure and its adverse effects on this Agreement, and to resume performance as completely as is reasonably possible once the Force Majeure is overcome or ameliorated.

12.14 Payment of billings is due within thirty (30) days after the date of each billing. Failure of the Client to make payment when due shall entitle the Company, in addition to its other rights and remedies, to suspend, temporarily, further performance of this Agreement without liability.

12.15 This Agreement represents the entire agreement of Client and the Company with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied or statutory. The Client hereby acknowledges that in entering into this Agreement it did not rely on any information not explicitly set forth in this Agreement. This Agreement may not be altered or amended except in writing, executed, making specific references to

this Agreement, by a duly authorized officer of the Company and by a duly authorized official of the Client.

EXHIBIT A

Scope of Work

- a) Project Management**
 - Provide Tyler/AES Project Manager.
 - Provide project management plan with implementation schedule, required resources and change control process.

- b) Site Preparation and Setup**
 - Setup hardware (workstation and server) and software requirements for COUNTY.
 - Configure and prepare 1 test workstation.
 - Configure Tyler/AES server environment.
 - Establish VPN Remote Connectivity.
 - Install Tyler/AES Prop 8 software and database.
 - Establish development environment.

- c) Data Mapping and Business Rules**
 - Work with County IT staff to create data map and automated data conversion processes.
 - Work with COUNTY to automate data mapping processes.
 - Populate Tyler/AES database fields.
 - Modify Tyler/AES screens for County specific data.
 - Provide data export program that will create a fixed length ASCII file to upload to the COUNTY mainframe.
 - Define rules for comparable sales selection.
 - Establish adjustment schedules
 - Define rules and workflow for Enrollment

- d) Testing**
 - Establish Tyler/AES Beta Test team and project testing procedures.
 - Validate data mapping.
 - Validate value results.
 - Validate output fixed length ASCII file.
 - Functional testing.
 - User Acceptance Testing.
 - Disaster Recovery / Stress-Load Testing.

- e) Deployment**
 - Full Deployment of Tyler/AES software to target users.
 - Deliver User Documentation

- f) Training (Train the Trainers)**

- User Training Sessions of Tyler/AES software to target users
- Tyler/AES shall schedule training classes at locations specified by the County and according to the County's schedule. Occasionally this may mean breaking an eight-hour class into two four-hour sessions.
- Training shall consist of one week, Monday through Thursday, and up to eight hour days.
- Courses will have a minimum of eight participants. In general, the maximum number of participants is ten.

County Responsibilities

- Furnish a county project manager to oversee implementation of software on County network.
- Maintain and deliver final design document to Tyler/AES.
- Establish VPN Remote Connectivity.
- Provide Tyler/AES with Assessor business rules for use in program.
- Provide access to existing assessor database.
- Work with Tyler/AES to map existing data fields into Tyler/AES program.
- Validate data conversion.
- Define rules for comp sales selection.
- Establish adjustment schedules for comp selection.
- Establish project Beta Team and project testing procedures.
- Conduct software functional testing.
- Conduct user acceptance testing.
- Work with AES to establish Disaster Recovery Plan.
- Coordinate Stress Testing of software.
- Assist in full deployment of software to users.

IN WITNESS THEREOF, County and TYLER TECHNOLOGIES have executed this Contract on the day and year first hereinabove set forth.

AGREED BY: Monterey County



Authorized Signature

Michael R. DeRre

Type or Print Name

Contracts/Purchasing Office

Title

12-19-12

Date

AGREED BY: Tyler Technologies, Inc.

Carmen R. Guido

Authorized Signature

Carmen R. Guido

Type or Print Name

Director

Title

December 13, 2012

Date

IN WITNESS THEREOF, County and TYLER TECHNOLOGIES have executed this Contract on the day and year first hereinabove set forth.

AGREED BY: Monterey County

Contracts/Purchasing Officer

Michael R. Depp

Type or Print Name

12-19-12

Date

Department head (if applicable)

Stephen L. Vagnini

Type or Print Name

12/14/12

Date

Board of Supervisors (if applicable)

Date

Approved as to Form

[Signature]
County Counsel Deputy

J. M. KIN 12-14-12

Type or Print Name

Approved as to Fiscal Provisions

[Signature]
Auditor/Controller

12/16/12

Date

Approves as to Liability Provisions

Risk Management

Date:

AGREED BY: Tyler Technologies, Inc.

Authorized Signature

Type or Print Name

Title

Date

ENTERED
DEC 18 2012
CCC