

ORDINANCE 2018-10-11-0804

APPROVING A THREE-YEAR AGREEMENT FOR GEOGRAPHIC INFORMATION SYSTEM SOFTWARE LICENSES, SUPPORT, MAINTENANCE AND TRAINING WITH ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC., FOR AN ESTIMATED ANNUAL COST OF \$625,000.00, THE FIRST YEAR OF WHICH IS FUNDED THROUGH THE ADOPTED FISCAL YEAR 2019 INFORMATION TECHNOLOGY SERVICES DEPARTMENT FUND BUDGET.

* * * * *

WHEREAS, this Ordinance considers an agreement with Environmental Systems Research Institute, Inc. ("ESRI") to provide the Information Technology Services Department ("ITSD") with geographic information system ("GIS") software licenses, support, maintenance and training to develop GIS applications and meet the growing demands for GIS services, with a term commencing on October 19, 2018 and expiring on October 18, 2021, unless terminated earlier; and

WHEREAS, the Agreement allows ITSD to support the GIS business needs for all City of San Antonio departments, as well as Open Government initiatives, including GIS software, software support, map production, data management, database administration, web development, application interfacing and training, and gives ITSD the licensing to fully support desktop and web-based GIS business needs across a common platform and software suite; and

WHEREAS, the Agreement also enrolls the City in an active business relationship with ESRI, called the ESRI Enterprise Advantage Program, which, through collaboration, will lead to the development of a plan for implementing location strategies that match GIS Services to departmental and City goals and includes access to select support, training and consulting services; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of a three-year agreement for Geographic Information Software licenses, support, maintenance and training with Environmental Systems Research Institute, Inc., in an annual amount of \$625,000.00, are authorized and approved. The City manager, or her designee, is authorized to sign the Agreement. A copy of the Agreement, previously executed by ESRI, is attached to this Ordinance as **Exhibit I**.

SECTION 2. Funding in the amount of \$625,000.00 for this Ordinance was approved in the Fiscal Year 2019 Budget in Fund 74001000, Cost Center 903050001 and General Ledger 5201047.


SECTION 3. Payment not to exceed the budgeted amount is authorized to ESRI and shall be encumbered with a purchase order. All expenditures will be in accordance with the Fiscal Year

2019 and subsequent budgets that fall within the term period of this Agreement approved by City Council.

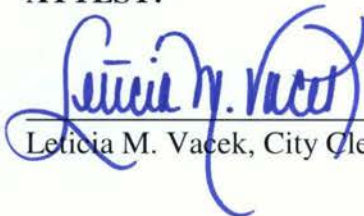
SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

PASSED AND APPROVED this 11th day of October, 2018.



M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	6 (in consent vote: 6, 7, 8, 9, 10, 11, 12A, 12B, 13A, 13B, 14, 16, 17, 18, 21)						
Date:	10/11/2018						
Time:	09:28:55 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance approving a three-year agreement for Geographic Information System software licenses, support, maintenance and training with Environmental Systems Research Institute, Inc. for an estimated annual cost of \$625,000.00, the first year of which is funded through the Adopted Fiscal Year 2019 Information Technology Services Department Fund Budget. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Deputy Chief Financial Officer, Finance]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				x
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

EXHIBIT I

Enterprise Agreement



Enterprise Agreement No. 332614

This Enterprise Agreement, including the documents listed below ("EA"), is between the **City of San Antonio, TX ("City")**, with its main offices located at 111 Soledad, San Antonio, TX 78205, and **Environmental Systems Research Institute, Inc. ("Esri")**, with an Effective Date of October 19, 2018. This EA provides for the licensing and Deployment of certain EA Products, delivery of EA Maintenance, and provision of Esri User Conference registrations and any additional services as specified herein.

This EA is composed of the following documents, which are incorporated herein by reference:

1. Enterprise Agreement signature page(s)
2. Enterprise License Terms and Conditions, including
 - Appendix A—Products and Deployment Schedule
 - Appendix B—EA Fee Schedule
 - Appendix C—City Annual Deployment Report
 - Appendix D—EA Points of Contact
 - Appendix E—Tier 1 Help Desk Authorized Individuals
3. License Agreement (Master Agreement #333059)

The parties acknowledge that they have read and understand this EA and agree to be bound by the terms and conditions contained herein.

This EA constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to such subject matter. Any modifications or amendments to this EA must be in writing and signed by an authorized representative of each party.

ACCEPTED AND AGREED:

CITY OF SAN ANTONIO, TEXAS
(City)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

By: Timothy Brazeal
Authorized Signature

Printed Name: Timothy Brazeal
Manager, Commercial & Government Contracts

Title: _____

Date: October 2, 2018

ENTERPRISE AGREEMENT TERMS AND CONDITIONS

ARTICLE 1—DEFINITIONS

All definitions in other parts of the EA will have the same meaning in this Enterprise Agreement Terms and Conditions. In addition, the following definitions apply to the EA:

- "Case(s)" means a failure of Products to operate according to the Documentation where such failure substantially impacts operational or functional performance.
- "City" means City. For avoidance of doubt, the definition of City will not include consultants or contractors. City must not include persons or entities ineligible to receive or have access to Esri products or services by operation of law, including US export control laws, decrees, orders, rules, regulations, policies, riders, conditions, or provisos.
- "Deploy," "Deployment," or "Deployed" means to redistribute, or the redistribution of, the EA Products (and the EA Products related keycodes/registration files), or the EA Products having been redistributed, by City during the term of this EA for installation and use by City.
- "EA Fee" means the fee set forth in Appendix B—EA Fee Schedule.
- "EA Maintenance" means Tier 2 Support, updates, and patches provided by Esri for EA Products and Rolled-In Software.
- "EA Products" means the Products identified in Tables A-1 and A-2 of Appendix A—Products and Deployment Schedule. EA Products do not include unit-priced item(s) or Esri technology that may be embedded in third-party products purchased by City.
- "Effective Date" means the date the EA commences and the start date for all licenses, regardless of when an Ordering Document is provided by City.
- "License Agreement" means the applicable master agreement incorporated by this reference that is (i) found at <http://www.esri.com/legal/software-license> and available in the installation process requiring acceptance by electronic acknowledgment, or (ii) a signed license agreement between Esri and City that supersedes such electronically acknowledged license agreement.
- "Rolled-In Software" means Products of the same type as EA Products that City acquired for use prior to the Effective Date, that are current on paid maintenance (as shown in Esri's customer service records), and that receive EA Maintenance during the term of the EA.
- "Technical Support" means a process to attempt to resolve reported Case(s) through error correction, patches, hot fixes, and workarounds; replacement deliveries; or any other type of Product corrections or modifications specified in the most current applicable Esri Maintenance and Support Program.
- "Tier 1 Help Desk" means City's point of contact from which all Tier 1 Support will be given to City.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to City in the attempted resolution of reported Case(s).
- "Tier 2 Support" means the Technical Support provided by Esri to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

ARTICLE 2—GRANT OF LICENSE

2.1 Grant of License. During the term of this EA, City's use of the EA Products is subject to the License Agreement and any additional terms set forth in this EA. Rolled-In Software will be licensed in accordance with the License Agreement.

2.2 Beta License. Beta licenses are not available under this EA as EA Products.

2.3 Consultant Access. Esri grants City the right to permit City's consultants or contractors to use the EA Products exclusively for City's benefit. City shall be solely responsible for compliance by consultants and contractors with this License Agreement and shall ensure that the consultant or contractor discontinues use of EA Products upon completion of work for City. Access to or use of EA Products by consultants or contractors not exclusively for City's benefit is prohibited. City may not permit its consultants or contractors to install EA Products on consultant, contractor, or third-party computers or remove EA Products from City locations except for the purpose of hosting the EA Products on contractor servers for the benefit of City. Consultant or contractors must

not include persons or entities ineligible to receive or have access to Esri products or services by operation of law, including US export control laws, decrees, orders, rules, regulations, policies, riders, conditions, or provisos.

ARTICLE 3—SCOPE OF USE

3.1 Additional Permitted Uses. For the term of the EA, City may copy and Deploy the EA Products to City up to the quantities of licenses granted in Appendix A. No other City has a right to copy (except as permitted in the License Agreement) or Deploy the EA Products. City may transfer, redistribute, or Deploy the EA Products within the continental United States; Hawaii; Alaska; and US territories, excluding Puerto Rico and the US Virgin Islands.

3.2 Uses Not Permitted

- a. City shall not use the EA Products outside the United States or its territories or possessions without the prior written permission of Esri and agreement on additional fees, if any. Any such export will be subject to US Export Control Regulation requirements of the License Agreement.
- b. City shall not transfer, redistribute, or assign EA Products to any third party without the prior written permission of Esri.

3.3 Additional Restrictions Applicable to EA and License Agreement. A new or additional Eligible Agency may not be added as an EA participant or City without the express prior written approval of Esri. Addition of an Eligible Agency may result in an increase in the EA Fee.

ARTICLE 4—MAINTENANCE

4.1 EA Maintenance. EA Maintenance is included in the EA Fee. Rolled-In Software and EA Products will receive EA Maintenance, provided that standard maintenance is available for each item. EA Maintenance includes benefits specified in the most current applicable Esri Maintenance and Support Program document (found at www.esri.com/legal) as modified by this Section 4.1.

a. Tier 1 Support Provided by City

- (1) The Tier 1 Help Desk will provide Tier 1 Support to all Customers.
- (2) The Tier 1 Help Desk will use analysts fully trained in the Products they are supporting.
- (3) At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
- (4) Tier 1 Support analysts will be the initial points of contact for all questions and Case(s). Tier 1 Support analysts shall obtain a full description of each reported Case and the system configuration from Customer. This may include obtaining any customizations, code samples, or data involved in the Case. The analyst may also use any other information and databases that may be developed to satisfactorily resolve Case(s).
- (5) If the Tier 1 Help Desk cannot resolve a Case, an authorized Tier 1 Help Desk individual may contact Esri for Tier 2 Support. The Tier 1 Help Desk shall provide support in such a way as to minimize repeat calls and make solutions available to Customer.
- (6) City may assign named Tier 1 Help Desk individuals up to the quantity listed in Appendix B. These individuals will be identified in Appendix E and will be the only individuals (callers) authorized to contact Esri directly for Tier 2 Support.

b. Tier 2 Support Provided by Esri

- (1) Esri shall log the calls received from Tier 1 Help Desk individuals.
- (2) Esri shall review all information collected by and received from Tier 1 Help Desk individuals including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
- (3) Esri may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

- (4) Esri shall attempt to resolve Case(s) submitted by Tier 1 Help Desk by assisting the Tier 1 Help Desk individuals and not City.
- (5) When a Case is resolved, Esri shall communicate the information to the Tier 1 Help Desk individuals, and the Tier 1 Help Desk shall disseminate the resolution to City.
- (6) Esri may, at its sole discretion, make patches, hot fixes, or updates available for downloading from Esri's website or, if requested, deliver them on media.

ARTICLE 5—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT REPORT

5.1 Purchase Orders, Invoicing, Delivery, and Deployment

- a. Esri does not require City to issue purchase orders and will invoice City upon the Effective Date of the EA and annually thereafter in accordance with the fee schedule set forth in this EA. City may submit purchase orders in accordance with its own process requirements. If City issues purchase orders, then City will submit its initial purchase order upon execution of this EA and any subsequent purchase order at least thirty (30) days before the anniversary date. Invoices will be due and payable within thirty (30) days of invoice.
- b. Any purchase orders that City issues will reference, incorporate, and be subject to the terms and conditions of this EA. Additional or conflicting terms in any purchase orders, invoices, or other documents exchanged during the ordering process, other than the terms of this EA, Product or Service descriptions, quantities, pricing, and delivery instructions, are void and of no effect. City will process all orders and deliveries pertaining to this EA through City's centralized point of contact.
- c. City will include the following information in each purchase order:
 - (1) Esri customer number, the ship-to address, and bill-to address as identified in Appendix D.
 - (2) Purchase order number.
 - (3) Applicable annual payment due and name of Customer.
 - (4) On the face of the purchase order, the following printed statement: "Governed by and subject to Enterprise Agreement No. 332614."
- d. Esri will provide Authorization Codes to activate the nondestructive copy protection program that enables City to download, operate, or allow access to the EA Products listed in Appendix A.
- e. Delivery of updates/new versions of EA Products will be made in the same manner. If requested by City, Esri will deliver a limited number of sets of backup media as provided in Appendix B to the ship-to address identified in Appendix D—EA Points of Contact, FOB destination with shipping charges prepaid. City may purchase additional backup media sets at the prices in effect at the time of purchase. Delivery or receipt of tangible media could cause prior and future license fees to be subject to taxes. Esri may invoice for and City agrees to pay any such sales or use tax associated with receipt of tangible media.
- f. City shall track the Deployment status of EA Products.

5.2 Annual Report of Deployments. At each anniversary date and ninety (90) days prior to the expiration date of this EA, City shall provide a written report, as set forth in Appendix C, to Esri detailing all Deployments made, including preexisting and Rolled-In Software. The report will be subject to audit by an authorized representative of Esri.

5.3 Esri User Conference Registration. Esri shall provide Esri User Conference registrations to City annually during the term of this EA in the quantities set forth in Appendix B. City is responsible for distributing the registrations to City. Third parties may not represent or attend on behalf of City at any Esri User Conference.

ARTICLE 6—POINTS OF CONTACT; NOTICES

6.1 Points of Contact. In Appendix D, each party shall identify points of contact for administrative and technical issues.

6.2 Legal Notices. Except as otherwise set forth in this EA, any notice, report, demand, or other communication will be made in writing in English; sent by courier, registered or certified airmail, or facsimile or other electronic transmission; and confirmed when sent by courier or by registered or certified airmail, properly addressed to the appropriate party at the address set forth below, until changed by notice in writing by either party hereto. If sent by

courier or airmail, notice will be effective upon the earlier of confirmed receipt or seven (7) days from the date of deposit with the courier service or post office. If sent by electronic transmission, notice will be effective one (1) business day from the date of transmission, provided confirmation of receipt is made. Notices will be given at the following addresses:

To: Esri
380 New York Street
Redlands, CA 92373-8100
Attn.: Manager, Contracts and Legal
Fax: 909-307-3020
Email: legalnotices@esri.com

To: City
as listed in Appendix D

ARTICLE 7—TERM, TERMINATION, AND EXPIRATION

7.1 Term. The term of the EA will commence on October 19, 2018 and be for the period listed in Appendix B unless this EA is terminated earlier as provided herein.

7.2 Termination for a Material Breach; Convenience. Either Party may terminate this EA for a material breach by the other Party. The breaching Party will be given a period of thirty (30) days from date of written notice to cure any material breach. Upon termination of this EA by Esri for a material breach by City, all licenses Deployed will also terminate, and the full amount of unpaid EA Fees will be due and payable by City within thirty (30) days from the date of termination. City shall uninstall, remove, and destroy all EA Products; training materials; and any whole or partial copies, modifications, or merged portions in any form. City shall deliver evidence of such destruction to Esri (e.g., certification letter). City may continue to use Rolled-In Software, provided City complies with the terms and conditions of the License Agreement. Further, Esri agrees that City is not required to pay a maintenance reinstatement fee for lapsed maintenance for Rolled-In Software if City orders maintenance at time of EA termination. Other items that may be included in this EA—such as EEAP, Esri Virtual Campus annual user license, access codes, Virtual Campus dollar credits, and Esri User Conference registrations—will also terminate if this EA is terminated. This EA may not be terminated for convenience.

7.3 License Term and Use upon Expiration of EA Term. Upon full payment of EA Fee and expiration of this EA, the License Agreement will survive, and City may continue to use the Deployed EA Products and Rolled-In Software in accordance with the terms and conditions set forth in the License Agreement. City shall notify Esri of the quantity and type of licenses for which City elects to purchase standard maintenance. If maintenance is not ordered for Rolled-In Software or EA Products upon expiration of the EA, it lapses. If, at a later date, City decides to reinstate maintenance, City must pay maintenance reinstatement fees from the date of EA expiration (i.e., back maintenance fees). City shall not Deploy additional copies of the EA Products beyond the quantities in use upon termination or as of the date of expiration.

7.4 Termination for Non-Appropriation of Funds or Lack of Funds. City obligation to pay the amounts due under this EA may be contingent upon appropriation of funds for this EA ("**Lack of Funds**"). Either party may terminate this EA for Lack of Funds by providing a written termination for Lack of Funds notice no less than sixty (60) days prior to the next annual EA payment. In all such cases, the effective date of the termination will be the last day of the EA year for which City has paid. Under no circumstances may City deploy additional copies of the EA Products upon termination of the EA for Lack of Funds.

- a. City may retain a combination of some or all of the perpetual Deployed EA Products and all Rolled-In Software of like products identified in Appendix A, subject to the following conditions:
 - i. City will report the quantity and types of EA Products Deployed as of the termination date;
 - ii. Esri will calculate the aggregate value of EA Products Deployed, excluding Online Services or term based Products, at then-current list price, plus the aggregate cost of maintenance for the Deployed EA Products and Rolled-In Software (collectively, the "**Deployed EA Value**");
 - iii. Esri will deduct the value of all other deliverables, including but not limited to Online Services, term based Products training, virtual campus, workshops, and services, provided as part of this EA from the total EA Fees paid by City, as set forth on Appendix B, at the date of termination, ("**Remaining Value**");

- iv. If the Deployed EA Value is less than or equal to the Remaining Value, Licensee may retain all Deployed perpetual EA Products and Rolled-In Software at the maintenance version current as of the date of termination. No refund will be provided to City for unused fees.
 - v. If the Deployed EA Value is greater than the Remaining Value, Licensee will inform Esri of the quantities of Deployed EA Products and Rolled-in Software that it will retain at the maintenance version current as of the date of termination, such that the aggregate Software and maintenance does not exceed the Remaining Value. Licensee will uninstall, remove and destroy all Deployed EA Products not retained. Rolled-In Software not retained at current maintenance will revert to the version that was current as of the start date of the EA term.
- b. After termination, Licensee must immediately uninstall, remove and destroy all Deployed EA Products not retained. All subscriptions, User Conference Passes, Training and other services will end at termination. Rolled-In software not retained at current maintenance will revert to the version that was current as of the start date of the EA term.
 - c. Within thirty (30) days of termination of the EA for Lack of Funds, City will document in writing to Esri the total quantity and type of Products for which Licensee desires to obtain maintenance, if any. Payment of maintenance fees will be effective from the date of the EA termination.
 - d. Licensee's use of any retained Products and Rolled-In Software following termination of the EA Agreement will be in accordance with the License Agreement. If at a future date Licensee chooses to renew its Rolled-In Software or any other retained Products, Licensee will be required to pay maintenance retroactive to the date of termination in order to receive the most current version and support.

ARTICLE 8—CONFIDENTIALITY

8.1 Esri Confidential Information. Certain terms and conditions of this EA are confidential and proprietary information of Esri. Except as provided herein, City shall not publish or disclose the EA (or contents) to any third party without Esri's prior written consent. Disclosure may be made only to those City employees, contractors, or consultants of City (e.g., outside counsel or accountants) who have a need to know to perform their duties or work on behalf of City and have an obligation of confidentiality. No other portions of the EA may be disclosed to a contractor or consultant. To the extent that any such disclosures may be required by law (such as an open/public records request), City shall inform Esri of the requested disclosure, with a reasonable description of the requested disclosure and identification of the requester, in sufficient time for Esri to assert any objection Esri may have to such disclosure with the appropriate administrative or judicial body.

ARTICLE 9—RELATIONSHIP OF THE PARTIES

The EA does not constitute a partnership, joint venture, or agency between Esri and City. Neither Esri nor City will hold itself out as such, nor shall Esri or City be bound or become liable because of any representation, action, or omission of the other.

ARTICLE 10—FORCE MAJEURE

If the performance of any obligation under this EA is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war; threat of or actual terrorist act, cyber attack, or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any government agency; or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be provided a temporary extension for a period of time as may be reasonably necessary to allow for such delay, prevention, interference, or restriction.

ARTICLE 11—NO EXCLUSIVITY

This EA will not be construed or interpreted as an exclusive dealings agreement, and City reserves the right to purchase from third parties any of their requirements for GIS software or related services.

City agrees that Esri may publicize the existence of the EA with City's prior written approval.

ARTICLE 12—ADMINISTRATIVE REQUIREMENTS

12.1 Esri Partner Original Equipment Manufacturer (OEM) Bundled or Embedded Items/Services. Certain Esri partners are authorized to either embed limited portions of Esri technology or bundle Esri products or services with the partner's application or service under Esri's OEM or Solution OEM programs. Partner pricing and product bundling is independent of this EA, and each partner markets under its own business model and pricing. City shall not be entitled to or seek any discount from the OEM partner or Esri, directly or indirectly, as a result of or based on the availability of such Products as EA Products under this EA. City shall not be entitled to or seek to decouple Esri's technology or products/services from the partner's bundle or solution. In addition, such Products or any component thereof included in the OEM software program or product, will be licensed through the license agreement provided by the OEM partner and not through this EA.

12.2 EA Products—Limited Quantity or Unit-Priced Items. Esri reserves the right to exclude new Products from uncapped Deployment. New Products may contain or be developed with (i) newly acquired technology obtained through a significant investment or (ii) third-party intellectual property that requires a unit-based royalty fee or prohibits Deployment under a site or enterprise license. Such items can be made available to City on a limited-quantity basis or as unit-priced items.

12.3 Obsolescence. During the term of this EA, some of the items listed in Appendix A may become obsolete, will no longer be commercially offered, or may no longer be available for Deployment. City may continue to use EA Products that have been Deployed, but support and upgrades for older items may not be available. EA Maintenance and maintenance and availability of EA Products identified in Appendix A will be subject to each item's Product Life Cycle Support Status, which can be found at <http://support.esri.com/en/content/productlifecycles> by selecting the product type and clicking the Product Life Cycle link for specific product plans. Esri's Product Life Cycle Support Policy, available at <http://help.arcgis.com/en/shared/product-life-cycle/ProductLifeCycle.pdf>, covers the support phases and overall support plans.

ARTICLE 13—GENERAL PROVISIONS

13.1 If there is a conflict among any of the terms and conditions in the various documents, the order of descending precedence will be as follows: (1) Signature Page, (2) Enterprise License Terms and Conditions, (3) License Agreement. If City subscribes to the Esri Enterprise Advantage Program (EEAP), the EEAP terms and conditions take precedence over the provisions of this EA with respect to products or services provided under EEAP. Except as otherwise expressly provided herein, any amendment or Addendum to this EA must be in writing and signed by an authorized representative of each party.

13.2 Survival of Certain EA Clauses. The provisions of Section 7.3, and, Article 8 of this Enterprise License Terms and Conditions document will survive the expiration or termination of this EA.

13.3 NO BOYCOTT. Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By executing this EA with the City of San Antonio, Esri verifies, that to the best of their knowledge and belief, at the time of contract execution to the knowledge of the person signing on behalf of Esri, that it does not boycott Israel, and will not boycott Israel during the term of this EA. City relies on Esri's verification. If found to be false, City may terminate this EA for material breach, without providing the opportunity to cure.

**APPENDIX A
PRODUCTS AND DEPLOYMENT SCHEDULE**

City may Deploy the EA Products up to the total quantity of licenses indicated below during the term of this EA.

**Table A-1
EA Products—Uncapped Quantities**

Product	Total Qty. to Be Deployed
ArcGIS Desktop: Advanced, Standard, Basic (Single and Concurrent Use)	Uncapped
ArcGIS Desktop Extensions: ArcGIS 3D Analyst, ArcGIS Data Reviewer, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Publisher, ArcGIS Schematics, ArcGIS Spatial Analyst, and ArcGIS Workflow Manager (Single and Concurrent Use)	Uncapped
ArcGIS Enterprise: Enterprise and Workgroup (Advanced and Standard)	Uncapped
ArcGIS Server Extensions: ArcGIS 3D Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Spatial Analyst, ArcGIS Workflow Manager	Uncapped
ArcGIS Engine for Desktop: ArcGIS Spatial Analyst, ArcGIS 3D Analyst, ArcGIS GeoDatabase Update, ArcGIS Network, and ArcGIS Schematics Extensions	Uncapped
Mapping and Charting Solutions: Esri Production Mapping for Desktop	Uncapped

**Table A-2
EA Products—Capped Quantities**

Item	Rolled-In Qty. (if applicable)	Qty. to Be Deployed	Total
Esri Business Analyst for Desktop (US National Dataset) (Concurrent Use)	2	-	2
Esri City Engine Advanced (Single Use)	1	-	1
Data Interoperability Extension for Desktop (Concurrent Use)	5	-	5
ArcPad	10	-	10
ArcGIS Enterprise Additional Capability Server – GeoEvent Server (Up to Four Cores)	1	-	1
ArcGIS Developer Subscription (Professional Edition)	-	5	5
Data Interoperability Extension for Server (Up to Four Cores)	1	-	1

Product	Number of Subscriptions	Named Users per Subscription	Annual Credits per Subscription
ArcGIS Online Subscription	1	100 Level 1 1000 Level 2	375,000

Product	Named Users
ArcGIS Business Analyst Online (for use with ArcGIS Online) (Term License)	30
Community Analyst Online(Term License)	5
Insights for ArcGIS Online (Term License)	5

APPENDIX B EA FEE SCHEDULE

The EA Fee is \$1,875,000. The EA Fee is in consideration of the EA Products, EA Maintenance, Esri User Conference registrations, and Esri Training Pass, and Esri Enterprise Advantage Program.

	October 19, 2018 – October 18, 2019	October 19, 2019 – October 18, 2020	October 19, 2020 – October 18, 2021	EA Fee
EA Fee*	\$625,000	\$625,000	\$625,00	\$1,875,000

*Includes EEAP pricing

Number of Esri User Conference Registrations per Year	15
Number of Tier 1 Help Desk Callers That May Contact Esri for Tier 2 Support	3
Esri Training Pass**	20 Annual Training Pass Days per Year
Esri Enterprise Advantage Program (EEAP)***	100 Technical Advisor Hours per Year
Term of EA	Three (3) years from October 19, 2018

**Training Pass days may be rolled over from year to year. Unused Training Pass days will expire on October 18, 2021.

***Unused EEAP Learning and Service Credits from EA 2006ELA1961 have been rolled-in. Unused Learning and Services credits will expire 24 months from their purchase date, or one month after the expiration of the program, whichever is first. Learning and Services credits are a flexible way for your organization to receive focused technical enablement support. These credits are not intended for use on project-specific professional services. Any project-related activities requiring Esri Project Services support will be scoped, budgeted, and scheduled outside of the EEAP. You can find more information about the EEAP at www.esri.com/services/eeap. Any activities proposed to be completed under the EEAP would be subject to review and approval by Esri to ensure alignment with the intent of the EEAP.

APPENDIX C

CITY ANNUAL DEPLOYMENT REPORT

SAMPLE REPORT—This report will be provided to Esri annually as an Excel spreadsheet or in a comparable format.

[illegible]

**APPENDIX D
EA POINTS OF CONTACT**

Either party may change its point of contact by written notice to the other party.

1. Esri point of contact for order processing issues:

Name: Customer Service
Esri
380 New York Street
Redlands, CA 92373-8100
Email: service@esri.com
Phone: 888-377-4575
Fax: 909-307-3083

2. Esri contact for Tier 2 Support issues:

MyEsri: <http://my.esri.com>
Phone: 909-793-3774 (within the United States only)
Fax: 909-792-0960
Web: <http://support.esri.com>

3. City centralized point of contact for order release and administrative issues:

Name: Kevin Goodwin
Email: Kevin.Goodwin@sanantonio.gov
Phone: 210-207-5840
Fax: _____

4. All invoices to City will be mailed to the address listed below (unless otherwise stated on the purchase order):

City Office: ____
Name: _____
Address: _____

5. All deliverables to City will be shipped to the address listed below:

City Office: ____
Name: _____
Address: _____

6. All notices to City will be mailed to the address listed below:

City Office: ____
Name: _____
Address: _____

APPENDIX E
TIER 1 HELP DESK AUTHORIZED INDIVIDUALS

Below are named Tier 1 Help Desk individuals authorized to seek Tier 2 Support from Esri. Substitutes/Changes to Tier 1 Help Desk authorized individuals may be made by written notice to Esri.

1. Name: Frank Yang_____
Address: 111 Soledad St Ste 700_____
San Antonio, TX 78205_____
Phone: 210-207-0537_____
Fax: _____
Email: frank.yang@sanantonio.gov_____

4. Name: Brian Pangtay_____
Address: 111 Soledad St Ste 700_____
San Antonio, TX 78205_____
Phone: 210-207-8365_____
Fax: _____
Email: brian.pangtay@sanantonio.gov_____

2. Name: Sean Cummings_____
Address: 111 Soledad St Ste 700_____
San Antonio, TX 78205_____
Phone: 210-207-5136_____
Fax: _____
Email: sean.cummings@sanantonio.gov_____

5. Name: _____
Address: _____
Phone: _____
Fax: _____
Email: _____

3. Name: Sergio Cruz_____
Address: 111 Soledad St Ste 700_____
San Antonio, TX 78205_____
Phone: 210-207-8399_____
Fax: _____
Email: sergio.cruz@sanantonio.gov_____

Master Agreement



Agreement No. 333059

This Master Agreement ("**Agreement**") is between the entity shown below ("**Customer**") and **Environmental Systems Research Institute, Inc. ("Esri")**, a California corporation with a place of business at 380 New York Street, Redlands, California 92373-8100 USA.

This Agreement is the sole and entire agreement of the parties as to the subject matter of this Agreement and supersedes any previous agreements, understandings, and arrangements relating to such subject matter. Neither party has relied on any statement, representation, or warranty not expressly stated in this Agreement. The Agreement comprises this signature page, the terms and conditions that begin on the following page, and all referenced attachments. Except for Product or Service descriptions, quantities, pricing, and delivery instructions, or as agreed in an Ordering Document signed by both parties, all terms included in any Ordering Document are void and of no effect. Any modification(s) or amendment(s) to this Agreement must be in writing and signed by both parties.

The parties may sign this Agreement in counterparts or via electronic signatures; such execution is valid even if an original paper document bearing both parties' original signatures is not delivered. This Agreement is executed and effective as of the last date signed below.

The authorized representatives of each party accept and agree to the terms of this Agreement by signing below:

CITY OF SAN ANTONIO, TEXAS
(Customer)

Legal Address: 111 Soledad, San Antonio, TX

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

ENVIRONMENTAL SYSTEMS RESEARCH
INSTITUTE, INC. (Esri)

380 New York Street, Redlands, CA 92373-8100

By: Timothy Brazeal
Authorized Signature

Printed Name: Timothy Brazeal
Manager, Commercial & Government Contracts

Title: _____

Date: October 2, 2018

Customer Contact Information

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, ZIP: _____

Email: _____

Attachment A contains definitions of capitalized terms used throughout this Agreement. Each section of this Agreement may include additional definitions that are used exclusively within that section.

1.0 GENERAL GRANT OF RIGHTS AND RESTRICTIONS

1.1 Grant of Rights. In consideration of Customer's payment of all applicable fees and in accordance with this Agreement, Esri

- a. Provides Services as set forth in this Agreement;
- b. Grants to Customer a nonexclusive, nontransferable right and license or subscription to access and use Esri Offerings as set forth in the Specifications and applicable Ordering Documents; and
- c. Authorizes Customer to copy and make derivative works of the Documentation for Customer's own internal use in conjunction with Customer's authorized use of Deliverables or Esri Offerings. Customer will include the following copyright attribution notice acknowledging the proprietary rights of Esri and its licensors in any derivative work:

"Portions of this document include intellectual property of Esri and its licensors and are used under license. Copyright © [Customer will insert the actual copyright date(s) from the source materials.] Esri and its licensors. All rights reserved."

The grants of rights in this section (i) continue for the duration of the subscription or applicable Term or perpetually if no Term is applicable or identified in the Ordering Documents and (ii) are subject to additional rights and restrictions in this Agreement including Attachment B.

1.2 Consultant or Contractor Access. Customer may authorize its consultants or contractors to (i) host Esri Offerings for Customer's benefit and (ii) use Esri Offerings exclusively for Customer's benefit. Customer will be solely responsible for its consultants' and contractors' compliance with this Agreement and will ensure that each consultant or contractor discontinues use of the Esri Offerings upon completion of work for Customer. Access to or use of Esri Offerings by consultants or contractors that is not exclusively for Customer's benefit is prohibited.

1.3 Reservation of Rights. All Esri Offerings are the copyrighted works of Esri or its licensors; all rights not specifically granted in this Agreement are reserved.

1.4 Trial, Evaluation, and Beta Licenses. Products acquired under a trial or evaluation license or subscription or under a Beta program are intended for evaluation and testing purposes only and not for commercial use. Any such use is at Customer's own risk, and the Products do not qualify for Maintenance. If Customer does not convert to a purchased license or subscription prior to the expiration of the evaluation term, Customer may lose any Customer Content and customizations made during the evaluation term. If Customer does not wish to purchase a license or subscription, Customer should export such Customer Content before the end of Customer's evaluation period.

1.5 Educational Programs. Customer agrees to use Esri Offerings provided under an educational program solely for educational purposes during the educational use Term. Customer shall not use Products for any Administrative Use unless Customer has acquired an Administrative Use license. "**Administrative Use**" means administrative activities that are not directly related to instruction or education, such as asset mapping, facilities management, demographic analysis, routing, campus safety, and accessibility analysis. Customer shall not use Products for revenue-generating or for-profit purposes.

1.6 Grant Programs. Customer may use Esri Offerings provided under a grant program for noncommercial purposes only. Except for cost recovery of using and operating the Esri Offerings, Customer shall not use Esri Offerings for revenue-generating or for-profit purposes.

1.7 Other Esri Limited-Use Programs. If Customer acquires Esri Offerings under any limited-use program not listed above, Customer's use of the Esri Offerings may be subject to the terms set forth in the applicable launching page or enrollment form or as described on Esri's website in addition to the nonconflicting terms of this Agreement.

2.0 SOFTWARE

2.1 License Types. Esri licenses Software under the following license types; the Documentation and Ordering Documents identify which license type(s) applies to the ordered Software:

- a. **Concurrent Use License.** Customer may install and use the Software on computer(s) on a network, but the number of simultaneous users may not exceed the number of licenses acquired. A Concurrent Use License includes the right to run passive failover instances of Concurrent Use License management software in a separate operating system environment for temporary failover support.
 - b. **Deployment License.** Customer may incorporate ArcGIS Runtime components in Value-Added Applications and distribute the Value-Added Applications to Customer's end users.
 - c. **Deployment Server License.** Customer may use the Software under a Server License for all uses permitted in the Agreement and as described in the Documentation.
 - d. **Development Server License.** Customer may use the Software under a Server License only to build and test Value-Added Applications as described in the Documentation.
 - e. **Development Use.** Customer may install and use the Software to build and test Value-Added Applications as described in the Documentation.
 - f. **Dual Use License.** Customer may install the Software on a desktop computer and use it simultaneously with either a personal digital assistant (PDA) or handheld mobile computer as long as the Software is only used by a single individual at any time.
 - g. **Failover License.** Customer may install Software on redundant systems for failover operations, but the redundantly installed Software may be operational only during the period the primary site is nonoperational. Except for system maintenance and updating of databases, the redundant Software installation(s) will remain dormant while the primary site (or any other redundant site) is operational.
 - h. **Redistribution License.** Customer may reproduce and distribute the Software provided that
 1. Customer reproduces and distributes the Software in its entirety;
 2. A license agreement that protects the Software to the same extent as this Agreement accompanies each copy of the Software, and the recipient agrees to the terms and conditions of the license agreement;
 3. Customer reproduces all copyright and trademark attributions and notices; and
 4. Customer does not charge a fee to others for the use of the Software.
 - i. **Server License.** Customer may install and use the Software on a server computer. Server Licenses may be subject to a limited number of server cores or distributed deployment on multiple servers as described in the Ordering Documents or Documentation. If the Software description includes failover use, each Server License includes a Failover License.
 - j. **Single Use License.** Customer may permit a single authorized end user to install and use the Software on a single computer. Customer may permit the single authorized end user to install a second copy for the end user's exclusive use on a second computer as long as only 1 copy of Software is in use at any time. No other end user may use Software under the same license at the same time for any other purpose.
 - k. **Staging Server License.** Customer may use the Software under a Server License to build and test Value-Added Applications and map caches; conduct user acceptance, performance, and load testing of other third-party software; stage new commercial data updates; and conduct training activities as described in the Documentation. Customer may use Value-Added Applications and map caches with Development and Deployment Server Licenses.
- 2.2 Permitted Uses**
- a. Customer may
 1. Install, access, or store Software and Data on electronic storage device(s);
 2. Make archival copies and routine computer backups;
 3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed Customer's licensed quantity; thereafter, Customer will not use more Software in the

aggregate than Customer's total licensed quantity. This concurrent use right does not apply to Software licensed for Development Use.

4. Move the Software in the licensed configuration to a replacement computer;
 5. Distribute Software and any associated Authorization Codes required for use of a Deployment License to third parties; and
 6. Use server Software for Commercial ASP Use only if Customer has procured a Commercial ASP Use license or is a governmental or not-for-profit organization that operates a website or offers an Internet service on a cost-recovery basis and not for profit.
- b. Customer may customize Software using any macro or scripting language, APIs, or source or object code libraries but only to the extent that such customization is described in Documentation.
 - c. Customer may use all fonts provided with the Software for any authorized use of the Software. Customer may also use Esri fonts separately to print any output created by the Software. Any use restrictions for third-party fonts included with the Software are set forth in the font file itself.
 - d. Esri publishes Product-specific Software terms of use at <http://www.esri.com/legal/scope-of-use>

3.0 ONLINE SERVICES

3.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Anonymous Users"** means all who have public access (i.e., without having to provide a Named User Credential) to any part of Customer Content or Value-Added Applications. Customer may enable Anonymous Users to access Customer Content or Value-Added Applications by publishing them through the use of the Sharing Tools, included with Customer's authorized use of the Online Services.
- b. **"App Login Credential(s)"** means a system-generated application login and associated password, provided when registering a Value-Added Application with ArcGIS Online, which when embedded in a Value-Added Application allows the Value-Added Application to access and use of Online Services.
- c. **"Service Credit(s)"** means a unit of exchange that is allocated with an Online Services subscription in an amount specified in the Ordering Document.
- d. **"Sharing Tools"** means publishing capabilities included with Online Services and ArcGIS Website that allow Customer to make Customer Content and Value-Added Applications available to third parties or Anonymous Users.

3.2 Online Services Descriptions. Esri publishes Online Services subscription-specific terms of use at <http://www.esri.com/legal/scope-of-use>. Use of Online Services is also subject to the Cloud Services terms found in Attachment B.

3.3 Access to Value-Added Applications

- a. Named Users have unique, individual login credentials. Named Users have private access to features of Online Services that are not publicly accessible to Anonymous Users.
- b. Customer may use its Online Services subscription to build Value-Added Applications for internal use by Named Users in accordance with the published Online Services descriptions.
- c. Customer may transfer Value-Added Applications to any third party for use in conjunction with the third party's own Online Services subscription.
- d. Customer may not add third parties as Named Users to Customer's Online Services subscription. This restriction does not apply to third parties included within the definition of Named Users.
- e. Customer may not provide a third party with access to ArcGIS Online Services enabled through Customer's ArcGIS Online subscription other than through Customer's Value-Added Applications. This restriction does not apply to third parties included within the definition of Named Users.
- f. Customer may enable Anonymous Users to access Customer's Value-Added Applications running under Customer's own subscription, subject to the following terms:
 1. Customer may charge for such access under subscription types that permit use for commercial retail business purposes.
 2. Customer may embed an App Login Credential into Value-Added Applications to enable public use by Anonymous Users but may not embed a Named User Credential.

3. Customer is responsible for all Service Credits consumed in Anonymous Users' use of Customer's Value-Added Applications.
4. Customer is solely responsible for providing technical support for Customer's Value-Added Application(s).
5. Customer may not enable Anonymous Users to access Value-Added Applications that are intended for Customer's internal use only; Value-Added Applications used internally require each user to use Named User login credentials.

3.4 Customer's Responsibilities

- a. Customer is solely responsible for the development and operation of Customer Content and Value-Added Applications and for its Named Users' compliance with this Agreement. Customer and its Named Users or Anonymous Users (if applicable) are the only persons authorized to access Online Services through Customer's subscription. Named Users' login credentials are for designated Named Users only and may not be shared with other individuals. Customer may reassign a Named User License if the former Named User no longer requires access to Online Services.
- b. Customer must include attribution acknowledging that its application uses Esri Online Services, if attribution is not automatically displayed through the use of Online Services. Guidelines are provided in the Documentation.
- c. Customer will ensure that Customer Content is suitable for use with Online Services and will maintain regular offline backups using the Online Services export and download capabilities

3.5 Modifications of Online Services. Esri may change Online Services and associated APIs at any time, subject to 30 days' notice of material changes and 90 days' notice for deprecations. If any modification, discontinuation, or deprecation of Online Services causes a material, adverse impact to Customer's operations, Esri may, at its discretion, attempt to repair, correct, or provide a workaround for Online Services. If a viable solution is not commercially reasonable, Customer may cancel its subscription to Online Services, and Esri will issue a prorated refund.

3.6 Subscription Fee Changes. Esri may change fees for subscriptions with a term greater than 1 month by notifying Customer at least 60 days prior to expiration of the then-current subscription term. Esri may change monthly subscription fees upon 30 days' notice. Outside the United States, the distributor may provide notice of rate changes.

3.7 Sharing Customer Content. If Customer elects to share Customer Content using Sharing Tools, then Customer acknowledges that Customer has enabled third parties to use, store, cache, copy, reproduce, (re)distribute, and (re)transmit Customer Content through Online Services. Esri is not responsible for any loss, deletion, modification, or disclosure of Customer Content resulting from use or misuse of Sharing Tools or Online Services, Customer Content, ArcGIS Website, Documentation, or related materials. Customer's use of Sharing Tools is at Customer's sole risk.

3.8 Limits on Use of Online Services, Service Credits. Each Online Services subscription includes Service Credits as described in the applicable Ordering Document. Each Service Credit entitles Customer to consume a set amount of Online Services, the amount varying depending on the Online Services that Customer is using. As Customer consumes Online Services, Service Credits are automatically debited from Customer's subscription, up to the maximum number of Service Credits available. Customer may purchase additional Service Credits as needed. Esri will notify Customer's subscription account administrator when Customer's Service Credit consumption reaches approximately 75 percent of the Service Credits allocated to Customer through Customer's subscription. Esri reserves the right to suspend Customer's access to Online Services that consume Service Credits when Customer has consumed all its Service Credits. Esri will promptly restore Customer's access to its Online Services once Customer has purchased additional Service Credits.

4.0 DATA

4.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Business Listing Data"** means any dataset that includes a list of businesses and may include other associated business attributes.
- b. **"Esri Content Package(s)"** means a digital file containing ArcGIS Online basemap content (e.g., raster map tiles, images, vector data) extracted from the ArcGIS Online basemap services.
- c. **"Street Data"** means Data that includes or depicts information about roads, streets, and related features.

4.2 Permitted Uses

- a. Unless otherwise authorized in writing, Customer may only use Data with the Products for which Esri has provided the Data.
- b. Customer may include representations of the Data in hard-copy or static, electronic format (e.g., PDF, GIF, JPEG) in presentation packages, marketing studies, or other reports or documents containing map images or data summaries derived from the use of Esri Products to third parties subject to restrictions set forth in this Agreement, provided that Customer affixes an attribution statement to the Data representations acknowledging Esri or its applicable licensor(s) as the source of the portion(s) of the Data used for the Data representation.
- c. Customer may take ArcGIS Online basemaps offline through Esri Content Packages and subsequently deliver (transfer) them to any device for use with licensed ArcGIS Runtime applications and ArcGIS Desktop. Customer may not otherwise cache or download such Data.
- d. Esri does not acquire any rights in Customer Content under this Agreement.

4.3 Use Restrictions

- a. Customer may not act directly or authorize its customers to cobrand Data, use the Data in any unauthorized service or product, or offer Data through or on behalf of any third party.
- b. Customer may not use or allow third parties to use Data for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party.
- c. *Business Listing Data.* Unless authorized in writing, Customer may not use Business Listing Data for any direct marketing purposes, resale publication, or distribution to any third party as part of any mailing list, directory, classified advertising, or other compilation of information.
- d. *Street Data.* Customer may use Street Data for mapping, geocoding, routing, and transportation network analysis purposes. Unless otherwise authorized in writing, Customer may not use Street Data for
 - 1. Real-time navigational guidance, including alerting a user about upcoming maneuvers, such as warning of an upcoming turn or calculating an alternate route if a turn is missed;
 - 2. Synchronized multivehicle routing; or
 - 3. Synchronized route optimization.
- e. *Business Analyst Data.* Customer may cache Data provided with ArcGIS Business Analyst Mobile App on a mobile device for use in conjunction with its use of ArcGIS Business Analyst Server. Customer may not otherwise cache or download such Data.
- f. *Partial Dataset Licenses:* If Customer orders a subset of a dataset (for example, a country, region, state, or local portion of a global database), Customer may use only the licensed subset, not any other portion of the full dataset.
- g. *Esri MapStudio Data.* Customer may create, publicly display, and distribute maps in hard-copy or static electronic format for news-reporting purposes only.
- h. *Michael Bauer Research International Boundaries Data ("MBR Data"):* Customer's right to use data downloaded to the Customer's premises (e.g. MBR Data stored in ArcGIS Enterprise, ArcGIS Desktop) terminates 2 years after download.

4.4 Supplemental Terms and Conditions for Data. Certain Data licensors require Esri to flow down additional attribution requirements and terms of use to Customer. These terms supplement and amend the terms of this Agreement and are available at www.esri.com/legal/third-party-data.

5.0 MAINTENANCE

US Customers: Esri will provide Maintenance for Software and Online Services in accordance with the Esri Maintenance and Support Program and this Agreement if Customer is in the United States.

Customers outside the United States: Customer may obtain maintenance services from their local Esri distributor under the distributor's own standard support policy.

6.0 PROFESSIONAL SERVICES

6.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Invention(s)"** means a patentable invention, discovery, innovation, or improvement, excluding Deliverables, relating to the subject matter of a Task Order.
- b. **"Inventor(s)"** means a party's principal, employee, consultant, or independent contractor that solely or jointly develops Inventions during Esri's performance under a Task Order.
- c. **"Professional Service Package(s)"** means a predefined unit of Professional Services, including travel-related expenses, provided at a firm fixed price.

6.2 Permitted Uses. Customer may use, copy, and modify the Deliverables solely in conjunction with Customer's authorized use of Products.

6.3 Task Orders and Project Schedule

- a. Esri will provide Professional Services and Deliverables as specified in the Task Order.
- b. Each Task Order will reference this Agreement and specify the commencement date and, if known, the period of performance.
- c. Task Orders may have the format shown in Attachment C or any other agreed-upon format.
- d. Each party will identify, in writing, the project manager who is responsible for the Professional Services and Deliverables described in Task Orders. By written notice to the other party's technical administrator, either party may replace the project manager at any time with a similarly qualified person.
- e. Other than pricing and descriptions of the Professional Services to be performed, terms and conditions in a Task Order are not binding unless both parties have signed the Task Order. The terms of a signed Task Order take precedence over conflicting terms in this Agreement.

6.4 Ownership of Deliverables and Inventions

- a. Esri or its licensors own and retain ownership of the Deliverables.
- b. Each party will retain title to any Inventions made or conceived solely by its Inventors during the Term of this Agreement, including, but not limited to, such Inventions that Esri's Inventors solely make or conceive while providing technical assistance pursuant to this Agreement. The parties will jointly own any Inventions made or conceived jointly by Inventors from both parties.
- c. The parties will negotiate in good faith and cooperate reasonably in (i) deciding whether or not to seek or maintain, or to continue to seek or maintain, patent protection in any country on any Invention and the extent and scope of such protection and (ii) protecting and enforcing any patents issued on such Invention.

6.5 Acceptance

- a. **For Firm Fixed Price Task Orders.** Customer will complete its acceptance review within 10 working days of receiving each Deliverable and classify the Deliverables as follows:
1. "DELIVERABLE ACCEPTED" means a Deliverable conforming to the applicable Task Order with no more than minor nonconformities.
 2. "DELIVERABLE ACCEPTED WITH REWORK" means a deliverable substantially conforming to the applicable Task Order but having a significant number of identified nonconformities and accepted subject to rework by Esri. Esri will rework the Deliverable for the identified nonconformities and resubmit it within 30 days. Customer will rerun its acceptance review for the nonconformities detected in the initial review within 10 working days of such resubmission and will reclassify the Deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.
 3. "DELIVERABLE REJECTED" means a Deliverable that fails to substantially conform to applicable Task Order(s). Esri will rework the Deliverable and resubmit it to Customer within 30 days, at which time Customer will have 10 working days to rerun its acceptance review and reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.

Customer may not use any Deliverable in its business operations before acceptance as described in a.1. or a.2. If Customer does not notify Esri in writing within 10 working days after delivery that it has classified the Deliverable as ACCEPTED WITH REWORK or REJECTED in accordance with a.2. or a.3., or if Customer uses the Deliverable in its business operations, the Deliverable will be deemed, as of the first of either of these events to occur, to have been accepted.

- b. **For Task Orders with Professional Service Packages.** Professional Services that Esri performs under Professional Service Packages will be deemed accepted unless Customer notifies Esri within 10 days after performance. Customer may purchase additional Professional Service Packages as needed to complete Customer's work requirements.
- c. **For Time and Materials Task Orders.** Professional Services are provided strictly on a time and materials basis subject to the Task Order not-to-exceed funding limit. The Professional Services provided will be deemed accepted and in compliance with the professional and technical standards of the software industry unless Customer notifies Esri within 10 days after performance. Deliverables produced under a time and materials Task Order will not be subject to acceptance testing.

6.6 Warranty for Deliverables. Esri warrants to Customer that firm fixed price Deliverables materially comply with Specifications for a period of 90 days from acceptance, subject to the limitations and disclaimers of liability set forth in the "Limited Warranties and Disclaimers" section of Attachment B.

6.7 Changes. The parties may make changes within the general scope of a Task Order by mutual agreement. To document any agreed-to scope changes within the general scope of the Task Order that affects the cost or time required to provide a Deliverable, the parties will jointly sign a written amendment to the Task Order that includes an equitable adjustment in the price, schedule, or both.

6.8 Customer Termination for Convenience. Customer may terminate any Task Order at any time upon 30 days' written notice to Esri and upon payment to Esri of all amounts due to date pursuant to this Agreement, including reasonable expenses incurred as a direct result of the termination and the pro rata contract price for the Task Orders affected.

6.9 Payment; Invoices

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

- b. **For Professional Service Packages.** Esri will submit an invoice for Professional Service Packages on receipt of an agreed-upon Task Order. Esri may, at its sole discretion, stop work to avoid exceeding the total labor hours or number of days allotted in the applicable Professional Service Package description set forth in the applicable scope of work. Professional Service Packages expire if not used within 12 months of the Esri invoice date.
- c. **For Time and Materials Task Orders**
1. Esri will submit to Customer written monthly invoices to the Customer address provided in the Task Order. The invoices will include the payment due for work performed, including travel time, and any other direct costs (ODCs) that are pre-approved by Customer in writing, incurred as authorized under a Task Order. The amount invoiced for labor will be equal to the number of hours expended during the previous month, multiplied by the applicable labor rates. Esri will invoice meals on a per diem basis in accordance with the full daily limits specified on the government General Services Administration (GSA) website at <http://gsa.gov/>. Esri and Customer may include hourly labor rates in this Agreement; if the parties elect to do so, **Attachment D** will identify the hourly labor rates for each labor category. Esri may change hourly labor rates for Services; any increase in the first 5 years will not exceed 5 percent per year. Esri will invoice pre-approved ODCs, including travel related expenses incurred, plus a 15 percent burden.
 2. Esri may reallocate the budget between activities, labor categories, and pre-approved ODCs as necessary to facilitate the work effort, provided the overall price is not exceeded. If Esri reaches the funded not-to-exceed Task Order value and the activities are not completed, Customer may increase the order funding to allow additional work to be performed, or Esri may stop work without further obligation or liability.

6.10 System and Data Access. Each Task Order will specify any requirement for Customer to give Esri personnel access to Customer's systems or data.

7.0 ESRI MANAGED CLOUD SERVICES

7.1 Definitions. The following definitions supplement the definitions provided in **Attachment A**:

- a. "**EMCS Environment**" means the hardware, Software, Data, and network platform that Esri or its third-party supplier provides as part of Esri Managed Cloud Services (EMCS).
- b. "**Hosting**" means the business of housing and making accessible Customer Content via the Internet.

7.2 Provision of EMCS

- a. **Generally.** Use of EMCS is subject to the Cloud Services terms found in **Attachment B** of this Agreement.
- b. **Requirements Planning.** It is Customer's responsibility to plan for and address with Esri changes to Customer's requirements, such as the need for additional capacity, the update of an application or dataset, or increased level of system availability.
- c. **Compensation and Expenses.** Esri will invoice Customer for the one-time setup fee upon Task Order execution. Thereafter, Esri will invoice Customer monthly for the EMCS to be provided the following month. Customer will pay invoices within 30 days of receipt. Customer is responsible for any shipping or temporary storage costs incurred during the delivery of Customer Content to Esri or removal of Customer Content from the EMCS Environment. This paragraph does not apply to EMCS provided under the Advantage Program (see the section entitled "Advantage Program" in this Agreement.)
- d. **Risk of Loss.** Risk of loss for all Customer Content shall at all times remain with Customer, and it is Customer's sole responsibility to maintain regular backups of Customer Content. Risk of loss for the EMCS Environment shall at all times remain with Esri.
- e. **Personally Identifiable Information.** Prior to providing any Customer Content under this Agreement, Customer shall notify Esri if Customer Content includes personally identifiable information.
- f. **Public Software.** Customer may not use, and may not authorize its end users or contractors to Combine or use any Esri Offerings with any software (including any underlying dependencies), documentation, or other material distributed under an open source or other similar licensing or distribution model that requires as a condition of such model that any component of the Esri Offering to be (1) disclosed or distributed in source

code form, (2) made available free of charge to third parties, or (3) modifiable without restriction by third parties.

- g. **Monitoring.** Customer will provide information and other materials related to its Customer Content as reasonably requested by Esri or its Hosting partner to verify Esri's or Customer's compliance with this Agreement. Esri or its Hosting partner, as applicable, may browse, index, or otherwise monitor the external interfaces of any Customer Content solely for the purpose of verifying compliance with this Agreement.

8.0 TRAINING

8.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Customer-Supplied Training Data"** means any digital dataset(s) including, but not limited to, geographic vector data, coordinates, raster data reports, or associated tabular attributes supplied by Customer for use in training.
- b. **"Esri Mobile Lab"** means Esri equipment consisting of laptops preconfigured with Esri Software, Training Materials, hard drives, power cords, and network switches provided to Customer for use in conjunction with scheduled Esri Training Events only.
- c. **"Esri Training Event(s)"** means an Esri site class, Esri instructor-led online class, a Customer site/private class or coaching services.
- d. **"Esri Training Event Assistant"** means Customer's primary Esri liaison in organizing private Esri Training Events.
- e. **"Student(s)"** means a Customer employee or agent who is a registered participant in a specific Esri Training Event, or Training-related services. If Customer is an individual, then Student means Customer.
- f. **"Training Pass"** means a non-refundable, non-transferable block of prepaid training days with a fixed price per day training price throughout the term of the Training Pass.

8.2 Permitted and Prohibited Uses

- a. Esri provides Training Materials for Training purposes only and for the exclusive use of the Student who attends the training course for which the Training Materials are provided.
- b. The Customer may reproduce copies of Training Materials for registered Students.
- c. Customer may not and may not permit any Student to (i) separate the component parts of the Training Materials for any use or (ii) use audio or video recording equipment during an Esri Training Event.
- d. Esri may issue temporary Product authorizations if Customer has an insufficient number of Products available for Training. Customer may use such Products as Training Materials under the terms of this Agreement. Customer will uninstall all deployed Products and return any media provided by Esri upon conclusion of the Esri Training Event.
- e. Customer will retain ownership of any Customer-Supplied Training Data.

8.3 Esri's Responsibilities

Esri will

- a. Provide an instructor qualified to conduct the Training;
- b. Provide all necessary Training Materials for Student; and
- c. Confirm Esri Training Events approximately 10 business days prior to the scheduled start date. Esri will only confirm Student registrations that include a payment method. Registrations without a confirmed payment method are placed on the reservation waiting list. All reservations on the waiting list are subject to availability. Customer site/Private class and coaching services confirmation is also dependent on receipt of the completed Customer site training request form.

8.4 Customer's Responsibilities

Customer will

- a. Ensure that all Students have received confirmation from Esri to participate in an Esri Training Event.. Esri reserves the right to disconnect any Student who permits unregistered student access to an online classroom Esri Training Event. In such case the full Esri Training Event fee will be invoiced and payable;
- b. Ensure that all Students meet the minimum prerequisites for the applicable Esri Training Event as listed on Esri's training website;
- c. Submit Student registrations in Esri site classes with payment method information at least 15 business days before the scheduled start date.
- d. Provide the Esri Training Event Assistant with a list of the names and email addresses of any Students who are to attend an Esri Training Event at least 3 business days before the scheduled start date, for compliance with the US embargoed country lists and the various US Government Lists of Parties of Concern or Specially Designated Nationals lists.
- e. For classes held at the Customer-designated facility, complete a client site training request form; consult with Esri personnel to determine classroom, computer, and network requirements; and provide all such required classrooms, computers, and network access;
- f. Ensure that Student use of Training Materials provided by Esri complies with the terms of this Agreement; and
- g. Assume full liability and responsibility for Student attending Training course(s) under this Agreement.
- h. If the Esri Mobile Lab is used, Customer will
 1. Immediately report any previously damaged Esri Mobile Lab equipment to the Esri Training Event Assistant upon receipt of the equipment;
 2. Keep Esri Mobile Lab equipment in a secure, locked area between Esri Training Event sessions;
 3. Be responsible for loss of, damage to, or theft of Esri Mobile Lab equipment while in Customer's possession;
 4. Allow the Esri instructor to check all Esri Mobile Lab equipment following the completion of an Esri Training Event. Esri will notify Customer in writing of any damage to Esri Mobile Lab equipment due to Customer use, excluding normal wear and tear. Customer will be financially responsible for any repair or replacement of equipment resulting from such damage; and
 5. Make Esri Mobile Lab equipment available for freight pickup upon the conclusion of the Esri Training Event.

8.5 Student Registration and Training Event Change Policy

- a. Customer will provide written notice to the Esri Customer Service department at service@esri.com of any student substitution, before class commencement. A replacement Student must be from the same Customer organization as the Student being replaced.
- b. If Customer reschedules an Esri Training Event three or fewer days before the scheduled start date, Esri will charge Customer 50 percent of the fee plus the cost of the rescheduled Esri Training Event.
- c. If the Customer (i) cancels an Esri Training Event 3 or fewer days before the scheduled start date without concurrently rescheduling or (ii) is absent without notice from the Esri Training Event, the Customer will be liable for the full Esri Training Event fee.
- d. If cancellation of an Esri Training Event is necessary due to causes beyond the party's reasonable control, the affected party may reschedule or cancel the Training without incurring any liability.
- e. *Termination of Agreement.* Students who are currently registered for an Esri Training Event as of the date of termination of this Agreement may attend the scheduled Training, subject to the terms and conditions of this Agreement.

8.6 Invoicing; Prepaid Fees

- a. Esri will invoice Customer upon completion of the Esri Training Event or on purchase of a Training Pass. On Customer request, Esri will invoice in advance for an Esri Training Event.

- b. If Customer is invoiced and pays that invoice prior to the scheduled Esri Training Event, then Customer has 1 year from the date of the invoice to consume the Training days. For a multiyear order, the Training days must be consumed by the end date specified on the Esri quotation. Thereafter, all prepaid fees are forfeited.
- c. Training Pass exchange rates are described at <https://www.esri.com/training/training-for-organizations/>.

This paragraph does not apply to Training provided under the Advantage Program.

9.0 ADVANTAGE PROGRAM

9.1 Definitions. The following definitions supplement the definitions provided in Attachment A:

- a. **"Activity Description"** means a mutually agreed upon written statement that confirms the number of Learning and Services Credits that Esri estimates is required to perform an activity and authorizes Esri to begin work based on such estimate. The Activity Description serves as the Task Order for Services provided under the Advantage Program.
- b. **"Advantage Program"** means either the BPAP or the EEAP.
- c. **"Authorized Contact"** means the Customer point of contact for the Advantage Program identified below.
- d. **"BPAP"** means the Business Partner Advantage Program as described at www.esri.com/partners/bpap/components
- e. **"EEAP"** means the Esri Enterprise Advantage Program as described at www.esri.com/services/eeap/components
- f. **"Learning and Services Credits"** means a contracted unit of exchange that Customer may use to acquire Professional Services, Training, PSS, EMCS, or related travel expenses as described below.
- g. **"Premium Support Services" or "PSS"** means a prioritized incident management and technical support program further described at <http://support.esri.com/en/support/premium>.
- h. **"Technical Advisor"** means an Esri consultant assigned to work with Customer to provide Professional Services comprising advising on GIS strategies, facilitating annual account planning, and developing and coordinating a collaborative technical work plan under the Advantage Program.

9.2 Advantage Program Description. The Advantage Program is provided on an order-by-order, annual subscription basis allowing access to Professional Services, Training, PSS, and EMCS offerings that provides Customer with the flexibility to select the offerings that best meet its needs with guidance from the Technical Advisor. The Advantage Program may change from time to time. The Advantage Program includes:

- a. **Technical Advisor.** Customer will receive up to the number of Technical Advisor hours ordered. Customer may elect to retain additional Technical Advisor hours for a supplemental price.
- b. **Annual Account Planning Session.** A 1-day annual account planning and review meeting is included.
- c. **Technical Work Plan.** A collaboratively developed document designed to drive the program's implementation through definition of Customer's GIS vision, goals, and objectives.
- d. **Learning and Services Credits.** Customer will receive the number of Learning and Services Credits ordered. Customer may use the credits toward any combination of Professional Services, Training, PSS, EMCS or related travel expenses. Customer may order, for an additional price, additional Learning and Services Credits. Learning and Services Credits may be exchanged as described at the BPAP or EEAP website. Esri will provide a monthly report outlining usage of Learning and Services Credits to date to the Authorized Contact.
- e. **Quarterly Technology Webcast.** Esri will provide an email invitation to the Authorized Contact for a quarterly webcast presenting business and technical information related to enterprise GIS.
- f. **No Project Services.** The Advantage Program is not designed for Esri to provide project-specific Professional Services such as custom application or database development for solutions or applications. Esri will not provide these types of Professional Services under the Advantage Program and does not warrant that Deliverables provided under an Advantage Program will comply with Specifications.

9.3 Authorized Contact Information. Customer identifies the following person as its initial Authorized Contact.

(to be completed by Customer):

Contact Name: _____
Telephone: _____
Address: _____
Fax: _____
City, State, ZIP: _____
Email: _____

9.4 Current on Maintenance. Customer must remain current on standard Software Maintenance during the Advantage Program term.

9.5 Authorization of Learning and Services Credits Use. Customer will contact its account manager or Technical Advisor to consume Learning and Services Credits for a particular request. Esri will submit an Activity Description by email to Customer for confirmation and authorization to use the Learning and Services Credits. Customer may authorize the consumption of Learning and Services Credits by submitting an email. Esri will begin work and deduct the estimated credit amount stated in the Activity Description from the unused Learning and Services Credits available.

9.6 Activity Descriptions for EMCS. The Activity Description for EMCS orders must include the following:

- a. **The EMCS Term**—The time period in which Esri provides the EMCS to Customer. The EMCS term does not begin until setup and deployment of the data and application are complete.
- b. **Targeted System Availability**—The minimum percentage of time that Customer has external access to the application and associated Customer Content through the Internet. Examples of supported levels of system availability are 95 percent, 99 percent, and 99.9 percent. Not all EMCS offerings include a Targeted System Availability.
- c. **Number of Anticipated Requests**—A The number of requests made by an end user through a client (e.g., desktop computer, web application, mobile device) and sent to a server(s) that is set up in the EMCS Environment by Esri and performs computational tasks on behalf of the end user. An example of a common request used in a GIS is a map request. A map request is made every time a user pans, zooms, or queries a map service.
- d. **Amount of Data Storage**—The storage capacity required to retain digital data, which is to be used and consumed in Customer GIS applications or Cloud Services.
- e. **Learning and Services Credits Consumption**—The price for the EMCS in Learning and Services Credits.

The Data storage location may be defined in the Activity Description.

9.7 Travel and Per Diem Expenses. Any Esri travel and per diem expenses will be quoted separately. Travel expenses will include a 15 percent burden and per diem will be determined in accordance with the full daily limits specified on the government General Services Administration (GSA) website at <http://gsa.gov/>. Customer may direct Esri to use Learning and Services Credits for travel and per diem expenses, or Customer may issue a purchase order and Esri will invoice Customer for the travel and per diem expenses as set forth in the "Professional Services" section of this Agreement.

9.8 Notification of Consumed Credits. Esri will notify Customer if the authorized Learning and Services Credits are consumed prior to completion of the requested work. Customer may elect to direct the use of additional Learning and Services Credits, if available; procure additional Learning and Services Credits; or notify Esri to stop work on such requested work. Esri reserves the right to stop work if Customer has consumed all of its Learning and Services Credits.

9.9 Review of Proposed Activities. Any activities proposed to be completed under the Advantage Program will be subject to Esri's review and approval to ensure alignment with the intent of the program.

9.10 Invoicing

- a. Esri shall invoice Customer as quoted for the Advantage Program subscription, additional Learning and Services Credits, or Technical Advisor services upon receipt of Customer's order. Subsequently, Esri will invoice annually at least 30 days in advance of the Advantage Program subscription expiration date. Esri will extend the Advantage Program subscription for a subsequent annual term upon receipt of Customer's payment of the renewal invoice. Esri will invoice fees for additional Learning and Services Credits or Technical Advisor services upon receipt of Customer's order.
- b. Pricing for annual program renewals and new or additional Services will be in accordance with Esri's standard pricing at the time of purchase or renewal.

9.11 Termination and Expiration. Upon termination or expiration of an Advantage Program subscription:

- a. Services will end as of the expiration or termination date stated; and
- b. Unless either party terminates the Advantage Program subscription for cause, Customer may apply any unused Learning and Services Credits toward any Professional Services, Training, PSS, or related travel expenses that are scheduled as of the termination or expiration date, provided that the Learning and Services Credits are used within 3 months after the termination or expiration date. Any other unused Learning and Services Credits will expire 30 days after the expiration or termination date; if Customer renews the Advantage Program subscription within this time period, any unused Learning and Services Credits will remain valid for up to 2 years from the purchase date or termination of this Agreement, whichever comes first.

ATTACHMENT A GLOSSARY OF TERMS

The following glossary of terms applies to all Esri Offerings and Services that Esri may provide to its customers. Certain Esri Offerings or Services may not be within the scope of this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

"Affiliate" means any entity that directly or indirectly (i) Controls; (ii) is Controlled by; or (iii) is under common Control with a party; where "Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

"API" means application programming interface.

"ArcGIS Website" means www.arcgis.com and any related or successor websites.

"Authorization Code(s)" means any key, authorization number, enablement code, login credential, activation code, token, user name and password, or other mechanism required for use of Esri Offerings.

"Beta" means any alpha, beta, or other prerelease version of a Product.

"Cloud Services" means Online Services and EMCS.

"Commercial ASP Use" means use as a commercial application service provider, that is, to generate revenue by providing access to Software or Online Services through a Value-Added Application, for example, by charging a subscription fee, service fee, or any other form of transaction fee or by generating more than incidental advertising revenue.

"Content" means data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, graphics components, icons, software, and other resources.

"Control" means having more than 50 percent of the voting stock or other voting interest in the Controlled entity.

"Customer Content" means any Content that Customer provides, uses, or develops in connection with Customer's use of Esri Offerings or Services, including Value-Added Applications. Customer Content excludes any feedback, suggestions, or requests for improvements that Customer provides to Esri.

"Data" means any commercially available digital dataset(s) including, but not limited to, geographic vector data, raster data reports, or associated tabular attributes, that Esri bundles with other Esri Offerings or delivers independently.

"Deliverables" means anything that Esri delivers to a Customer as a result of performance of Professional Services.

"Documentation" means all user reference documentation that Esri provides with a Deliverable or an Esri Offering.

"Esri Managed Cloud Services" or **"EMCS"** means a Customer-specific cloud infrastructure, Software, Data, and network platform that Esri hosts, manages, and makes available to Customer or Customer's end users via the Internet.

"Esri Offering(s)" means any Product or Documentation. If Esri provides Training or Professional Services directly to Customer, then Esri Offerings also include Deliverables provided on a firm fixed price basis and Training Materials. Esri Offerings exclude Services and Third-Party Content.

"GIS" means geographic information system.

"Maintenance" means a subscription program that Esri provides and that entitles Customer to Product updates and other benefits such as access to technical support and self-paced, web-based learning resources.

"Malicious Code" means software viruses; worms; time bombs; Trojan horses; or any other computer code, files, denial of service, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

"Named User(s)" is Customer's employee, agent, consultant, or contractor to whom Customer has assigned a unique secure named user login credential (identity) enabling access to a Product that requires such identity to access identity-managed capabilities within a Product for Customer's exclusive benefit. For educational use, Named Users may include registered students.

"Named User Credential(s)" means an individual person's login and associated password enabling that person to access and use Products.

"Named User License" means the right for a single Named User to use a specific Esri Offering.

"Online Services" means any commercially available, Internet-based geospatial system that Esri provides, including applications and associated APIs for storing, managing, publishing, and using maps, data, and other information. Online Services exclude Data and Content.

"Ordering Document(s)" means a sales quotation, Maintenance renewal quote, purchase order, proposal, Task Order, or other document identifying the Esri Offerings, updates, or Services that Customer orders.

"Perpetual License" means a license to use a version of the Esri Offering for which applicable license fees have been paid, indefinitely, unless terminated by Esri or Customer as authorized under this Agreement.

"Personal Use" means personal, noncommercial use by an individual Customer. Personal Use excludes use for the benefit of any third party, including commercial, educational, governmental, or nonprofit entities.

"Product(s)" means Software, Data, and Online Services.

"Professional Services" means any development or consulting services that Esri provides to Customer.

"Sample(s)" means sample code, sample applications, add-ons, or sample extensions of Products.

"Service(s)" means Maintenance. If Esri provides EMCS, Training, or Professional Services directly to Customer, then Services also include EMCS, Training, and Professional Services.

"Software" means any proprietary commercial off-the-shelf software, excluding Data, accessed or downloaded from an Esri-authorized website or that Esri delivers on any media in any format including backups, updates, service packs, patches, hot fixes, or permitted merged copies.

"Specification(s)" means (i) the Documentation for Software and Online Services, (ii) the scope of work set forth in any Task Order, or (iii) Esri's published course descriptions for Training.

"Task Order(s)" means an Ordering Document for Services.

"Term License" means a license for use of an Esri Offering for a limited time period ("**Term**").

"Third-Party Content" means any Content that Customer may obtain from a third-party website or that persons other than Esri employees, suppliers, or contractors may directly contribute to Esri's website.

"Training" means standard Product training that Esri provides under this Agreement.

"Training Materials" means digital or printed content required to complete Training, which may include, but is not limited to, workbooks, data, concepts, exercises, and exams.

"Value-Added Application(s)" means an application developed by Customer for use in conjunction with the authorized use of any Software, Data, or Online Services.

ATTACHMENT B GENERAL TERMS AND CONDITIONS

The following general terms and conditions apply to all Esri Offerings and Services that Esri may offer to its customers. Certain Esri Offerings or Services may not be available under this Agreement. Please disregard any terms that are not applicable to Esri Offerings or Services offered under this Agreement.

ARTICLE 1—GENERAL USE RESTRICTIONS

Except as expressly permitted in this Agreement, Customer will not

- a. Sell, rent, lease, sublicense, distribute, lend, time-share, or assign Esri Offerings;
- b. Distribute or provide direct access to Esri Offerings to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs;
- c. Distribute Authorization Codes to third parties;
- d. Reverse engineer, decompile, or disassemble any Product or Deliverable delivered in compiled form;
- e. Make any attempt to circumvent the technological measure(s) that controls access to or use of Esri Offerings;
- f. Store, cache, use, upload, distribute, or sublicense Content or otherwise use Esri Offerings in violation of Esri's or a third-party's rights, including intellectual property rights, privacy rights, nondiscrimination laws, export laws, or any other applicable law or regulation;
- g. Remove or obscure any Esri or its licensors' patent, copyright, trademark, proprietary rights notices, or legends contained in or affixed to any Esri Offerings, output, metadata file, or online or hard-copy attribution page of any Data or Documentation;
- h. Unbundle or independently use individual or component parts of Esri Offerings;
- i. Incorporate any portion of Esri Offerings into a product or service for third-party use that competes with the Esri Offerings;
- j. Publish or in any other way communicate the results of benchmark tests run on Beta Products without the prior written permission of Esri and its licensors; or
- k. Use, incorporate, modify, distribute, provide access to, or combine any Esri Offerings in a manner that would subject any part of the Esri Offerings to open-source or open-database license terms that require any part of the Esri Offerings to be:
 1. Disclosed in source code form to third parties;
 2. Licensed to third parties for the purpose of making derivative works; or
 3. Redistributable to third parties at no charge.

These restrictions will not apply to the extent that they conflict with applicable law or regulation.

ARTICLE 2—TERM AND TERMINATION

2.1 Customer may terminate this Agreement or any Esri Offerings license or subscription at any time upon written notice to Esri. Termination without cause does not entitle Customer to receive any refund of fees paid. Any right to terminate pending Services engagements for convenience is set forth in the applicable section in the body of this Agreement. Either party may terminate this Agreement or any license or subscription for a material breach that is not cured within 30 days of written notice to the breaching party. Upon any termination of this Agreement for breach, Esri will stop providing Services. Any licenses in Esri Offerings that survive termination of this Agreement continue under the terms of this Agreement.

2.2 If Esri terminates this Agreement following Customer's breach, then Esri may also, at its election, terminate Customer's licenses or subscriptions in Esri Offerings. If Customer terminates this Agreement for cause or convenience, then Customer may, at its election, also terminate Customer's licenses or subscriptions to Esri Offerings.

2.3 Upon any termination of a license or subscription, Customer will

- a. Stop accessing and using the terminated Esri Offerings;
- b. Clear any client-side data cache derived from the terminated Cloud Services; and

- c. Stop using and uninstall, remove, and destroy all copies of affected Esri Offerings in Customer's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Esri or its authorized distributor.

Esri may stop performing Services immediately upon written notice to Customer if a bankruptcy or insolvency proceeding is commenced by or against Customer until the trustee cures any existing defaults and provides adequate assurance of future performance under this Agreement. This Agreement terminates upon the insolvency, liquidation, or dissolution of either party.

ARTICLE 3—LIMITED WARRANTIES AND DISCLAIMERS

3.1 Limited Warranties. Except as disclaimed below, Esri warrants to Customer that (i) Products and Training will substantially comply with the applicable Specifications and (ii) Services will substantially conform to the professional and technical standards of the industry. The warranty period for Esri Offerings and Services offered under a Perpetual License runs for 90 days from the date of delivery or from the date of acceptance if this Agreement provides an acceptance period. The warranty period for Esri Offerings and Services offered under a subscription or Term License basis runs for the lesser of (i) the duration of the subscription or term or (ii) 90 days from delivery or acceptance if this Agreement provides an acceptance period.

3.2 Special Disclaimer. Third-Party Content; Data; Samples; hot fixes; patches; updates; Online Services provided at no charge; and trial, evaluation and Beta Products are delivered "as is" and without warranty of any kind.

3.3 General Disclaimer. Except for the express limited warranties set forth in this Agreement, Esri disclaims all other warranties or conditions of any kind, whether express or implied, including, but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, and noninfringement of intellectual property rights. Esri is not responsible for any nonconformities caused by Customer's modification of any Esri Offering other than as specified in the Documentation. Esri does not warrant that Esri Offerings, or Customer's operation of the same, will be uninterrupted, error free, fault tolerant, or fail-safe or that all nonconformities can or will be corrected. Esri Offerings are not designed, manufactured, or intended for use in environments or applications that may lead to death, personal injury, or physical property or environmental damage. Customer should not follow any navigational route suggestions that appear to be hazardous, unsafe, or illegal. Any such uses will be at Customer's own risk and cost.

3.4 Disclaimers

- a. **Internet Disclaimer.** Neither party will be liable for damages under any theory of law related to the performance or discontinuance of operation of the Internet or to regulation of the Internet that might restrict or prohibit the operation of Cloud Services.
- b. **Third-Party Websites; Third-Party Content.** Esri is not responsible for any third-party website or Third-Party Content that appears in or is referenced by Esri Offerings or Esri websites, including www.esri.com and www.arcgis.com. Providing links to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.

3.5 Exclusive Remedy. Customer's exclusive remedy and Esri's entire liability for breach of the limited warranties in this section will be to replace any defective media and to (i) repair, correct, or provide a workaround for the applicable Esri Offering or Services or (ii) at Esri's election, terminate Customer's right to use and refund the fees paid for Esri Offerings or Services that do not meet Esri's limited warranties.

ARTICLE 4—LIMITATION OF LIABILITY

4.1 Disclaimer of Liability. Neither Customer, Esri, nor any Esri distributor or licensor will be liable for any indirect, special, incidental, or consequential damages; lost profits; lost sales; loss of goodwill; costs of procurement of substitute goods or services; or damages exceeding the applicable license or current subscription fees paid or owed to Esri for the Esri Offerings giving rise to the cause of action.

4.2 The limitations and exclusions of liability in the preceding paragraph do not apply to Customer's infringement, misuse, or misappropriation of Esri's or Esri's licensors' intellectual property rights, either party's indemnification obligations, gross negligence, willful misconduct, or violations of the Export Compliance clause of this Agreement or any applicable law or regulation.

4.3 **Applicability of Disclaimers and Limitations.** Esri or its authorized distributor has set its fees and entered into this Agreement in reliance on the disclaimers and limitations in this Agreement; the fees reflect an allocation of risk that is an essential basis of the bargain between the parties. **These limitations will apply whether or not a party is aware of the possibility of any damage and notwithstanding any failure of essential purpose of any exclusive, limited remedy.**

4.4 The foregoing disclaimers, limitations, and exclusions may be invalid in some jurisdictions and apply only to the extent permitted by applicable law or regulation in Customer's jurisdiction. Customer may have additional rights that may not be waived or disclaimed. Esri does not seek to limit Customer's warranty or remedies to any extent not permitted by law.

ARTICLE 5—INDEMNIFICATIONS

5.1 **Definitions.** The following definitions supplement the definitions provided in Attachment A:

- a. "Claim" means any claim, action, or demand by a third party.
- b. "Indemnitees" means Customer and its directors, elected officials and employees.
- c. "Infringement Claim(s)" means any Claim alleging that Customer's use of or access to Esri Offerings or Services infringe a patent, copyright, trademark, or trade secret.
- d. "Loss(es)" means out-of-pocket loss, damage award, settlement amount, cost, or expense, including awarded attorneys' fees.

5.2 Infringement Indemnity

- a. ESRI will DEFEND and HOLD ALL INDEMNITEES HARMLESS from any Infringement Claim and INDEMNIFY any Loss arising out of an Infringement Claim as set forth in the following paragraphs.
- b. If ESRI determines that an Infringement Claim is valid, Esri may, at its expense, either (i) obtain rights for Customer to continue using the Esri Offerings or Services or (ii) modify the Esri Offerings or Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, Esri may terminate Customer's right to use the Esri Offerings or Services and will refund any (a) license fees that Customer paid for the infringing Esri Offerings or Services acquired under a Perpetual License, prorated on a 5-year, straight-line depreciation basis beginning from the initial date of delivery or (b) unused portion of fees paid for Term Licenses, Subscriptions, and Maintenance.
- c. Esri has NO OBLIGATION TO DEFEND an Infringement Claim or to INDEMNIFY Customer to the extent the Infringement Claim arises out of (i) the combination or integration of Esri Offerings or Services with a product, process, system, or element that Esri has not supplied or specified in the Specification; (ii) alteration of Esri Offerings or Services by anyone other than Esri or its subcontractors; (iii) compliance with Customer's specifications; or (iv) use of Esri Offerings or Services after Esri either provides a modified version to avoid infringement or terminates Customer's right to use the Esri Offerings or Services.

5.3 **General Indemnity.** ESRI will DEFEND and HOLD ALL INDEMNITEES HARMLESS from, and INDEMNIFY any Loss arising out of, any Claim for bodily injury, death, or tangible or real property damage brought against any of the INDEMNITEES to the extent arising from any negligent act or omission or willful misconduct by ESRI or its directors, officers, employees, or agents performing Services while on Customer's site.

5.4 **Conditions for Indemnification.** As conditions for indemnification, Indemnitee will (i) promptly notify Esri in writing of the Claim, (ii) provide all available documents describing the Claim, (iii) give Esri sole control of the

defense of any action and negotiation related to the defense or settlement of any Infringement Claim, and (iv) reasonably cooperate in the defense of the Infringement Claim at Esri's request and expense.

5.5 This section sets forth the entire obligation of Esri, its authorized distributor, and its licensors regarding any Infringement Claim.

ARTICLE 6—INSURANCE

Insurance. Within sixty (60) days of signature of this Agreement and annually thereafter, if required, Esri will furnish an original completed Certificate of Insurance to City's Information Technology Service Department and City's Risk Management Division executed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon.

Esri's financial integrity is of interest to City, therefore, subject to Esri's right to maintain reasonable deductibles, Esri shall obtain and maintain in full force and effect for the duration of this Agreement, at Esri's sole expense, insurance coverage written on an occurrence basis, except for professional liability, in the following types and amounts:

MINIMUM AMOUNTS

1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000 per occurrence
3. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Product-/completed operations d. Personal Injury e. Contractual liability	Combined Single Limit for Bodily Injury and Property damage of \$1,000,000 per occurrence. General Aggregate limit of \$2,000,000 occurrence
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims made form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services.

Esri's insurer will provide 30 day notice to Esri of any of cancellation or nonrenewal of the Commercial General Liability, Automobile Liability, Professional Liability, and/or Workers Compensation/Employers Liability policies. Within 20 days after receipt of such notice, Esri will have its carrier provide notice to City, provided that no such notice is required if Esri buys a replacement policy that ensures continuous coverage and otherwise complies with the requirements of this paragraph. All notices under this Article shall be given to City at the following addresses:

City of San Antonio
Information Technology Service Department
Attn: Kevin Goodwin
PO Box 39966
San Antonio, Texas 78283

Nothing herein contained shall be construed as limiting in any way the extent to which Esri may be held responsible for payments of damages to persons or property.

ARTICLE 7—SECURITY AND COMPLIANCE

7.1 Security. Esri publishes its security capabilities at <http://trust.arcgis.com>. Customer may give Esri personnel access to Customer systems or to Customer or third-party personal information, controlled information, or sensitive data if access is essential for Esri's performance of Services and if Esri expressly agrees to such access. Esri will use reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. Customer bears responsibility to (i) confirm that Esri's published security and privacy controls meet all applicable legal requirements for protection of Customer Content and (ii) upload or share Customer Content through Cloud Services only when it is legal to do so. Esri is not responsible to review Customer Content to ensure compliance with applicable laws and regulations. Customer must contact Esri at securesupport@esri.com for further instruction before providing any Customer Content that requires security measures other than Esri's published security capabilities.

7.2 Malicious Code. Esri will use commercially reasonable efforts to ensure that Esri Offerings will not transmit any Malicious Code to Customer. Esri is not responsible for Malicious Code that Customer introduces to Esri Offerings or that is introduced through Third-Party Content.

7.3 Export Compliance. Each party will comply with all applicable export laws and regulations, including the US Department of Commerce's Export Administration Regulations (EAR), the US Department of State's International Traffic in Arms Regulations (ITAR), and other applicable export laws. Customer will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of Services or Esri Offerings to any United States embargoed countries or denied entities or persons except in accordance with all then-current applicable US government export laws and regulations. Customer will not export, reexport, transfer, or use Services or Esri Offerings for certain missile, nuclear, chemical, or biological activities or end uses without proper authorization from the US government. Customer shall immediately notify Esri in writing if any US government entity or agency denies, suspends, or revokes Customer's export privileges. Customer will not upload, store, or process in Cloud Services any Customer Content that (i) has an Export Control Classification Number (ECCN) other than EAR99 or (ii) is controlled for export from the United States under ITAR. Customer will notify Esri in advance if Esri's performance of any Services or provision of any Esri Offerings is related to any defense article, defense service, or technical data, as defined under the ITAR Sections 120.6, 120.9, and 120.10, respectively; Esri will not perform any such Services or provide any such Esri Offerings until Esri obtains any necessary export license from the US government. Customer will reasonably assist Esri in applying for and obtaining an export license if needed.

ARTICLE 8—CLOUD SERVICES

8.1 Prohibited Uses. Customer shall not provide Customer Content or otherwise access or use Cloud Services in a manner that

- a. Spams, spoofs, or phishes email; transmits junk email or offensive or defamatory material; or stalks or makes threats of physical harm;
- b. Stores or transmits any Malicious Code;
- c. Violates any law or regulation;
- d. Infringes or misappropriates the rights of any third party;
- e. Probes, scans, or tests the vulnerability of Cloud Services or breach any security or authentication measures used by Cloud Services without written approval from Esri's product security officer; or
- f. Benchmarks the availability, performance, or functionality of Cloud Services for competitive purposes.

8.2 Service Interruption. System failures or other events beyond Esri's reasonable control may interrupt Customer's access to Cloud Services. Esri may not be able to provide advance notice of such interruptions.

8.3 Customer Content.

- a. Customer grants Esri and its subcontractors a nonexclusive, nontransferable, worldwide right to host, run, modify and reproduce Customer Content as needed to provide Cloud Services to Customer. Esri will not access, use, or disclose Customer Content without Customer's written permission except as reasonably

necessary to support Customer's use of Cloud Services. Except for the limited rights granted to Esri under this Agreement, Customer retains all its rights, title, and interest in the Customer Content.

- b. If Customer accesses Cloud Services with an application provided by a third party, Esri may disclose Customer Content to such third party as necessary to enable interoperation between the application, Cloud Services, and Customer Content.
- c. Esri may disclose Customer Content if required to do so by law or regulation or by order of a court or other government body, in which case Esri will reasonably attempt to limit the scope of disclosure.
- d. When Customer's use of Cloud Services ends, Esri will either:
 - (i) Make Customer Content available to Customer for download for a period of 30 days unless Customer requests a shorter window of availability or Esri is legally prohibited from doing so; or
 - (ii) Download all Customer Content in Esri's possession to a medium of Customer's choosing and deliver such Customer Content to Customer.

Esri will have no further obligations to store or return Customer Content at the conclusion of the Cloud Services.

8.4 Removal of Customer Content. Esri may remove or delete Customer Content if there is reason to believe that uploading Customer Content to or using it with Cloud Services materially violates this Agreement. If reasonable under these circumstances, Esri will notify Customer before removing Customer Content. Esri will respond to any Digital Millennium Copyright Act takedown notices in accordance with Esri's copyright policy, available at www.esri.com/legal/dmca_policy.

8.5 Service Suspension. Esri may suspend access to Cloud Services (i) if Customer materially breaches this Agreement and fails to timely cure the breach; (ii) if Esri reasonably believes that Customer's use of Cloud Services will subject Esri to immediate liability or adversely affect the integrity, functionality, or usability of the Cloud Services; (iii) for scheduled maintenance; (iv) to enjoin a threat or attack on Cloud Services; or (v) if Cloud Services become prohibited by law or regulated to a degree that continuing to provide them would impose a commercial hardship. When feasible, Esri will notify Customer of any Cloud Services suspension beforehand and give Customer reasonable opportunity to take remedial action.

Esri is not responsible for any damages, liabilities, or losses that may result from any interruption or suspension of Cloud Services or removal of Customer's content as described above.

8.6 Notice to Esri. Customer will promptly notify Esri if Customer becomes aware of any unauthorized use of Customer's subscription or any other breach of security regarding Cloud Services.

ARTICLE 9—GENERAL PROVISIONS

9.1 Payment. Customer will pay each correct invoice no later than 30 days after receipt and will remit payment to the address stated on the invoice. Customers outside the United States will pay the distributor's invoices in accordance with the distributor's payment terms.

9.2 Feedback. Esri may freely use any feedback, suggestions, or requests for Product improvement that Customer provides to Esri.

9.3 Patents. Customer may not seek, and may not permit any other user to seek, a patent or similar right worldwide that is based on or incorporates any Products. This express prohibition on patenting will not apply to Customer's software and technology except to the extent that Products, or any portion thereof, are part of any claim or preferred embodiment in a patent application or a similar application.

9.4 Restrictions on Solicitation. Neither party will solicit for hire any employee of the other party who is associated with the performance of Services during the performance of the Services and for a period of 1 year thereafter. This does not restrict either party from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

9.5 Taxes and Fees; Shipping Charges. Fees that Esri quotes to Customer are exclusive of any and all applicable taxes or fees including, but not limited to, sales tax, use tax, or value-added tax (VAT); customs, duties, or tariffs; and shipping and handling charges. Esri will add any such taxes that it is required to remit to the

total amount of its invoice to the Customer. For Customers outside the United States, the distributor may quote taxes or fees in accordance with its own policies.

9.6 Compliance Review. Both parties will keep accurate and complete records and accounts pertaining to their compliance with the obligations under this Agreement for 4 years from the date of termination of this Agreement. Esri or its authorized distributor may conduct a compliance review of these records and accounts with no less than 14 business days' written notice or may appoint an independent third party to conduct such a compliance review on its behalf. Customer will promptly correct any noncompliance identified during the compliance review. Neither Esri nor Esri's distributor may conduct a compliance review of Customer within 12 months after the conclusion of any prior compliance review that does not reveal any material Customer noncompliance.

9.7 No Implied Waivers. The failure of either party to enforce any provision of this Agreement is not a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

9.8 Severability. If any provision of this Agreement is held to be unenforceable for any reason, (i) such provision will be reformed only to the extent necessary to make the intent of the language enforceable, and (ii) all other provisions of this Agreement will remain in effect.

9.9 Successor and Assigns. Customer will not assign, sublicense, or transfer Customer's rights or delegate Customer's obligations under this Agreement without Esri's and its authorized distributor's prior written consent, and any attempt to do so without consent will be void. This Agreement will be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a contractor under contract to the government to deliver Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Esri, provided the government customer assents to the terms of this Agreement. Upon mutual agreement, Esri's Affiliates may provide Services under the terms of this Agreement; in such cases, the Ordering Documents will identify the Affiliate as the party that provides the Services. Esri's distributors are not Affiliates of Esri.

9.10 Survival of Terms. The Glossary of Terms and provisions of the following Articles of these General Terms and Conditions will survive the expiration or termination of this Agreement: "Limited Warranties and Disclaimers," "Limitation of Liability," "Indemnifications," and "General Provisions."

9.11 US Government Customer. The Products are commercial items, developed at private expense, provided to Customer under this Agreement. If Customer is a US government entity or US government contractor, Esri licenses or provides subscriptions to Customer in accordance with this Agreement under FAR Subparts 12.211/12.212 or DFARS Subpart 227.7202. Esri Data and Online Services are licensed or subscribed under the same DFARS Subpart 227.7202 policy as commercial computer software for acquisitions made under DFARS. Products are subject to restrictions, and this Agreement strictly governs Customer's use, modification, performance, reproduction, release, display, or disclosure of Products. Agreement provisions that are inconsistent with federal law regulation will not apply. A US government Customer may transfer Software to any of its facilities to which it transfers the computer(s) on which it has installed such Software. If any court, arbitrator, or board holds that a US government Customer has greater rights to any portion of the Products under applicable public procurement law, such rights will extend only to the portions affected. Online Services are FISMA-Low authorized but do not meet higher security requirements including those found in DFARS 252.239-7010.

9.12 Governing Law. This Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods.

- a. **Government Entities.** If Customer is a government entity, the applicable laws of Customer's jurisdiction govern this Agreement.
- b. **Non-government Entities.** US federal law and the law of the State of Texas exclusively govern this Agreement, excluding their respective choice of law principles.

9.13 Dispute Resolution. The parties will use the following dispute resolution processes:

- a. **Equitable Relief.** Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.
- b. **US Government Agencies.** This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601-613).
- c. **Other Government Entities.** Esri will comply with mandatory dispute resolutions under applicable law.
- d. **Reserved.**

9.14 Force Majeure. A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may include, but are not limited to, acts of God, war, strikes, labor disputes, cyber attacks, laws, regulations, government orders, or any other force majeure event.

9.15 Independent Contractor. Esri is and at all times will be an independent contractor. Nothing in this Agreement creates an employer/employee, principal/agent, or joint venture relationship between Esri or its authorized distributor and Customer. No party has any authority to enter into contracts on behalf of another party or otherwise act on behalf of another party.

9.16 Notice. Customer may send notices required under this Agreement to Esri at the following address:

Environmental Systems Research Institute, Inc.
Attn: Contracts and Legal Department
380 New York Street
Redlands, CA 92373-8100
USA
Tel.: 909-793-2853
Email: LegalNotices@esri.com

9.18 Conflict of Interest. (A) The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City officer or employee;
- (ii) his parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

(B) Esri warrants and certifies as follows, that to the best of their knowledge and belief, at the time of contract execution to the knowledge of the person signing on behalf of Esri:

- (i) Esri and its officers, employees and agents are neither officers nor employees of the City.

(C) Esri acknowledges that City's reliance on the above warranties and certifications is reasonable.

9.19 Non-Discrimination. As a party to this EA, Esri understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further,

shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established in this EA.

9.20 Governing Law. (A) THIS AGREEMENT BETWEEN THE PARTIES SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

(B) Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this agreement between the parties shall be heard and determined in federal and state courts located in the City of San Antonio, Bexar County, Texas.

**ATTACHMENT C
SAMPLE TASK ORDER**

Esri Agreement No. _____
Task Order No. _____

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

1. Scope of Work: *[As applicable, specifically identify and describe Deliverables including custom code, map data, and technical data (including technical assistance) and the resources to be provided by Customer (including Customer-supplied personnel, software, hardware, and digital or hard-copy data), and place of delivery and location where technical assistance will be provided.]*

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

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

ACCEPTED AND AGREED:

[sample only—do not sign]
(Customer)

Signature: [sample only—do not sign]

Printed Name: _____

Title: _____

Date: _____

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

Signature: [sample only—do not sign]

Printed Name: _____

Title: _____

Date: _____

**ATTACHMENT D
TIME AND MATERIALS RATE SCHEDULE**

See Quotation for Pricing.