



Amendment No. 5
to
MA 5600 NS180000002
for
Software and Maintenance Services
between
Environmental Systems Research Institute, Inc. (Contractor)
and the
City of Austin

1.0 The above referenced contract is amended as follows:

Revise Exhibit A (Enterprise License Terms and Conditions) as per attached.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Contract: 10/1/17-11/30/21	\$5,225,000.00	\$5,225,000.00
Amendment No. 1: Modification of Appendix B-EA Fee Schedule	\$0.00	\$5,225,000.00
Amendment No. 2: Modification of Appendix A and replacement of Appendix B	\$0.00	\$5,225,000.00
Amendment No. 3: Additional ArcGIS term licenses	\$99,375.00	\$5,324,375.00
Amendment No. 4: Modification of Appendix A	\$0.00	\$5,324,375.00
Amendment No. 5: Council Authorized, August 31, 2017 addition of Revised Appendix A and Revised Appendix B. (TOTAL available \$5,833,333.00)	Year 3 \$99,500.00 Year 4 \$13,500.00 Total: \$113,000.00	\$5,437,375.00

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas or the City of Austin.

5.0 All other terms and conditions remain the same.

By signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

Authorized Representative:

Contractor Signature: Chris Johnson

Printed Name: Chris Johnson

Date: Jun 4, 2020

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

Signature: Sai Xoomsai Purcell
Signature: Sai Xoomsai Purcell (Jun 5, 2020 15:50 CDT)
City of Austin Purchasing Office

Printed Name: Sai Xoomsai Purcell

Date: Jun 5, 2020

City of Austin
124 W. 8th St. Ste. 310
Austin, TX 78701

AMENDMENT NO. 5
TO SOFTWARE AND MAINTENANCE SERVICES
CONTRACT



CITY OF AUSTIN CONTRACT: MA 5600 NS180000002
ESRI ENTERPRISE AGREEMENT: 324293

This Amendment No. 5 is entered into by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Environmental Systems Research Institute, Inc. ("Contractor"), having offices at 380 New York Street, Redlands, CA and is effective as of the date of the last party to sign below ("Amendment 5 Effective Date").

WHEREAS, Contractor and City entered into a Software and Maintenance Services Agreement, which also includes Esri Enterprise Agreement and Esri Master Agreement with an Effective Date of October 1, 2017 ("Contract"); and

WHEREAS, Contractor and City desire to amend the Contract to include additional Products at an additional cost of ninety-nine thousand, five hundred dollars (\$99,500) in Year 3 of the Contract and an additional cost of thirteen thousand, five hundred dollars in Year 4 of the Contract (\$13,500).

NOW THEREFORE, Contractor and City agree to the following, which shall become effective on the last date of signature:

1. Appendix A Products and Deployment Schedule Table A-2 EA Products-Capped Quantities is hereby deleted entirely and replaced with the attached Table A-2 EA Products-Capped Quantities, which shall supersede and apply on the Amendment 5 Effective Date.
2. Appendix B EA Fee Schedule is hereby deleted entirely and replaced with the attached B EA Fee Schedule, which shall supersede and apply on the Amendment 5 Effective Date.

Except as may be specifically modified by this Amendment No. 5, all other terms and conditions of the Contract and any Amendment(s) or Addendum(s) constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements or representations, written or oral, concerning the subject matter of this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 5 as of the date of the last party to sign below.

ENVIRONMENTAL SYSTEMS RESEARCH
INSTITUTE, INC. (Contractor)

By: Chris Johnson
Signature

Name: Chris Johnson
Printed Name

Title: Manager, Comm'l & Gov't Contracts

Date: Jun 4, 2020

CITY OF AUSTIN
(City)

By: Sai Xoomsai Purcell
Signature

Name: Sai Xoomsai Purcell
Printed Name

Title: Procurement Supervisor

Date: Jun 5, 2020

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

Item	Rolled-In Qty. (if applicable)	Qty. to Be Deployed	Total
ArcGIS Developer Subscription (Professional Level annual subscription)	-	15	15
ArcGIS Developer Subscription (Enterprise Level annual subscription)	-	10	10
ArcGIS for Aviation: Airports (Single Use)	-	5	5
Esri Business Analyst for Desktop Standard (TX)	2	-	2
ArcGIS Image Server Extension	-	1	1
ArcGIS GeoEvent Server (Production License)	-	2	2
ArcGIS GeoEvent Server (Staging License)	-	1	1
ArcGIS GeoAnalytics Server (Production License)	-	1	1
ArcGIS GeoAnalytics Server (Staging License)	-	1	1
ArcGIS Utility Network Management for ArcGIS GIS Server Advanced (up to 4 cores) Term License	-	2	2
ArcGIS Hub Premium Term License*	-	1	1
Block of 1,000 Additional Community Identities*	-	1	1
Image Analyst (for use with ArcGIS Pro) Concurrent Use*	-	1	1

Product	Number of Subscriptions	Total Named Users	Total Annual Credits
ArcGIS Online	1 (City) 1 (Austin Water)	1,400 Viewers 1,600 Creators	Year 1- 600,000 Year 2- 675,000 Year 3- 725,000 Year 4- 800,000
ArcGIS Enterprise	N/A	5 Creators	N/A
Community Analyst Online	N/A	50	N/A
GeoPlanner for ArcGIS, Term License	N/A	1	N/A
Navigator for ArcGIS, Term License	N/A	50	N/A
Tracker for ArcGIS Online, Term License*	N/A	80	N/A
Drone2Map, Subscription	N/A	5	N/A
Insights for ArcGIS Online, Term License	N/A	Year 1 - 5 Year 2 - 10 Year 3 - 15 Year 4 - 20	N/A
Insights for ArcGIS Enterprise Named User Term License	N/A	10	N/A

*Modified by this Amendment No. 5.

Existing Concurrent Use Rolled-In Products

Maintenance Items	Concurrent Use	Quantity
Desktop Advanced	CU	250
Desktop Standard	CU	50
3D Analyst	CU	125
Data Reviewer	CU	30
Geostatistical Analyst	CU	10
Network Analyst	CU	100
Publisher	CU	30
Schematics	CU	25
Spatial Analyst	CU	100
Workflow Manager	CU	30
Tracking Analyst	CU	10
CityEngine Advanced	CU	1

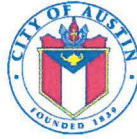
**APPENDIX B
EA FEE SCHEDULE**

The EA Fee is \$5,437,375*. The EA Fee is in consideration of the EA Products, EA Maintenance, Esri User Conference registrations, *Premium Support Services*, and Esri Enterprise Advantage Program.

	Year 1 October 1, 2017 to November 30, 2018	Year 2 December 1, 2018 to November 30, 2019	Year 3 December 1, 2019 to November 30, 2020	Year 4 December 1, 2020 to November 30, 2021	EA Fee
Payments	\$1,539,375	\$1,235,000	\$1,349,500*	\$1,313,500*	\$5,437,375*

Number of Esri User Conference Registrations per Year	30
Number of Esri User Conference Registrations per Year	5
Number of Tier 1 Help Desk Callers That May Contact Esri for Tier 2 Support	10
Term of EA	4 Years and 2 months through November 30, 2021
Esri Enterprise Advantage Program (EEAP)	<u>400</u> Technical Advisory Hours per Year (300 for City of Austin & 100 for Austin Water) <u>750*</u> Learning and Services Credits for Year 3, and <u>600 Learning and Services Credits</u> for Year 4 Two Annual 1-day Planning Sessions (1 for City of Austin, 1 for Austin Water)
<i>Premium Support Services (PSS)</i>	<u>Unlimited Incidents</u> <u>2 Authorized PSS Callers</u>

*Modified by this Amendment No. 5.



Amendment No. 4
to
MA 5600 NS180000002
for
Software and Maintenance Services
between
Environmental Systems Research Institute, Inc. (Contractor)
and the
City of Austin

1.0 The above referenced contract is amended as follows:

Revise Exhibit A (Enterprise License Terms and Conditions) as per attached.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Contract: 10/1/17 – 11/30/21	\$5,225,000.00	\$5,225,000.00
Amendment No. 1: Modification of Appendix B – EA Fee Schedule	\$0.00	\$5,225,000.00
Amendment No. 2: Modification of Appendix A and replacement of Appendix B	\$0.00	\$5,225,000.00
Amendment No. 3: Additional ArcGIS term licenses	\$99,375	\$5,324,375.00
Amendment No. 4: Modification of Appendix A	\$0.00	\$5,324,375.00

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas or the City of Austin.

5.0 All other terms and conditions remain the same.

By the signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

Authorized Representative:

Contractor Signature: TB-

Printed Name: Timothy Brazeal
Manager, Commercial & Government Contracts

Date: JUNE 27, 2019

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

Signature: [Signature]

City of Austin Purchasing Office
Printed Name: Gil E. [Signature]

Date: 6/27/19

City of Austin
124 W. 8th St., Ste. 310
Austin, TX 78701

**AMENDMENT NO. 4
TO SOFTWARE AND MAINTENANCE SERVICES
CONTRACT**



**CITY OF AUSTIN CONTRACT: MA 5600 NS180000002
ESRI ENTERPRISE AGREEMENT: 324293**

This Amendment No. 4 is entered into by and between the **City of Austin** ("**City**"), a home-rule municipality incorporated by the State of Texas, and Environmental Systems Research Institute, Inc. ("**Contractor**"), having offices at 380 New York Street, Redlands, CA.

WHEREAS, Contractor and City entered into a Software and Maintenance Services Agreement, which also includes Esri Enterprise Agreement and Esri Master Agreement with an Effective Date of October 1, 2017 ("**Contract**"); and

WHEREAS, Contractor and City desire to amend the Contract to include additional licenses at no additional cost;

NOW THEREFORE, Contractor and City agree to the following, which shall become effective on the last date of signature:

1. Appendix A Products and Deployment Schedule Table A-2 EA Products-Capped Quantities is hereby deleted entirely and replaced with the attached Table A-2 EA Products-Capped Quantities.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

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

Item	Rolled-In Qty. (if applicable)	Qty. to Be Deployed	Total
ArcGIS Developer Subscription (Professional Level annual subscription)	-	15	15
ArcGIS Developer Subscription (Enterprise Level annual subscription)	-	10	10
ArcGIS for Aviation: Airports (Single Use)	-	5	5
Esri Business Analyst for Desktop Standard (TX)	2	-	2
ArcGIS Image Server Extension	-	1	1
ArcGIS GeoEvent Server (Production License)	-	2	2
ArcGIS GeoEvent Server (Staging License)	-	1	1
ArcGIS GeoAnalytics Server (Production License)	-	1	1
ArcGIS GeoAnalytics Server (Staging License)	-	1	1
ArcGIS Utility Network Management for ArcGIS GIS Server Advanced (up to 4 cores) Term License	-	2	2

Product	Number of Subscriptions	Total Named Users	Total Annual Credits
ArcGIS Online	1 (City) 1 (Austin Water)	1,400 Viewers 1,600 Creators	Year 1- 600,000 Year 2- 675,000 Year 3- 725,000 Year 4- 800,000
ArcGIS Enterprise	N/A	5 Creators	N/A
Community Analyst Online	N/A	50	N/A
GeoPlanner for ArcGIS, Term License	N/A	1	N/A
Navigator for ArcGIS, Term License	N/A	50	N/A
Drone2Map, Subscription	N/A	5	N/A
Insights for ArcGIS Online, Term License	N/A	Year 1 - 5 Year 2 - 10 Year 3 - 15 Year 4 - 20	N/A
Insights for ArcGIS Enterprise Named User Term License	N/A	10	N/A

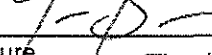
Existing Concurrent Use Rolled-In Products

Desktop Advanced	CU	250
Desktop Standard	CU	50
3D Analyst	CU	125
Data Reviewer	CU	30
Geostatistical Analyst	CU	10
Network Analyst	CU	100
Publisher	CU	30
Schematics	CU	25
Spatial Analyst	CU	100
Workflow Manager	CU	30
Tracking Analyst	CU	10
CityEngine Advanced	CU	1

Except as may be specifically modified by this Amendment No. 4, all other terms and conditions of the Contract and any Amendment(s) or Addendum(s) constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements or representations, written or oral, concerning the subject matter of this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 4 as of the date of the last party to sign below.

ENVIRONMENTAL SYSTEMS RESEARCH
INSTITUTE, INC. (Contractor)

By: 
Signature

Timothy Brazeal

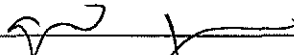
Manager, Commercial & Government Contracts

Name: _____
Printed Name

Title: _____

Date: JUNE 27, 2019

CITY OF AUSTIN
(City)

By: 
Signature

Name: Gil Jilka
Printed Name

Title: Contract Management Specialist III

Date: 6/27/19



Amendment No. 3
to
MA 5600 NS180000002
for
Software and Maintenance Services
between
Environmental Systems Research Institute, Inc. (Contractor)
and the
City of Austin

1.0 The above referenced contract is amended as follows:

Revise Exhibit A (Enterprise License Terms and Conditions), Appendix B (EA Fee Schedule), as per attached.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Contract: 10/1/17 – 11/30/21	\$5,225,000.00	\$5,225,000.00
Amendment No. 1: Modification of Appendix B – EA Fee Schedule	\$0.00	\$5,225,000.00
Amendment No. 2: Modification of Appendix A and replacement of Appendix B	\$0.00	\$5,225,000.00
Amendment No. 3: Additional ArcGIS term licenses	\$99,375	\$5,324,375.00

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas or the City of Austin.

5.0 All other terms and conditions remain the same.

By the signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

Authorized Representative:

Contractor Signature: T-B-

Printed Name: Timothy Brazeal, Manager, Commercial & Government Contracts

Date: August 7, 2018

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

Signature: [Signature]

City of Austin Purchasing Office

Printed Name: JANE T. HOWARD

Date: 8/10/18

City of Austin
124 W. 8th St., Ste. 310
Austin, TX 78701

**AMENDMENT NO. 3
TO SOFTWARE AND MAINTENANCE SERVICES
CONTRACT**



**CITY OF AUSTIN CONTRACT: MA 5600 NS180000002
ESRI ENTERPRISE AGREEMENT: 324293
ESRI MASTER AGREEMENT: 324294**

This Amendment No. 3 is entered into by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Environmental Systems Research Institute, Inc. ("Contractor"), having offices at 380 New York Street, Redlands, CA.

WHEREAS, Contractor and City entered into a Software and Maintenance Services Agreement, which also includes Esri Enterprise Agreement and Esri Master Agreement with an Effective Date of October 1, 2017 ("Contract"); and

WHEREAS, Contractor and City desire to amend the Contract to include additional ArcGIS term licenses for ninety-nine thousand, three hundred and seventy-five dollars (\$99,375) and an effective date of September 1, 2018.

NOW THEREFORE, Contractor and City agree to the following, which shall become effective on the last date of signature.

1. Table A-2 (EA Products-Capped Quantities) within Appendix A (Products and Deployment Schedule) is hereby deleted entirely and replaced with the below Table A-2 (EA Products- Capped Quantities). (*Changes shown in bold italics.*)

Item	Rolled-In Qty. (if applicable)	Qty. to Be Deployed	Total
ArcGIS Developer Subscription Professional	-	15	15
ArcGIS Developer Subscription Enterprise	-	10	10
ArcGIS for Aviation: Airports (Single Use)	-	5	5
ArcGIS Enterprise- GeoEvent Server	-	1	1
Esri Business Analyst for Desktop Standard (TX)	2	-	2
<i>GeoEvent Server (Production License)</i>	-	<i>1</i>	<i>1</i>
<i>GeoEvent Server (Staging License)</i>	-	<i>1</i>	<i>1</i>
<i>GeoAnalytics Server (Production License)</i>	-	<i>1</i>	<i>1</i>
<i>GeoAnalytics Server (Staging License)</i>	-	<i>1</i>	<i>1</i>

Product	Number of Subscriptions	Total Named Users Per Year	Total Annual Credits
ArcGIS Online Subscription	1 (City) 1 (Austin Water)	<i>Level 1 (1,300)</i> <i>Level 2 (1,600)</i>	Year 1- 600,000 Year 2- 675,000 Year 3- 725,000 Year 4- 800,000
Community Analyst Online	N/A	50 Named Users	N/A
GeoPlanner for ArcGIS, Term License	N/A	1 Named User	N/A
Navigator for ArcGIS, Term License	N/A	50 Named Users	N/A
Drone2Map, Subscription	N/A	5 Named Users	N/A
Insights for ArcGIS Online, Term License	N/A	Year 1- 5 Named Users Year 2- 10 Named Users Year 3- 15 Named Users Year 4- 20 Named Users	N/A
Insights for <i>ArcGIS Enterprise</i> , Term License	N/A	5 Named Users	N/A

2. The City will pay Esri \$99,375 upon execution of Amendment 3.

3. Appendix B (EA FEE SCHEDULE) of the Esri Enterprise Agreement, is hereby deleted in its entirety and replaced with the below Appendix B (EA FEE SCHEDULE) to account for an increase of ninety-nine thousand, three hundred and seventy-five dollars (\$99,375). (*Changes shown in bold italics.*)

**APPENDIX B
EA FEE SCHEDULE**

The EA Fee is **\$5,324,375**. The EA Fee is in consideration of the EA Products, EA Maintenance, Esri User Conference registrations, Premium Support Services, and Esri Enterprise Advantage Program.

	Year 1 October 1, 2017 to November 30, 2018	Year 2 December 1, 2018 to November 30, 2019	Year 3 December 1, 2019 to November 30, 2020	Year 4 December 1, 2020 to November 30, 2021	EA Fee
Payments	\$1,539,375	\$1,235,000	\$1,250,000	\$1,300,000	\$5,324,375

Number of Esri User Conference Registrations per Year	30
Number of Esri User Conference Registrations per Year	5
Number of Tier 1 Help Desk Callers That May Contact Esri for Tier 2 Support	10
Term of EA	4 Years and 2 months through November 30, 2021
Esri Enterprise Advantage Program (EEAP)	400 Technical Advisory Hours per Year (300 for City of Austin & 100 for Austin Water) 600 Learning and Services Credits per Year Two Annual 1-day Planning Sessions (1 for City of Austin, 1 for Austin Water)
Premium Support Services (PSS)	Unlimited Incidents 2 Authorized PSS Callers

Except as may be specifically modified by this Contract No. 3, all other terms and conditions of the Contract and any Amendment(s) or Addendum(s) constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements or representations, written or oral, concerning the subject matter of this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract No. 3 as of the date of the last party to sign below.

ACCEPTED AND AGREED

ENVIRONMENTAL SYSTEMS RESEARCH
INSTITUTE, INC.

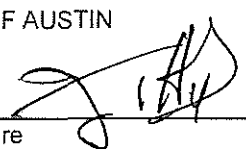
By: 
Signature

Name: Timothy Brazeal
Printed Name

Title: Manager, Commercial & Government Contracts

Date: August 7, 2018

CITY OF AUSTIN

By: 
Signature

Name: JAMES T. HOWARD
Printed Name

Title: IT Procurement Mgr

Date: 8/10/18



Amendment No. 2
to
MA 5600 NS180000002
for
Software and Maintenance Services
between
Environmental Systems Research Institute, Inc. (Contractor)
and the
City of Austin

1.0 The above referenced contract is amended as follows:

Revise Exhibit A, Enterprise License Terms and Conditions, Appendix B-EA Fee Schedule, as per attached.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Contract: 10/1/17 – 11/30/21	\$5,225,000.00	\$5,225,000.00
Amendment No. 1: Modification of Appendix B – EA Fee Schedule	\$0.00	\$5,225,000.00
Amendment No. 2: Modification of Appendix A and replacement of Appendix B	\$0.00	\$5,225,000.00

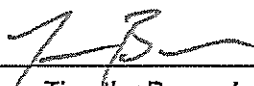
3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas or the City of Austin.

5.0 All other terms and conditions remain the same.

By the signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

Authorized Representative:

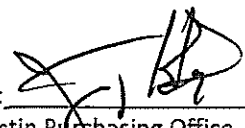
Contractor Signature: 

Printed Name: Timothy Brazeal
Manager, Commercial & Government Contracts

Date: JUNE 1, 2018

~~50 Enterprise Systems Research Institute, Inc.~~
380 New York Street
Redlands, CA 92373

**ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.**

Signature: 

City of Austin Purchasing Office
Printed Name: JAMES T. HOWARD

Date: 6/4/18

City of Austin
124 W. 8th St., Ste. 310
Austin, TX 78701

**AMENDMENT NO. 2
TO SOFTWARE AND MAINTENANCE SERVICES
CONTRACT**



**CITY OF AUSTIN CONTRACT: MA 5600 NS180000002
ESRI ENTERPRISE AGREEMENT: 324293
ESRI MASTER AGREEMENT: 324294**

This Amendment No.2 s entered into by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Environmental Systems Research Institute, Inc. ("Contractor"), having offices at 380 New York Street, Redlands, CA.

WHEREAS, Contractor and City entered into a Software and Maintenance Services Agreement, which also includes Esri Enterprise Agreement and Esri Master Agreement with an Effective Date of October 1, 2017 ("Contract"); and

WHEREAS, Contractor and City desire to amend the Contract to include previously negotiated Premium Support Services ("PSS").

NOW THEREFORE, Contractor and City agree to the following, which shall become effective upon last date of signature.

1. Table A-2 (EA Products-Capped Quantities) within Appendix A (Products and Deployment Schedule) is hereby deleted entirely and replaced with the below Table A-2 (EA Products- Capped Quantities). Changes shown in Bold Italic.

Product	Number of Subscriptions	Total Named Users Per Year	Total Annual Credits
ArcGIS Online Subscription	1 (City) 1 (Austin Water)	Level 1 (1,300) Level 2 (1,600)	Year 1- 600,000 Year 2- 675,000 Year 3- 725,000 Year 4- 800,000
Community Analyst Online	N/A	50 Named Users	N/A
GeoPlanner for ArcGIS, Term License	N/A	1 Named User	N/A
Navigator for ArcGIS, Term License	N/A	50 Named Users	N/A
Drone2Map, Subscription	N/A	5 Named Users	N/A
Insights for <i>ArcGIS Online</i> , Term License	N/A	Year 1- 5 Named Users Year 2- 10 Named Users Year 3- 15 Named Users Year 4- 20 Named Users	N/A

2. Appendix B (EA FEE SCHEDULE) of the Esri Enterprise Agreement, is hereby deleted in entirety and replaced with the below Appendix B (EA FEE SCHEDULE). (*Changes shown in italics.*)

**APPENDIX B
EA FEE SCHEDULE**

The EA Fee is \$5,225,000. The EA Fee is in consideration of the EA Products, EA Maintenance, Esri User Conference registrations, *Premium Support Services*, and Esri Enterprise Advantage Program.

	Year 1 October 1, 2017 to November 30, 2018	Year 2 December 1, 2018 to November 30, 2019	Year 3 December 1, 2019 to November 30, 2020	Year 4 December 1, 2020 to November 30, 2021	EA Fee
Payments	\$1,440,000	\$1,235,000	\$1,250,000	\$1,300,000	\$5,225,000

Number of Esri User Conference Registrations per Year	30
Number of Esri User Conference Registrations per Year	5
Number of Tier 1 Help Desk Callers That May Contact Esri for Tier 2 Support	10
Term of EA	4 Years and 2 months through November 30, 2021
Esri Enterprise Advantage Program (EEAP)	400 Technical Advisory Hours per Year (300 for City of Austin & 100 for Austin Water) 600 Learning and Services Credits per Year Two Annual 1-day Planning Sessions (1 for City of Austin, 1 for Austin Water)
Premium Support Services (PSS)	Unlimited Incidents 2 Authorized PSS Callers

Except as may be specifically modified by this Contract No.2 all other terms and conditions of the Contract and any Amendment(s) or Addendum(s) constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements or representations, written or oral, concerning the subject matter of this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract No.2 is of the date of the last party to sign below.

ACCEPTED AND AGREED

Environmental Systems Research Institute, Inc.

By: [Signature]
Signature

Name: Timothy Brazeal
Manager, Commercial & Government Contracts

Printed Name

Title: _____

Date: JUNE 1, 2018

CITY OF AUSTIN

By: [Signature]
Signature

Name: JAMES T. HOWARD

Printed Name

Title: IT Procurement Manager

Date: 6/4/18



Amendment No. 1
to
MA 5600 NS180000002
for
Software and Maintenance Services
between
Environmental Systems Research Institute, Inc. (Contractor)
and the
City of Austin

1.0 The above referenced contract is amended as follows:

Revise Exhibit A, Enterprise License Terms and Conditions, Appendix B-EA Fee Schedule, as per attached.

2.0 The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Original Contract: 10/1/17 – 11/30/21	\$5,225,000.00	\$5,225,000.00
Amendment No. 1: Modification of Appendix B – EA Fee Schedule	\$0.00	\$5,225,000.00

3.0 MBE/WBE goals were not established for this contract.

4.0 By signing this amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas or the City of Austin.

5.0 All other terms and conditions remain the same.

By the signature affixed below, this amendment is hereby incorporated into and made a part of the above referenced contract.

Authorized Representative:

Contractor Signature: _____

Printed Name: Timothy Brazeal
Manager, Commercial & Government Contracts

Date: 12-28-2017

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

Signature: _____

City of Austin Purchasing Office

Printed Name: Gil Zilkha

Date: 12/28/17

City of Austin
124 W. 8th St., Ste. 310
Austin, TX 78701

**Amendment No. 1
Esri Agreement No. 324293
City of Austin Contract No.
MA 5600 NS180000002**



This Amendment No. 1 is entered into by and between the City of Austin, TX ("City") and Environmental Systems Research Institute, Inc. ("Esri").

WHEREAS, Esri and the City entered into an Enterprise License Agreement with an effective date of October 1, 2017 ("Agreement"); and

WHEREAS, the parties desire to correct the reference of Esri Use Conference Registrations and Esri Developer Summit Registrations.

NOW THEREFORE, the parties agree to the following:

1. Appendix B- EA Fee Schedule, is hereby modified by deleting reference to both rows of Esri User Conference Registrations per year and replacing with the below.

Number of Esri User Conference Registrations per Year	30
Number of Developer Summit Registrations per Year	5

Except as may be specifically modified by this Amendment, all other terms and conditions of the Agreement and any Amendment(s) or Addendum(s) constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 as of the date of the last party to sign below.

ACCEPTED AND AGREED:

CITY OF AUSTIN, TX

(City)

Signature: [Signature]

Printed Name: Gill Zilkha

Title: Contract Management Specialist IV

Date: 12/28/17

**ENVIRONMENTAL SYSTEMS RESEARCH
INSTITUTE, INC.**

(Esri)

Signature: [Signature]

Printed Name: Timothy Brazeal

Manager, Commercial & Government Contracts

Title: _____

Date: 12/28/2017

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
Environmental Systems Research Institute, Inc.
For
Software and Maintenance Services
City of Austin Contract Number MA 5600 NS180000002
Esri Enterprise Agreement Number 324293
Esri Master Agreement Number 324294**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Environmental Systems Research Institute, Inc. ("Contractor"), having offices at 380 New York Street, Redlands, CA.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for providing the software, maintenance and Esri Enterprise Advantage Program ("EEAP") services identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Thomas Brown, Phone: (210) 499-1044, Email Address: Thomas_Brown@esri.com. The City's Contract Manager for the engagement shall be Monica Kaspar, Phone: (512) 974-1633, Email Address: Monica.Kaspar@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations and with the following attached hereto:

2.1.1 **Exhibit A- Contractor's Enterprise Agreement (EA) composed of the following documents**

2.1.1.1 **Enterprise Terms and Conditions (E512), including Appendix A, Appendix B, Appendix C, Appendix D and Appendix E.**

2.1.2 **Exhibit B- Contractor's Master Agreement (MA) No. 324294**

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein in accordance with the terms and conditions of Exhibit A, Section 5.1 and Appendix B, and have an amount not-to-exceed \$5,225,000.00 for all fees and expenses. The first installment payment for year 1 beginning October 1, 2017, shall be due no later than November 1, 2017. Subsequent installments are due and payable by December 1 of each year.

3.2 **Invoices.**

3.2.1 The Contractor shall submit separate invoices in duplicate by October 1 of each year. **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management or (CTM)
Attn:	Accounts Payable
Email Address	CTMAPInvoices@austintexas.gov
Address	PO Box 1088
City, State, Zip Code	Austin, TX 78767

3.2.2 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

3.3.3.1 Breach by Contractor of Article 3 of the Master Agreement;

3.3.3.2 Failure of the Contractor to comply with any material provision of the Contract.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall become effective on October 1, 2017 with an initial term of 50 months.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** Reserved

4.5 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Equal Opportunity.**

5.1.2 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.1.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.2 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

5.3 **Delays.**

5.3.1 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

SECTION 6. WARRANTIES

6.1 **Warranty – See Attachment B, Article 3 of the Master Agreement.**

SECTION 7. MISCELLANEOUS

7.1 **Workforce.**

7.1.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.1.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.1.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.1.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.2 Compliance with Health, Safety, and Environmental Regulations. The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern.

7.3 Significant Event. The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.3.1 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.3.2 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.3.3 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract; or

7.3.4 significant change in market share or product focus that would prevent the Contractor from fulfilling its obligations under this Contract.

7.4 Audits and Records.

7.4.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments due to the City finally adjudicated by a court of law or agreement of Contractor. For avoidance of doubt, no access to overhead accounts, or company operating financial information will be provided under this Section 7.4.

7.4.2 Records Retention:

7.4.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.4.3 The Contractor shall include sections 7.4.1 above in all subcontractor agreements entered into in connection with this Contract.

7.5 Indemnity. See Exhibit B, Attachment B, Article 5.

7.6 Claims. If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.7 Notices. Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Gil Zilkha, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Environmental Systems Research Institute, Inc.

ATTN: Contract Manager

380 New York Street

Redlands, CA

7.8 Confidentiality. In order to provide the deliverables under this Contract, each party may require access to certain confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Each Party acknowledges and agrees that the Confidential Information is the valuable property of the disclosing party and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the disclosing party. The receiving party (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the disclosing party or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction. If Contractor is required to disclose Confidential Information of the City, Contractor must promptly notify the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. Contractor acknowledges that the City is subject to the Texas Public Information Act, currently codified at Chapter 552 of the Texas Government Code, and will provide notice to Contractor of any request under that chapter for Contractor's Confidential Information to the extent required by the Texas Public Information Act. The receiving party agrees to use protective measures no less stringent than the receiving party's uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information. Confidential Information shall be conspicuously marked, and if verbal, identified in writing within 30 days of disclosure. Confidential information does not include (i) information that is or becomes available to the public through no breach of this Contract; (ii) information that is already known to receiving party and can be shown to be in its possession at the time of disclosure; (iii) information received by receiving party without any duty of confidentiality; (iv) information that is received by receiving party from a third party that is not under a nondisclosure obligation to the disclosing party; and (v) information that is independently developed by either Party without reference to Confidential Information. Obligations of receiving party to maintain confidentiality of Confidential Information continue for a period of three (3) years after original receipt of Confidential Information by receiving party.

7.9 Advertising. The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.10 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.11 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.12 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.13 **Independent Contractor.** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.14 **Assignment Delegation.** The Contract is not intended to confer rights or benefits on any person, firm, or entity not a party to this Contract, it being the intention of the parties that there be no third party beneficiaries to this Contract.

7.15 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.16 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.17 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.18 **Dispute Resolution.**

7.18.1 Except for material breach of a nature that is impossible to cure, if a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate

a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.18.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.19 **Jurisdiction, Venue, And Governing Law.** The Contract is made under and shall be governed by the laws of the State of Texas, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction, except that US federal law shall govern matters of intellectual property. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.20 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.21 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.22 **Incorporation of Documents.** In addition to any other documents incorporated by reference, **Section 0100, Standard Purchase Definitions**, is hereby incorporated into this Contract by Reference, with the same force and effect as if they were incorporated in full text. The full text versions of Section 0100 are available on the Internet at the following online address:
https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf.

7.23 **Order of Precedence.** In the event of any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.23.1 City of Austin Contract Number MA 5600 NS180000002;

7.23.2 Exhibit A- Enterprise Terms and Conditions, 324293;

7.23.3 Exhibit B- Master Agreement No. 324294.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

Environmental Systems Research Institute, Inc.

By: [Signature]
Signature

Name: Chris Johnson
Printed Name Manager, Commercial & Government Contracts

Title: _____

Date: 10/6/17

CITY OF AUSTIN

By: [Signature]
Signature

Name: Gil Zilka
Printed Name

Title: Contract Management Specialist IV

Date: 10/10/17

List of Exhibits

Exhibit A	Enterprise License Terms and Conditions, Agreement No. 324293
Exhibit B	Master Agreement, No. 324294
Exhibit C	Form 1295 "Certificate of Interested Parties" Instructions
Exhibit D	Non-Discrimination Certification

Enterprise Agreement



Enterprise Agreement No. 324293

This Enterprise Agreement, including the documents listed below ("EA"), is between City of Austin, TX ("City"), with offices located at 1124 IH 35E, Austin, TX and Environmental Systems Research Institute, Inc. ("Esri"), with an Effective Date of October 1, 2017. 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. Master Agreement, 324294

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

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 AUSTIN, TX
(City)

By: [Signature]
Authorized Signature

Printed Name: Gil Zilkha

Title: Contract Mangement Specialist IV

Date: 10/10/17

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

By: [Signature]
Authorized Signature

Printed Name: Chris Johnson
Manager, Commercial & Government Contracts

Title: _____

Date: 10/6/17

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.
- "Customer(s)" means City. For avoidance of doubt, the definition of Customer will not include consultants or contractors. Customer(s) 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 their related keycodes/registration files), or their having been redistributed, by City during the term of this EA for installation and use by Customer.
- "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 Customer.
- "Effective Date" means the date the EA commences and the start date for all licenses, regardless of when an Ordering Document is provided by Customer.
- "License Agreement" means the applicable master agreement signed between Esri and City that supersedes such electronically acknowledged license agreement.
- "Rolled-In Software" means Products of the same type as EA Products that Customer 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 Customer.
- "Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk as the primary contact to Customer 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, Customer'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 Customer the right to permit Customer's consultants or contractors to use the EA Products exclusively for Customer's benefit. Customer 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 Customer. Access to or use of EA Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install EA Products on consultant, contractor, or third-party computers or remove EA Products from Customer locations except for the purpose of hosting the EA Products on contractor servers for the benefit of Customer. 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 Customers up to the quantities of licenses granted in Appendix A. No other Customer 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. Customer 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. Customer 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 Customer 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 employees, consultants and contractors of Customer.
- (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 employees, consultants and contractors. 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 employees, consultants and contractors.
- (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 Customer employees, consultants and contractors.
- (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 Customer employees, consultants and contractors.
- (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. 321517."
- 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's employees. Third parties may not represent or attend on behalf of City or Eligible Agencies 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 the Effective Date 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. Esri may terminate this EA for a material breach by Customer. Customer 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 Customer, 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. Customers 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). Customer may continue to use Rolled-In Software, provided Customer complies with the terms and conditions of the License Agreement. Further, Esri agrees that Customer is not required to pay a maintenance reinstatement fee for lapsed maintenance for Rolled-In Software if Customer 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.

7.3 Reserved.

7.4 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 Customer 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. Customer shall notify Esri of the quantity and type of licenses for which Customer 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, Customer decides to reinstate maintenance, Customer 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 or Convenience. City's obligation to pay the amounts due under this EA is 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 thirty (30) 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. City'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 Customer (e.g., outside counsel or accountants) who have a need to know to perform their duties or work on behalf of Customer, 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. Esri acknowledges that City is subject to any confidentiality determination made by the Office of the Texas Attorney General with respect to the confidentiality of the EA or any information provided under the EA.

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—GIS STANDARD

City shall officially name Esri as its GIS standard and act as a reference for other Esri customers and potential customers as long as the EA remains in effect. This EA will not be construed or interpreted as an exclusive dealings agreement, and City and each Eligible Agency reserve the right to purchase from third parties any of their requirements for GIS software or related services.

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. Customer 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. Customer 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. Customer 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 Customer 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 Sections 2.4 and 7.4 and Article 8 of this Enterprise License Terms and Conditions document will survive the expiration or termination of this EA.

**APPENDIX A
PRODUCTS AND DEPLOYMENT SCHEDULE**

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

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

Product	Total Qty. to Be Deployed
ArcGIS Desktop: ArcGIS Desktop Advanced, Standard, and Basic (single 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, and Data Reviewer (single use)	Uncapped
ArcGIS Enterprise: ArcGIS Enterprise and Workgroup (Advanced and Standard)^	Uncapped
ArcGIS Enterprise Extensions: ArcGIS 3D Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Spatial Analyst, and ArcGIS Workflow Manager	Uncapped
ArcGIS Engine for Desktop	Uncapped
ArcGIS Engine Extensions: ArcGIS 3D Analyst, ArcGIS Engine Geodatabase Update, ArcGIS Network Analyst, ArcGIS Schematics, and ArcGIS Spatial Analyst (single use)	Uncapped
Mapping and Charting solutions: Esri Production Mapping for Desktop	Uncapped

^ NOTE: Customer shall receive a fixed number of ArcGIS Online named users, ArcGIS Pro named users and ArcGIS Enterprise named users as entitlements associated with Desktop and ArcGIS Enterprise licenses, per the then-existing Esri entitlement policies.

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

Item	Rolled-In Qty. (if applicable)	Qty. to Be Deployed	Total
ArcGIS Developer Subscription Professional	-	15	15
ArcGIS Developer Subscription Enterprise	-	10	10
ArcGIS for Aviation: Airports (Single Use)	-	5	5
ArcGIS Enterprise- GeoEvent Server	-	1	1
Esri Business Analyst for Desktop Standard (TX)	2	-	2

Product	Number of Subscriptions	Total Named Users	Total Annual Credits
ArcGIS Online Subscription	1 (City) 1 (Austin Water)	Year 1- Level 1 (1,000) Level 2 (1,200) Year 2- Level 1 (1,100) Level 2 (1,350) Year 3- Level 1 (1,200) Level 2 (1,450) Year 4- Level 1 (1,300) Level 2 (1,600)	Year 1- 600,000 Year 2- 675,000 Year 3- 725,000 Year 4- 800,000
Community Analyst Online	N/A	50 Named Users	N/A
GeoPlanner for ArcGIS, Term License	N/A	1 Named User	N/A
Navigator for ArcGIS, Term License	N/A	50 Named Users	N/A
Drone2Map, Subscription	N/A	5 Named Users	N/A
Insights for ArcGIS, Term License	N/A	Year 1- 5 Named Users Year 2- 10 Named Users Year 3- 15 Named Users Year 4- 20 Named Users	N/A

Existing Concurrent Use Rolled-In Products

Maintenance Items	Concurrent Use	Quantity
Desktop Advanced	CU	250
Desktop Standard	CU	50
3D Analyst	CU	125
Data Reviewer	CU	30
Geostatistical Analyst	CU	10
Network Analyst	CU	100
Publisher	CU	30
Schematics	CU	25
Spatial Analyst	CU	100
Workflow Manager	CU	30
Tracking Analyst	CU	10
CityEngine Advanced	CU	1

**APPENDIX B
EA FEE SCHEDULE**

The EA Fee is \$5,225,000. The EA Fee is in consideration of the EA Products, EA Maintenance, Esri User Conference registrations, and Esri Enterprise Advantage Program.

	Year 1 October 1, 2017 to November 30, 2018	Year 2 December 1, 2018 to November 30, 2019	Year 3 December 1, 2019 to November 30, 2020	Year 4 December 1, 2020 to November 30, 2021	EA Fee
Payments	\$1,440,000	\$1,235,000	\$1,250,000	\$1,300,000	\$5,225,000

Number of Esri User Conference Registrations per Year	30
Number of Esri User Conference Registrations per Year	5
Number of Tier 1 Help Desk Callers That May Contact Esri for Tier 2 Support	10
Term of EA	4 Years and 2 months through November 30, 2021
Esri Enterprise Advantage Program (EEAP)	<u>400</u> Technical Advisory Hours per Year* <u>600</u> Learning and Services Credits per Year Two Annual 1-day Planning Sessions (1 for City of Austin, 1 for Austin Water)

*(300 for City of Austin & 100 for Austin Water)

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: _____
Email: _____
Phone: _____
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.

<p>1. Name: _____ Address: _____ _____ Phone: _____ Fax: _____ Email: _____</p> <p>2. Name: _____ Address: _____ _____ Phone: _____ Fax: _____ Email: _____</p> <p>3. Name: _____ Address: _____ _____ Phone: _____ Fax: _____ Email: _____</p> <p>4. Name: _____ Address: _____ _____ Phone: _____ Fax: _____ Email: _____</p> <p>5. Name: _____ Address: _____ _____ Phone: _____ Fax: _____ Email: _____</p>	<p>6. Name: _____ Address: _____ _____ Phone: _____ Fax: _____ Email: _____</p> <p>7. Name: _____ Address: _____ _____ Phone: _____ Fax: _____ Email: _____</p> <p>8. Name: _____ Address: _____ _____ Phone: _____ Fax: _____ Email: _____</p> <p>9. Name: _____ Address: _____ _____ Phone: _____ Fax: _____ Email: _____</p> <p>10. Name: _____ Address: _____ _____ Phone: _____ Fax: _____ Email: _____</p>
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Master Agreement



Agreement No. 324294

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.

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 and addendums. Additional or conflicting terms in any Ordering Documents exchanged during the ordering process, other than the terms of this Agreement, Product or Service descriptions, quantities, pricing, and delivery instructions 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 AUSTIN, TX

(Customer)

Legal Address: 1124 S IN 35, Suite 300, Austin, TX 78704

By: [Signature]

Authorized Signature

Printed Name: Gil Zilkha

Title: Contract Manager Specialist IV

Date: 10/10/17

ENVIRONMENTAL SYSTEMS RESEARCH
INSTITUTE, INC. (Esri)

380 New York Street, Redlands, CA 92373-8100

By: [Signature]

Authorized Signature

Printed Name: Chris Johnson
Manager, Commercial & Government Contracts

Title: _____

Date: 10/6/17

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 and grants to Customer a personal, nonexclusive, nontransferable right to use the Esri Offerings as set forth in the Specifications and applicable Ordering Documents; and
- b. 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 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 others a fee 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 Servers.

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 provided under a Development License.

4. Move the Software in the licensed configuration to a replacement computer;
 5. Distribute to third parties Software and any associated Authorization Codes required for use of a Deployment License; and
 6. Use server Software for Commercial ASP Use 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. Addendum 1 provides Product-specific terms of use for individual Software. Esri may issue updates to Addendum 1 from time to time.

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 Subscription to Online Services. Esri provides Online Services subscriptions under the following terms. Addendum 1 also provides Product-specific terms of use for individual Online Services.

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. Unless otherwise noted in Addendum 1, Customer may use its Online Services subscription to build a Value-Added Application(s) for internal use by Named Users.
- 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 for the purpose of allowing third parties to access Customer's Value-Added Applications. 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 assign former Named Users' login credentials to new Named Users if the former users no longer require 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.

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 Customer Content

- a. *Ownership.* Customer retains all right, title, and interest in Customer Content. Customer hereby grants Esri and Esri's vendors or licensors a nonexclusive, nontransferable, worldwide right to host, run, and reproduce Customer Content solely for the purpose of enabling Customer's use of Online Services. Without Customer's permission, Esri will not access, use, or disclose Customer Content except as reasonably necessary to support Customer's use of Online Services, respond to Customer's requests for customer support, or troubleshoot Customer's subscription or for any other purpose authorized by Customer in writing. If Customer accesses Online 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, Online Services, and Customer Content. 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. It is Customer's sole responsibility to ensure that Customer Content is suitable for use with Online Services and for maintaining regular offline backups using the Online Services export and download capabilities.
- b. *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.
- c. *Retrieving Customer Content upon Termination.* Upon termination of this Agreement or any trial, evaluation, or subscription, Esri will 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.

Thereafter, Customer's right to access or use Customer Content with Online Services will end, and Esri will have no further obligations to store or return Customer Content.

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% 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 formats (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 data 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 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 and static electronic format for news-reporting purposes only.

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 patentable inventions, discoveries, innovations, and improvements, excluding Deliverables, relating to the subject matter of a Task Order.
- b. **"Inventor(s)"** means the parties' principals, employees, consultants, or independent contractors that solely or jointly develop 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.

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 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.
- 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 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 c.1. or c.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 c.2. or c.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.

6.6 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.

6.7 Customer Termination for Convenience. Customer may terminate any Task Order at any time on 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.

6.8 Payment; Invoices

- a. *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) 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 ODCs, including travel-related expenses incurred, plus a 15 percent burden.

2. Esri may reallocate the budget between activities, labor categories, and ODCs as necessary to facilitate the work effort, provided the overall price is not exceeded. 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.

- 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 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.

6.9 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 EMCS.
- b. **"Hosting"** means the business of housing and making accessible Customer Content via the Internet.

7.2 Provision of EMCS

- a. **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.
- b. **License to Customer Content.** During the Term of the Task Order issued under this Agreement, Customer hereby grants to Esri and its subcontractors permission to use Customer Content to support the provision of EMCS. Such permission shall include, but not be limited to, the grant of rights and license to manipulate, publish, distribute, and implement Customer Content within the EMCS Environment in any reasonable manner needed to support the provision of EMCS.
- 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.
- 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 to use, any software, documentation, or other material that contains or is derived (in whole or in part) from any software, documentation, or other material distributed as free software, open-source software (e.g., Linux), or other similar licensing or distribution models including, but not limited to, software, documentation, or other material licensed or distributed under any of the following license or distribution models or license or distribution models similar to any of the following: (i) the GNU General Public License (GPL), Lesser/Library GPL (LGPL), or Free Documentation License; (ii) the Artistic License (e.g., Perl); (iii) the Mozilla Public License (MPL); (iv) the Netscape Public License; (v) the Sun Community Source License (SCSL); (vi) the Sun Industry

Standards Source License (SISSL); (vii) the Berkeley Software Distribution (BSD) License; and (viii) the Apache License ("Public Software") in connection with the Customer Content in any manner that requires, pursuant to the license applicable to such Public Software, that any component of the EMCS be (1) disclosed or distributed in source code form, (2) made available free of charge to recipients, or (3) modifiable without restriction by recipients.

- 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.

7.3 Takedown or Termination of EMCS. In the event of takedown of Customer Content or upon any expiration or termination of an applicable Task Order while Esri is providing EMCS, Esri will download all Customer Content in Esri's possession to a medium of Customer's choosing and deliver such Customer Content to Customer. Customer will be responsible for any unpaid fees due through the date of termination.

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 Training.
- c. **"Esri Training Event Assistant"** means Customer's primary Esri liaison in organizing private Training events.
- d. **"Student"** means a Customer employee or agent who is a registered participant in a specific Training course, Customer coaching services, or training-related services. If Customer is an individual, then Student means Customer.

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. Each Student may run and install 1 copy of Training Materials and reproduce 1 copy of Training Materials. The Student may make 1 additional copy of the original Training Materials for archive purposes only, unless Esri grants in writing the right to make additional copies.
- c. Customer may not and may not permit any Student to (i) separate the component parts of the Training Materials for use on multiple systems or in the cloud, (ii) use the Training Materials in conjunction with any other software package, (iii) merge and compile the Training Materials into a separate database(s) or documents for other analytical uses, or (iv) use audio or video recording equipment during a Training course.
- d. Esri may issue temporary Product authorizations if Customer has an insufficient number of Products available for Training. Customer may use such Products for Training purposes only and under the terms of this Agreement. Customer will uninstall all deployed Products and return any media provided by Esri upon conclusion of the 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 class approximately 10 business days prior to the scheduled start date. Customer site and private classes confirmation is dependent on receipt of the completed Customer site training request form and intended method of payment.

8.4 Customer's Responsibilities

Customer will

- a. Ensure that all Students have received confirmation from Esri to participate in an Esri Training event. Unregistered students may not view or participate in an online classroom Training event. Esri reserves the right to disconnect any Student who permits access to an unregistered student;
- b. Confirm that all Students meet the minimum prerequisites for the applicable Training event as listed on Esri's Training website;
- c. Submit registrations with a confirmed payment commitment at least 15 business days before the scheduled start date. Esri will not confirm reservations for registrations submitted without payment commitment but will instead add the registration to a waiting list pending payment confirmation. All waiting list reservations are subject to availability;
- d. Provide the Esri Training Event Assistant with a list of the names and email addresses of any Students who are to attend an event at least 3 business days before the scheduled start date.
- e. Be responsible for all Student travel arrangements and hold Esri harmless for losses from any nonrefundable travel arrangements due to the denial of Student's participation based on US government export regulation requirements, course scheduling changes, or cancellations;
- f. 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;
- g. Ensure that Student use of Training Materials provided by Esri complies with the terms of this Agreement; and
- h. Assume full responsibility and, to the extent consistent with Customer's governmental immunity, be fully liable for Student attending Training course(s) under this Agreement.
- i. 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 Training event sessions.
 3. Ensure that only Students use Esri Mobile Lab equipment.
 4. Be responsible for loss of, damage to, or theft of Esri Mobile Lab equipment while in Customer's possession.
 5. Maintain sufficient insurance coverage to meet obligations created by this Agreement and by law or regulation.
 6. Allow the Esri instructor to check all Esri Mobile Lab equipment following the completion of Training. Esri will notify Customer in writing of any damage to Esri Mobile Lab equipment due to Student use, excluding normal wear and tear. Customer will be financially responsible for any repair or replacement of equipment resulting from such damage.
 7. Make Esri Mobile Lab equipment available for freight pickup upon the conclusion of the Training event.

8.5 Student Registration and Training Event Change Policy

- a. *Individual Student Seats.* Customer will provide written notice to the Esri Customer Service department at service@esri.com of any Student transfer, cancellation, or substitution requests at least 3 business days before the scheduled start date.
 1. Multiple requests and any requests that occur without the 3 business days' advance notice are subject to a fee, as determined by Esri.
 2. Cancellation of Student registrations that occurs without the 3 business days' advance notice is subject to the full Training event fee.
 3. Any substitute Student must be from the same organization as the Student being replaced.

- b. *Customer Site/Private Class/Coaching Services (Training Event)*. Customer will provide written notice to Esri Customer Service at service@esri.com of any Training event rescheduling, cancellation, or Student substitution requirements at least 3 business days before the scheduled start date.
 - 1. Training event rescheduling and cancellations that occur without the 3 business days' advance notice are subject to the full Training event fee. Customer will be responsible for all of Esri's reasonable travel expenses and shipping costs (including Esri Mobile Lab) for all rescheduled or canceled Training events.
 - 2. Student substitutions that occur without the 3 business days' advance notice are subject to a fee, as determined by Esri. Any substitute Student must be from the same organization as the Student being replaced.
- c. If cancellation of a Training event is necessary due to causes beyond the party's reasonable control, the affected party is released in full from the 3-business-day notification requirement. The affected party will either reschedule or cancel the Training without incurring any liability.
- d. If Esri is unable to conduct the Training on the scheduled date, Esri will notify Customer at least 3 business days before the scheduled start date.
- e. Esri will not permit any Student who is a resident of a US embargoed country or is listed on any of the various US Government Lists of Parties of Concern or Specially Designated Nationals lists to attend the Training event.
- f. *Termination of Agreement*. Students who are currently registered for a Training course 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 each Training course or immediately upon receipt of a purchase order if mutually agreed to by the parties.
- b. If Customer is invoiced and pays that invoice prior to the scheduled Training event, then Customer has 1 calendar 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.

9.0 ESRI ENTERPRISE ADVANTAGE PROGRAM

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

- a. **"Activity Description"** means a confirmation email or document received from Customer 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.
- b. **"Authorized EEAP Contact"** means the Customer point of contact for EEAP identified below.
- c. **"EEAP"** means the Esri Enterprise Advantage Program as described in this section.
- d. **"Learning and Services Credits"** means credits that Customer may use in exchange for Professional Services, Training, PSS, EMCS, or related travel expenses as described below.
- e. **"Premium Support Services" or "PSS"** means a prioritized incident management and technical support program further described at <http://support.esri.com/en/support/premium>.
- f. **"Technical Advisor"** means an Esri advisor 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 EEAP.

9.2 EEAP Description. EEAP is provided on an order-by-order, annual subscription basis. EEAP is a menu of Professional Services, Training, PSS, and EMCS that provides Customer with the flexibility to select the components that best meet its needs. The current EEAP is further described at www.esri.com/services/eeap/components, which may be changed from time to time. EEAP 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 following website: www.esri.com/services/eeap/components#learning. Esri will provide the Authorized EEAP Contact with a monthly report outlining usage of EEAP Learning and Services Credits to date.
- e. **Quarterly Technology Webcast.** Esri will provide an email invitation to the Authorized EEAP Contact for a quarterly webcast presenting business and technical information related to enterprise GIS.
- f. **No Development Services.** EEAP is not designed for Esri to provide project-specific professional services such as custom application or database development for solutions or applications. If these types of professional services are required, Customer will need to enter into a separate Task Order for Professional Services.

9.3 Authorized EEAP Contact Information. Customer identifies the following person as its initial Authorized EEAP 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 EEAP 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 to Customer a Learning and Services Credit estimate by email for confirmation and authorization to use the Learning and Services Credits. Customer may authorize the consumption of Learning and Services Credits by submitting an Activity Description. Esri will begin performance and deduct the amount quoted 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 request is 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. Customer may direct Esri to use Learning and Services Credits for travel and per diem expenses, or Customer will 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 EEAP will be subject to review and approval by Esri to ensure alignment with the intent of the program.

9.10 Invoicing

- a. Esri shall invoice Customer as quoted for the EEAP 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 EEAP subscription expiration date. Esri will extend the EEAP 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 EEAP subscription

- a. Technical Advisor, annual account planning session, and Activity Description services will end as of the expiration or termination date unless Customer renews its subscription;
- b. Unless either party terminates the EEAP 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 EEAP subscription within this time period, any unused Learning and Services Credits will remain valid for up to 2 years from their purchase date or termination of the EEAP 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. Esri's distributors are not Affiliates.

"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 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 other than Products, Training, or Services performed under EEAP.

"Documentation" means all user reference documentation that Esri provides with 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 the Customer to Product updates and other benefits such as access to technical support and to 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 in order 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 or Subscription" means a license or subscription for use by a single Named User.

"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. Use Software for Commercial ASP Use or service bureau purposes;
- c. 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;
- d. Distribute Authorization Codes to third parties;
- e. Reverse engineer, decompile, or disassemble any Product or Deliverable delivered in compiled form;
- f. Make any attempt to circumvent the technological measure(s) that controls access to or use of Esri Offerings;
- g. 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, or any other applicable law or regulation;
- h. 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;
- i. Unbundle or independently use individual or component parts of Esri Offerings;
- j. Incorporate any portion of Esri Offerings into a product or service for third-party use that competes with the Esri Offerings;
- k. 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
- l. 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

This Agreement is effective upon acceptance. 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.

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.

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) Esri Offerings 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 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 duration of the subscription or term.

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 either (i) repair, correct, or provide a workaround for the applicable Esri Offering or Services or (ii) return the fees paid by Customer for Esri Offerings or Services that do not meet Esri's limited warranties, provided that Customer uninstalls, removes, and destroys all copies of the applicable Esri Offerings; ceases accessing and using the applicable Cloud Services; and executes and delivers evidence of such actions to Esri or its authorized distributor.

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, or loss of goodwill; costs of procurement of substitute goods or services; or damages exceeding the applicable license or 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, officers, 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 property damage (excluding databases not covered under a reasonable backup program) brought against any of the indemnified parties 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, provided that for settlement of a Claim Esri will not agree to allow the third party plaintiff to include wording in any settlement or compromise which requires an admission regarding or inferring Customer's wrongdoing without Customer's written consent. In the event Customer's written consent is not provided for a proposed settlement and that disapproval causes an increase in the final settlement amount or any resulting expenses, such increases shall be borne by Customer., (iv) reasonably cooperate in the defense of the Infringement Claim at Esri's request and expense, and (v) City may participate in the defense of the Claim at its sole expense, provide such participation does not interfere with the defense of Esri.

5.5 This Section sets forth the entire obligation of Esri, its authorized distributor, and its licensors regarding any Claim for which Esri must indemnify Customer.

ARTICLE 6—INSURANCE

If Esri is providing Services, Esri will carry, at a minimum, the following coverage:

- a. Comprehensive general liability or commercial general liability with a minimum coverage of \$1,000,000.00 combined single limit per occurrence for bodily injury, including death, and property damage liability to include the following:
 1. Premises and operations;
 2. Blanket contractual liability;
 3. Broad form property damage;
 4. Independent contractors;
 5. Personal injury, with employee exclusion deleted; and
 6. Completed operations.
- b. Workers' compensation insurance, with waiver of subrogation, in an amount that complies with statutory limits.

ARTICLE 7—SECURITY AND COMPLIANCE

7.1 Security. Esri publishes its security capabilities at <http://doc.arcgis.com/en/trust/security/security-overview.htm>. 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; 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 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.

8.4 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.

8.5 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. For Customers outside the United States, the distributor may quote taxes or fees in accordance with its own policies.

9.6 Compliance Review. Customer will keep accurate and complete records and accounts pertaining to its compliance with its obligations under 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. Except for the sale of all or substantially all of Esri's assets, neither party will assign, sublicense, or transfer its rights or delegate its obligations under this Agreement without prior written consent of the other party, 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.

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. For avoidance of doubt, governing law shall be subject to Section 7.17 of the City Terms and Conditions "Contract".

9.13 Dispute Resolution. For avoidance of doubt, governing law shall be subject to Section 7.17 of the City Terms and Conditions "Contract".

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.

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.

Addendum 1

Product-Specific Terms of Use



SOFTWARE

The following list identifies additional terms of use that apply to specific Software. Each Product listing identifies one or more footnotes that apply to that Product. These footnotes supplement the terms of this Agreement. The definitions for each footnote follow the list. Unless otherwise noted in the applicable Ordering Document, extensions to Software follow the same scope of use as that granted for the corresponding Software.

Desktop Products

- ArcGIS Desktop (Advanced, Standard, or Basic) (26)
- ArcGIS Earth (65)
- ArcGIS Explorer Desktop (20)
- ArcGIS for AutoCAD (20)
- ArcPad (13)
- ArcReader (20)
- ArcGIS for Windows Mobile (15; 54)
- ArcGIS for Personal Use (3, 26)

Server Products

- ArcGIS Enterprise
 - Basic (17)
 - Standard or Advanced (17; 21; 31)
 - Workgroup Standard or Advanced (21; 28; 29; 30)
 - ArcGIS GIS Server (Standard or Advanced) (31)
 - ArcGIS GIS Server Basic (39)
 - ArcGIS GIS Server Workgroup (Standard or Advanced) (28; 29; 30)
 - ArcGIS GIS Server Workgroup Basic (39)
 - ArcGIS GIS Server Extension
 - ArcGIS for Maritime: Server (2)
 - ArcGIS Image Server, ArcGIS GeoEvent Server, ArcGIS GeoAnalytics Server (4)
- Esri Business Analyst for Server
 - Workgroup (28; 29; 30; 31; 39)
 - Enterprise (31; 39)
- World Geocoder for ArcGIS (67)

Developer Tools

- AppStudio for ArcGIS Standard (11, 16, 19)
- ArcGIS Runtime SDK for Android, iOS, Java, macOS, .NET, Windows Phone), Qt, or WPF (16; 19)
- ArcGIS Runtime Basic Level for Android, iOS, Java, Mac OS X, Microsoft .NET Framework (Windows [desktop], Windows Phone, Windows Store), Qt, or WPF (1)
- ArcGIS Runtime Basic, Standard, Advanced Levels and the Analysis Extension for Android, iOS, Java, Mac OS X, Microsoft .NET Framework (Windows [desktop], Windows Phone, Windows Store), Qt, or WPF (15; 18)
- ArcGIS Engine Developer Kit and Extensions (16, 19; 22, 26)
- ArcGIS Engine for Windows/Linux and Extensions (15; 22; 26)
- ArcGIS Web Mapping (including ArcGIS API for JavaScript/HTML5, ArcGIS API for Flex, ArcGIS API for Microsoft Silverlight) (15; 16; 64; 66)
- ArcGIS Developer Subscription (24; 26)
- Esri File Geodatabase API (47)

Mobile

- Navigator for ArcGIS (14)

Footnotes:

1. May not be used to edit an enterprise geodatabase via Direct Connect.
2. Not for use in navigation.
3. Licensed for personal use only.

Addendum 1

Product-Specific Terms of Use



4. When used with ArcGIS Enterprise Workgroup
 - Limited to 1 four-core server.
 - Can be installed on a separate machine.
- 5–10. Reserved.
11. Applications built with AppStudio for ArcGIS Standard are subject to the terms of use for ArcGIS Runtime Standard Level.
12. Reserved.
13. Licensed as a Dual Use License.
14. May be used for navigational purposes.
15. Licensed as a Deployment License.
16. Customer may use the SDKs or APIs to create Value-Added Applications and distribute and license those Value-Added Applications to its end users to use anywhere not prohibited under export regulation.
17. Customer shall not redistribute Oracle JDBC Driver or its documentation that is included with this Product. Oracle is a third-party beneficiary of this Agreement.
18. The Deployment License is per Value-Added Application per computer for stand-alone applications.
19. License may not be used to develop Internet or server-based Value-Added Applications.
20. Licensed as a Redistribution License.
21. Customer may build Value-Added Applications for use by Customer's Named Users. Customer may not (i) embed Named User Credentials in Value-Added Applications or (ii) embed or use App Login Credentials in Value-Added Applications. Customer may permit (a) public access to Value-Added Applications without credentials or (b) access using unique, individual Named User login credentials.
22. a. An end user must acquire a license in either ArcGIS Engine for Windows/Linux Software or other ArcGIS Desktop Software (Basic, Standard, or Advanced) to obtain the right to run an ArcGIS Engine application on 1 computer; and
b. The ArcGIS Engine for Windows/Linux extensions shall not be used in combination with ArcGIS Desktop Software to run ArcGIS Engine Value-Added Applications. A single user can have multiple ArcGIS Engine Value-Added Applications installed on 1 computer for use only by that end user.
23. Reserved.
24. Software may be used only for the purposes of development, testing, and demonstration of a prototype Value-Added Application and creating map caches. Customer may use Value-Added Applications and map caches with ArcGIS Enterprise Staging Server Licenses and Deployment Server Licenses. Software and Data may be installed on multiple computers for use by any ArcGIS Developer Subscribers with Builder or higher plan subscriptions; all other Software is licensed as a Single Use License.
25. Reserved.
26. The geodatabase is restricted to 10 gigabytes of Customer's data.
27. Reserved.
28. Use is limited to 10 concurrent end users of applications other than ArcGIS Enterprise Workgroup or ArcGIS GIS Server Workgroup applications. This restriction includes use of ArcGIS Desktop Software, ArcGIS Engine Software, and third-party applications that connect directly to any ArcGIS Enterprise Workgroup or ArcGIS GIS Server Workgroup geodatabase. There are no limitations on the number of connections from web applications.
29. Software requires a supported version of SQL Server Express. Supported versions are listed with the system requirements for the product on the Esri website.
30. Use is restricted to a maximum of 10 gigabytes of Customer's data.
31. Includes a Failover License.
32. Reserved.
- 33–38. Reserved.
39. Any editing functionality included with ArcGIS GIS Server is not permitted for use with ArcGIS GIS Server Basic and ArcGIS GIS Server Workgroup Basic.
- 40–46. Reserved.
47. Customer may develop and distribute Value-Added Applications that use Esri File Geodatabase API to Customer's end users.
- 48–53. Reserved.

Addendum 1

Product-Specific Terms of Use



54. ArcGIS for Windows Mobile deployments are licensed for use with ArcGIS Enterprise (Advanced or Standard), ArcGIS Enterprise Workgroup (Advanced), ArcGIS Desktop (Advanced, Standard, Basic), and ArcGIS Engine Value-Added Applications.
- 55–63. Reserved.
64. Value-Added Applications for web deployment must be used in conjunction with other Esri Products. Third-party technologies may also be used in conjunction with Value-Added Applications as long as the Value-Added Applications are always used in conjunction with other Esri Product(s).
65. May only be used in conjunction with other Esri Product(s). Third-party technologies may also be used in conjunction with ArcGIS Earth as long as ArcGIS Earth is always used in conjunction with other Esri Products.
66. For desktop applications, each license is per organization. For the purposes of this license, *organization* is equivalent to a principal registered unique domain identifier. *Domain* is the Internet domain name registered with a domain name registrar. For instance, in example.com, example.com is the registered unique domain identifier. Similarly, in example.com.xx, where xx is a registered country code, example.com.xx is the registered unique domain identifier. Desktop applications can be used by any employee of the organization with the principal registered unique domain identifier. There is no limit to the number of applications that can be built and deployed within an organization.
67. Limited to 250,000,000 geocodes per annual subscription.

Addendum 1

Product-Specific Terms of Use



ONLINE SERVICES

The following list identifies additional terms of use that apply to specific Online Services. Each Product listing identifies one or more footnotes that apply to that Product. The definitions for each footnote follow the list. Unless otherwise noted in the applicable Ordering Document, extensions to Software follow the same scope of use as that granted for the corresponding Software.

- ArcGIS Online developer deployment subscriptions are available through multiple selling programs:
 - Commercial Retail, enterprise agreements, and Government Programs
 - + Free Subscription (1; 9; 10; 13; 16)
 - + Paid Subscription (1; 9; 10; 11; 13)
 - Education Programs (Free or Paid Subscriptions) (1; 3; 4; 5; 6; 9; 10; 13; 16)
 - NGO/NPO, Press/Media Programs (Free or Paid Subscription) (1; 3; 4; 5; 6; 9; 10; 13; 16)
- ArcGIS Online subscriptions are available through multiple Selling Programs:
 - Commercial Retail, EAs; and Government Programs (1; 2; 3; 11; 12; 14; 17)
 - Education Programs (1; 2; 14; 16; 17)
 - Non-profit Programs (1; 2; 14; 16; 17)
- Public Plan
 - Commercial Retail; enterprise agreements; Government; NGO/NPO; Press/Media Programs (1; 4; 5; 6; 7; 9; 10; 15; 16)
 - Education Programs (1; 4; 5; 6; 7; 9; 10; 15; 16)

Footnotes:

1. Customer may not store the geocoded results generated by World Geocoding Service without an ArcGIS Online subscription. Customer may use the data accessible through Infographics Service for display purposes only and may not save any data accessible through this service.
2. May be used for any business purpose of Customer's organization.
3. May be used for development and test purposes for Customer's organization.
4. May be used for teaching purposes in educational organizations.
5. May be used for the benefit of Customer's qualified NGO/NPO organization.
6. May be used for the benefit of press or media organizations.
7. May be used for personal use.
8. Reserved
9. Customer may enable third-party use of Value-Added Applications only by publicly sharing using Sharing Tools. Customer may not use this subscription to power a Value-Added Application for its own business use unless Customer is an educational institution using the Value-Added Application for teaching purposes only, a qualified NGO/NPO organization, or a media or press organization.
10. Customer is not permitted to create private groups or participate in any private groups.
11. Customer may make Value-Added Applications available to third parties for a fee.
12. Customer may use this subscription to create or participate in private groups.
13. Each subscription is limited to 1,000,000 geosearch transactions per month in conjunction with Customer's subscription. Transactions include both basemap data and geocode search transactions. One geocode search transaction is equivalent to one address or place. If the results are stored in any manner such as after batch geocoding, the stored results are not counted toward the transaction limit. However, storage does consume Service Credits.
14. Each subscription is limited to 50,000,000 geosearch transactions in any 12-month period. One geocode search transaction is equivalent to one address or place. If the results are stored in any manner such as after batch geocoding, the stored results are not counted toward the transaction limit. However, storage does consume Service Credits.
15. May permit registered students of an education institution to directly access the Online Services and share a single subscription between more than 1 registered student for teaching purposes only.
16. Customer may not make Value-Added Applications available to third parties for a fee.
17. A Named User may embed its Named User Credential in an ArcGIS API for Python script solely for the purpose of automating a workflow to be used exclusively by the Named User whose Named User Credential is embedded in the script.

EXHIBIT C
FORM 1295 “CERTIFICATE OF INTERESTED PARTIES” INSTRUCTIONS

CITY OF AUSTIN
PURCHASING OFFICE
FORM 1295 "CERTIFICATE OF INTERESTED PARTIES" INSTRUCTIONS

As required by Section 2252.908 of the Texas Government Code, the Business Entity constituting the Offeror is required to submit to the City a complete Form 1295 "Certificate of Interested Parties" that is signed and notarized prior to contract execution.

The Business Entity will use Form 1295 to make and reaffirm the disclosure of Interested Parties. See definitions below:

1. **Interested Party** – a person who has a Controlling Interest in a Business Entity with whom the City contracts or who actively participates in facilitating the Contract or negotiating the terms of the Contract, including a broker, intermediary, adviser, or attorney for the Business Entity.
2. **Controlling Interest** – means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stocks or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers
3. **Business Entity** – any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.

Revised December 2015

EXHIBIT D
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this _____ day of _____, _____

CONTRACTOR

Authorized
Signature

Title


Chris Johnson
Manager, Commercial & Government Contracts

10/6/17



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 05/16/2017 DEPT: Communications and Technology Management
TO: Purchasing Officer or Designee FROM: Ross Clark, IT Corporate Manager
BUYER: PHONE: (512) 974-2764

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)
 - ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
 - ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
 - ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
 - ☐ a procurement for personal, professional, or planning services
 - ☐ a procurement for work that is performed and paid for by the day as the work progresses
 - ☐ a purchase of land or right-of-way
 - ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
 - ☐ a purchase of rare books, papers, and other library materials for a public library
 - ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
 - ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- services performed by blind or severely disabled persons
- goods purchased by a municipality for subsequent retail sale by the municipality
- electricity
- advertising, other than legal notices
- Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

Four (4) year Enterprise License Agreement (ELA) with Esri, Inc. of Redlands, CA. The City's current one year extension expires on September 30, 2017. The ELA includes Geographic Information System (GIS) software, maintenance, support, cloud services, training, and professional services credits for use by all City Departments. The price for the first year is \$1,633,333, which is higher than subsequent years due moving the payment due date from October 1st, 2018 to December 1st, 2018. The remaining three one year extensions of the contract are priced at \$1,400,000, for a total not to exceed amount of \$5,833,333. Thomas Brown (210-499-1044, ext. 1-8815) is our contact at Esri - San Antonio.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

Esri, Inc. products have been adopted at the City's Standard GIS software to ensure that all City departments are using compatible GIS systems and have the same level of service. Esri, Inc. is the sole provider of an Enterprise License Agreement which includes unlimited usage of ArcGIS desktop and server applications, limited use of other GIS applications, as well as training and consulting services credits.

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Esri, Inc.
which will cost approximately \$ 5,833,333.00 (Provide estimate and/or breakdown of cost).

Recommended
Certification

M. A. Clark 5/25/2017
Originator Date

Approved
Certification

Stephen G. Elkins 5/25/2017
Department Director or designee Date

[Signature] 5/25/17
Assistant City Manager / General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

[Signature] 7/13/17 JTH
Buyer Date Manager Initials

Exemption Authorized
(if applicable)

[Signature] 7/13/17
Purchasing Officer or designee Date

02/26/2013



SOLE SOURCE LETTER

Environmental Systems Research Institute, Inc. (Esri)

380 New York Street

Redlands, CA 92373

Telephone: 909-793-2853, Ext. 1-1990

Email: jricks@esri.com

DATE: May 15, 2017

TO: To Whom It May Concern

FROM: Jackie Ricks, Esri Contract Coordinator

RE: Sole Source Justification for Enterprise Agreement (EA) and Esri Enterprise Advantage Program (EEAP)

This letter confirms Esri, as owner and manufacturer, is the sole source provider of all U.S. domestic Enterprise Agreements. While some products are available through value-added resellers on a unit priced basis, Esri is the only source that can grant a right to copy and deploy products in an Enterprise Agreement. An EA is a bundled package for licensing software, maintenance, and online services for redistribution within the organization. Esri products are provided with a special grant to copy and deploy specified quantities of capped items and unlimited quantities of items without a cap, during the term of the EA.

Also, Esri is the only company that offers the Esri Enterprise Advantage Program (EEAP) which is a consulting services support, training and premium support offering designed to meet the unique needs of Esri's enterprise GIS customers. The program offers customers focused account and technical management, a flexible spending program for consulting services support, training and premium support services, plus other exclusive advantages.

If you have further questions, please feel free to call me at our Contracts and Legal Services Department at 909-793-2853, extension 1990 or jricks@esri.com.

Sincerely,

A handwritten signature in cursive script that reads "Jackie Ricks".

Jackie Ricks

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2017-268076

Date Filed:
10/03/2017

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Environmental Systems Research Institute, Inc.
Redlands, CA United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Austin

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

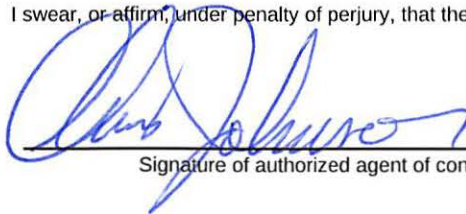
MA 5600 NS180000002
Enterprise Agreement with an underlining negotiated Master Agreement

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Jack and Laura Dangermond Trust	Redlands, CA United States	X	

5 Check only if there is NO Interested Party. ☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day of _____, 20_____, to certify which, witness my hand and seal of office.

Please see attached per California State Law

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

GOVERNMENT CODE § 8202

☐ See Statement Below (Lines 1–6 to be completed only by document signer[s], *not* Notary)

Figure 1 is a line graph with the Y-axis labeled 'Number of cases' ranging from 0 to 6, and the X-axis labeled 'Time' ranging from 0 to 6. A single black line starts at (0, 1) and increases linearly to (6, 6). The data points are as follows:

Time	Number of cases
0	1
1	2
2	3
3	4
4	5
5	6
6	6

Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Subscribed and sworn to (or affirmed) before me

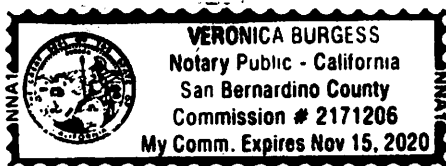
on this 3 day of October, 2017,
by Date Month Year

(1) Chris Johnson

(and (2) _____),
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.

Signature Virginia Blanton
Signature of Notary Public



Seal
Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Title or Type of Document: Certificate of Interested Parties **Document Date:** 10/3/17

Number of Pages: 1 **Signer(s) Other Than Named Above:** N/A