



BOARD OF SUPERVISORS AGENDA ITEM REPORT

CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 11/06/18

* = Mandatory, information must be provided

or Procurement Director Award ☐

***Contractor/Vendor Name/Grantor (DBA):**

Environmental Systems Research dba ESRI

***Project Title/Description:**

ESRI Geographic Information Systems Software ELA

***Purpose:**

Amendment of Award: Master Agreement No. MA-PO-17-125, Amendment No. 02. This Amendment is for a one-time increase of \$249,000.00 for a cumulative not-to-exceed contract amount of \$969,000.00 to support upgrading and adding new software to the existing GIS system.

Administering Department: Information Technology.

***Procurement Method:**

Pursuant to Pima County Procurement Code 11.12.050, Sole Source Procurement, on 12/06/16, the Procurement Director approved an award of contract for an initial term of three (3) years and a not-to-exceed contract amount of \$720,000.00 with two (2) renewal options.

On 01/10/17, the Procurement Director approved Amendment No. 01 incorporating Insights User Term License for ArcGIS as Enterprise Software.

PRCUID: 239183

Attachment: Contract Amendment No. 02.

***Program Goals/Predicted Outcomes:**

Continuation of maintenance and support to maintain software currently with Pima County.

***Public Benefit:**

Provide web-based mapping systems and applications to the public through which they can interact with Pima County, municipal, and regional information that is tied to geographic features.

***Metrics Available to Measure Performance:**

Continuation of software maintenance and support which is currently deployed both remotely and on-site.

***Retroactive:**

No.

Procurement 10/22/18 PM0411

Contract / Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Effective Date: _____ Termination Date: _____ Prior Contract Number (Synergen/CMS): _____
☐ Expense Amount: \$* _____ ☐ Revenue Amount: \$ _____

***Funding Source(s) required:**

Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? ☐ Yes ☐ No

***Is the Contract to a vendor or subrecipient?**

Were insurance or indemnity clauses modified? ☐ Yes ☐ No

If Yes, attach Risk's approval

Vendor is using a Social Security Number? ☐ Yes ☐ No

If Yes, attach the required form per Administrative Procedure 22-73.

Amendment / Revised Award Information

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 17-125

Amendment No.: 02 AMS Version No.: 07

Effective Date: 11/06/18 New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

☒ Expense or ☐ Revenue ☒ Increase ☐ Decrease Amount This Amendment: \$ 249,000.00

Is there revenue included? ☐ Yes ☒ No If Yes \$ _____

***Funding Source(s) required:** General Fund

Funding from General Fund? ☒ Yes ☐ No If Yes \$ 249,000.00 % 100

Grant/Amendment Information (for grants acceptance and awards) ☐ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____

Effective Date: _____ Termination Date: _____ Amendment Number: _____

☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

***All Funding Source(s) required:**

*Match funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

*Match funding from other sources? ☐ Yes ☐ No If Yes \$ _____ % _____

*Funding Source: _____

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Stephen Romero, Principal Buyer

Department: Procurement

Telephone: 520-724-3021

Department Director Signature/Date: _____

Deputy County Administrator Signature/Date: _____

County Administrator Signature/Date: _____

(Required for Board Agenda/Addendum Items)



MASTER AGREEMENT

PIMA COUNTY, ARIZONA

THIS IS NOT AN ORDER - TRANSMISSION CONSTITUTES
CONTRACT EXECUTION

Master Agreement No: 1700000000000000125

MA Version: 7

Page: 1 of 2

Description: ESRI Geographic Information Systems Software ELA

I S S U E R	Pima County Procurement Department	T E R M S	Initiation Date:	11-06-2018				
	130 W. Congress St. 3rd Fl		Expiration Date:	12-20-2019				
	Tucson AZ 85701							
	Issued By: SAL SERVIN							
	Phone: 5207249510							
	Email: sal.servin@pima.gov							
			<table><tr><td>NTE Amount:</td><td>\$969,000.00</td></tr><tr><td>Used Amount:</td><td>\$664,648.80</td></tr></table>		NTE Amount:	\$969,000.00	Used Amount:	\$664,648.80
NTE Amount:	\$969,000.00							
Used Amount:	\$664,648.80							

V E N D O R	ENVIRONMENTAL SYSTEMS RESEARCH	Contact:	Vince Collins
	DBA: ESRI	Phone:	303-449-7779
	FILE 54630	Email:	vcollins@esri.com
	LOS ANGELES CA 90074-4630	Terms:	0.00 %
		Days:	30

Shipping Method:	Vendor Method
Delivery Type:	
FOB:	FOB Dest, Freight Prepaid
Modification Reason	
This Amendment is for a one-time increase of \$249,000.00 for a cumulative not-to-exceed contract amount of \$969,000.00 and incorporates Advantage Program Agreement (EEAP).	
Attachment: Contract Amendment No. 02	

This Master Agreement incorporates the attached documents, and by reference all instructions, Standard Terms and Conditions, Special Terms and Conditions, and requirements that are included in or referenced by the solicitation documents used to establish this agreement. All transactions and conduct are required to conform to these documents.



MASTER AGREEMENT DETAILS

Master Agreement No: 17000000000000000125

MA Version: 7

Page: 2 of 2

Line	Description					
6	Roads & Highway Desktop Concurrent Use Licenses					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	EA	\$8,585.00		128890	
7	ArcGIS GIS Server Advanced (Windows) Up to 4 Cores Licenses					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	EA	\$8,585.00		160524	
8	ArcGIS GIS Server Advanced (Windows) Up to 4 Staging License					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	EA	\$4,934.00		160619	
9	GeoPlanner for ArcGIS Enterprise Perpetual License					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	EA	\$2,020.00		154296	
10	ArcGIS Business Analyst Desktop w US State Data Bundle					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	EA	\$7,984.00		154566	
11	Insight for ArcGIS in ArcGIS Enterprise Perpetual License					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	EA	\$2,020.00		153391	
12	EEAP Annual subscription incl. 1 day annual planning session					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	YEAR	\$86,860.00		97717	
13	ArcGIS Online named user Level 2 Term License					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	EA	\$480.00		153148	
14	ArcGIS Enterprise Standard or Advanced Named Users Level 2					
	Discount	UOM	Unit Price	Stock Code	VPN	MPN
	0.0000 %	EA	\$505.00		154252	

Pima County Department of Information Technology									
Project: ESRI Geographic Information Systems Software ELA									
Contractor: Environmental Systems Research Institute, Inc. ("ESRI") File 54630 Los Angeles, CA 90074-4630	<table border="1"> <tr> <td colspan="2">CONTRACT</td> </tr> <tr> <td>NO. <u>MA-PO-17-125</u></td> <td></td> </tr> <tr> <td>AMENDMENT NO. <u>02</u></td> <td></td> </tr> <tr> <td colspan="2">This number must appear on all invoices, correspondence and documents pertaining to this contract.</td> </tr> </table>	CONTRACT		NO. <u>MA-PO-17-125</u>		AMENDMENT NO. <u>02</u>		This number must appear on all invoices, correspondence and documents pertaining to this contract.	
CONTRACT									
NO. <u>MA-PO-17-125</u>									
AMENDMENT NO. <u>02</u>									
This number must appear on all invoices, correspondence and documents pertaining to this contract.									
Contract No.: MA-PO-17-125									
Contract Amendment No.: Two (02)									

Orig. Contract Term: 12/21/2016 - 12/20/2019	Orig. Amount:	\$720,000.00
Termination Date Prior Amendment: N/A	Prior Amendments Amount:	\$ 0.00
Termination Date This Amendment: 12/20/19	This Amendment Amount:	\$249,000.00
	Revised Total Amount:	\$969,000.00

CONTRACT AMENDMENT

The parties agree to amend the above-referenced contract as follows:

1. **Background and Purpose.**
 - 1.1. **Background.** On 12/21/16, County and Contractor entered into the above referenced ELA to provide ESRI Geographic Information Systems Software ELA.
 - 1.2. **Purpose.** County requires additional funding to support upgrading and adding new software to the existing GIS system which will be utilized by additional Pima County departments.
2. **Maximum Payment Amount.** The maximum amount the County will spend under this ELA, as set forth in Section 2.A. Not to Exceed Contract Amount, Contract Term/Renewals, and Revisions, is increased by \$249,000.00. County's total payments to Contractor under this contract, including any sales taxes, will not exceed \$969,000.00.
3. **Scope of Products/Services.** The parties have revised the scope to include additional products/services as described in the attached **Exhibit A (13 pages)**.

The effective date of this Amendment is November 06, 2018.

All other provisions of the ELA not specifically changed by this Amendment remain in effect and are binding upon the parties.

PIMA COUNTY

Environmental Systems Research Institute,
Inc. ("ESRI")

Chairman, Board of Supervisors

Date

7-8-

Authorized Officer Signature

Timothy Brazeal
Manager, Commercial & Government Contracts

Printed Name and Title

OCTOBER 11, 2018

Date

ATTEST

Clerk of the Board

Date

APPROVED AS TO FORM

[Signature]

Chris Straub, Deputy County Attorney

10-11-2018

Date

APPROVED AS TO CONTENT

[Signature]

Department Head

10-17-18

Date

Contract Amendment No.: Two (02)
Exhibit A

This amendment changes the ELA to include separately orderable products in exchange for additional funding, as follows:

1. Article 1—Definitions: The following definition is added to ELA Article 1— Definitions of the Enterprise License Terms and Conditions (Document 4 of the ELA).

- "Unit-Priced Item(s)" means separately orderable Products, Maintenance, or Esri Enterprise Advantage Program that are available subject to a per-unit license fee, maintenance fee, or subscription fee.

2. Appendix B. Appendix B—Enterprise License Fee Schedule of the Enterprise License Terms and Conditions (Document 4 of the ELA) is updated to include the following optional Unit-Priced Items:

Optional - Unit-Priced Items

Software, Data, and Online Services are available at the prices and quantities set forth below and are not included in the ELA Fee. Annual maintenance fees for Unit-Priced Items are not listed below, are not included in the ELA Fee, and if ordered, additional fees will apply. Pricing is valid for one (1) year from October 9, 2018 and may be updated by Esri by written notice to County. Software, Data, Online Services, and Maintenance acquired as Unit-Priced Items will be licensed under the terms and conditions of the License Agreement. The EEAP terms and conditions are found in the Advantage Program Agreement, a copy of which is attached hereto and incorporated herein as Document 6 of the ELA by this reference.

Unit-Priced Items			
Item	Qty	Unit Price	Total
Esri Roads and Highways for Desktop , Concurrent Use License	2	8,585.00	17,170.00
Esri Roads and Highways for ArcGIS GIS Server Advanced (Windows) , Up to Four Cores License	1	8,585.00	8,585.00
Esri Roads and Highways for ArcGIS GIS Server Advanced (Windows) , Up to Four Cores Staging Server License	1	4,934.00	4,934.00
GeoPlanner for ArcGIS Enterprise , Perpetual License	7	2,020.00	14,140.00
ArcGIS Business Analyst Desktop with US State Data Bundle , Single Use Term License	3	7,984.00	23,952.00
Insights for ArcGIS Named Users , Term License	20	2,020.00	40,400.00
ArcGIS Online Named User Level 2 Term License	50	480.00	24,000.00
ArcGIS Enterprise Standard or Advanced Named Users , Level 2 Term License	30	505.00	15,150.00
Esri Enterprise Advantage Program (EEAP) subscription	1	86,860.00	86,860.00

County may exercise its option(s) by submitting its purchase order(s) to Esri, subject to Section 5.1 c of Esri's Enterprise License Terms and Conditions.

Purchases of Esri Software, Data, Online Services, and Maintenance not listed above as a Unit-Priced Item shall be based on the License Agreement found in this ELA and Esri's then existing commercial price list.

Advantage Program Agreement



esri

THE
SCIENCE
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WHERE

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

This Agreement sets forth the terms under which Esri provides the Advantage Program to the Customer. This Agreement does not apply to Software, Online Services, Data, or Maintenance, or to development Professional Services. The terms of use for these Esri Offerings are set forth in the Contract No.: MA-PO-17-125 (Esri contract number 315383).

This Agreement is the sole and entire agreement of the parties as to the subject matter of this Agreement and supersedes any previous agreements, understandings, and arrangements relating to such subject matter. Neither party has relied on any statement, representation, nor warranty not expressly stated in this Agreement. The Agreement comprises this page, the terms and conditions that begin on the following page, and all referenced attachments and addendums. Except for Product or Service descriptions, quantities, pricing, and delivery instructions, or as agreed in an Ordering Document signed by both parties, all terms included in any Ordering Document are void and of no effect. Any modification(s) or amendment(s) to this Agreement must be in writing and signed by both parties.

Customer Contact Information

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, ZIP: _____

Email: _____

Attachment A of the License Agreement as supplemented by Attachment A of this Agreement, 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 t ELA, Esri

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

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

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

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

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

2.0 PROFESSIONAL SERVICES

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

- a. "**Invention(s)**" means a patentable invention, discovery, innovation, or improvement, excluding Deliverables, relating to the subject matter of a Task Order.
- b. "**Inventor(s)**" means a party's principal, employee, consultant, or independent contractor that solely or jointly develops Inventions during Esri's performance under a Task Order.

2.2 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.

3.0 ESRI MANAGED CLOUD SERVICES

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

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

3.2 Provision of EMCS

- a. **Generally.** Use of EMCS is subject to the Cloud Services terms found in Attachment B of this Agreement.
- b. **Requirements Planning.** It is Customer's responsibility to plan for and address with Esri changes to Customer's requirements, such as the need for additional capacity, the update of an application or dataset, or increased level of system availability.
- c. **Compensation and Expenses.** Esri will invoice Customer for the one-time setup fee upon Task Order execution. Thereafter, Esri will invoice Customer monthly for the EMCS to be provided the following month. Customer will pay invoices within 30 days of receipt. Customer is responsible for any shipping or temporary storage costs incurred during the delivery of Customer Content to Esri or removal of Customer Content from the EMCS Environment. This paragraph does not apply to EMCS provided under the Advantage Program (see the section entitled "Advantage Program" in this Agreement.)
- d. **Risk of Loss.** Risk of loss for all Customer Content shall at all times remain with Customer, and it is Customer's sole responsibility to maintain regular backups of Customer Content. Risk of loss for the EMCS Environment shall at all times remain with Esri.
- e. **Personally Identifiable Information.** Prior to providing any Customer Content under this Agreement, Customer shall notify Esri if Customer Content includes personally identifiable information.
- f. **Public Software.** Customer may not use, and may not authorize its end users or contractors to combine or use any Esri Offerings with any software (including any underlying dependencies), documentation, or other material distributed under an open source or other similar licensing or distribution model that requires as a condition of such model that any component of the Esri Offering to be (1) disclosed or distributed in source code form, (2) made available free of charge to third parties, or (3) modifiable without restriction by third parties.
- g. **Monitoring.** Customer will provide information and other materials related to its Customer Content as reasonably requested by Esri or its Hosting partner to verify Esri's or Customer's compliance with this Agreement. Esri or its Hosting partner, as applicable, may browse, index, or otherwise monitor the external interfaces of any Customer Content solely for the purpose of verifying compliance with this Agreement.

4.0 TRAINING

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

- a. **"Customer-Supplied Training Data"** means any digital dataset(s) including, but not limited to, geographic vector data, coordinates, raster data reports, or associated tabular attributes supplied by Customer for use in training.
- b. **"Esri Mobile Lab"** means Esri equipment consisting of laptops preconfigured with Esri Software, Training Materials, hard drives, power cords, and network switches provided to Customer for use in conjunction with scheduled Esri Training Events only.
- c. **"Esri Training Event(s)"** means an Esri site class, Esri instructor-led online class, a Customer site/private class or coaching services
- d. **"Esri Training Event Assistant"** means Customer's primary Esri liaison in organizing private Esri Training Events.

- e. **"Student(s)"** means a Customer employee or agent who is a registered participant in a specific Esri Training Event, or Training-related services. If Customer is an individual, then Student means Customer.
- f. **"Training Pass"** means a non-refundable, non-transferable block of prepaid training days with a fixed price per day training price throughout the term of the Training Pass.

4.2 Permitted and Prohibited Uses

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

4.3 Esri's Responsibilities

Esri will

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

4.4 Customer's Responsibilities

Customer will

- a. Ensure that all Students have received confirmation from Esri to participate in an Esri Training Event. Esri reserves the right to disconnect any Student who permits unregistered student access to an online classroom Esri Training Event. In such case the full Esri Training Event fee will be invoiced and payable;
- b. Ensure that all Students meet the minimum prerequisites for the applicable Esri Training Event as listed on Esri's training website;
- c. Submit Student registrations in Esri site classes with payment method information at least 15 business days before the scheduled start date.
- d. Provide the Esri Training Event Assistant with a list of the names and email addresses of any Students who are to attend an Esri Training Event at least 3 business days before the scheduled start date, for compliance with the US embargoed country lists and the various US Government Lists of Parties of Concern or Specially Designated Nationals lists.
- e. For classes held at the Customer-designated facility, complete a client site training request form; consult with Esri personnel to determine classroom, computer, and network requirements; and provide all such required classrooms, computers, and network access;
- f. Ensure that Student use of Training Materials provided by Esri complies with the terms of this Agreement; and
- g. Assume full liability and responsibility for Student attending Training course(s) under this Agreement.

h. If the Esri Mobile Lab is used, Customer will

1. Immediately report any previously damaged Esri Mobile Lab equipment to the Esri Training Event Assistant upon receipt of the equipment;
2. Keep Esri Mobile Lab equipment in a secure, locked area between Esri Training Event sessions;
3. Be responsible for loss of, damage to, or theft of Esri Mobile Lab equipment while in Customer's possession;
4. Allow the Esri instructor to check all Esri Mobile Lab equipment following the completion of an Esri Training Event. Esri will notify Customer in writing of any damage to Esri Mobile Lab equipment due to Customer use, excluding normal wear and tear. Customer will be financially responsible for any repair or replacement of equipment resulting from such damage; and
5. Make Esri Mobile Lab equipment available for freight pickup upon the conclusion of the Esri Training Event.

4.5 Student Registration and Training Event Change Policy

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

4.6 Invoicing; Prepaid Fees

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

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

5.0 ADVANTAGE PROGRAM

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

- a. **"Activity Description"** means a mutually agreed upon written statement that confirms the number of Learning and Services Credits that Esri estimates is required to perform an activity and authorizes Esri to begin work based on such estimate. The Activity Description serves as the Task Order for Services provided under the Advantage Program.
- b. **"Advantage Program"** means either the BPAP or the EEAP.
- c. **"Authorized Contact"** means the Customer point of contact for the Advantage Program identified below.

- d. **"BPAP"** means the Business Partner Advantage Program as described at www.esri.com/partners/bpap/components
- e. **"EEAP"** means the Esri Enterprise Advantage Program as described at www.esri.com/services/eeap/components
- f. **"Learning and Services Credits"** means a contracted unit of exchange that Customer may use to acquire Professional Services, Training, PSS, EMCS, or related travel expenses as described below.
- g. **"Premium Support Services" or "PSS"** means a prioritized incident management and technical support program further described at <http://support.esri.com/en/support/premium>.
- h. **"Technical Advisor"** means an Esri consultant assigned to work with Customer to provide Professional Services comprising advising on GIS strategies, facilitating annual account planning, and developing and coordinating a collaborative technical work plan under the Advantage Program.

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

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

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

(to be completed by Customer):

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

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

5.5 Authorization of Learning and Services Credits Use. Customer will contact its account manager or Technical Advisor to consume Learning and Services Credits for a particular request. Esri will submit an Activity Description by email to Customer for confirmation and authorization to use the Learning and

Services Credits. Customer may authorize the consumption of Learning and Services Credits by submitting an email. Esri will begin work and deduct the estimated credit amount stated in the Activity Description from the unused Learning and Services Credits available.

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

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

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

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

5.8 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.

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

5.10 Invoicing

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

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

- a. Services will end as of the expiration or termination date stated; and
- b. Unless either party terminates the Advantage Program subscription for cause, Customer may apply any unused Learning and Services Credits toward any Professional Services, Training, PSS, or

related travel expenses that are scheduled as of the termination or expiration date, provided that the Learning and Services Credits are used within 3 months after the termination or expiration date. Any other unused Learning and Services Credits will expire 30 days after the expiration or termination date; if Customer renews the Advantage Program subscription within this time period, any unused Learning and Services Credits will remain valid for up to 2 years from the purchase date or termination of this Agreement, whichever comes first.

ATTACHMENT A GLOSSARY OF TERMS FOR SERVICES

This glossary contains definitions that supplement Attachment A of the License Agreement solely for the interpretation of capitalized terms used throughout this Agreement. These terms do not change the meaning of any similarly defined terms set forth in License Agreement for interpretation of the Products licensed thereunder.

"Cloud Services" means Online Services and EMCS.

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

"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 Deliverables provided on a firm fixed price basis and Training Materials. Esri Offerings exclude Services and Third-Party 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.

"Product(s)" means Software, Data, and Online Services only. Products does not include EMCS, despite Cloud Services being defined herein to include EMCS.

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

"Service(s)" means EMCS, Training, and Professional Services.

"Specification(s)" means (i) the scope of work set forth in any Task Order or (ii) Esri's published course descriptions for Training.

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

"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.

ATTACHMENT B GENERAL TERMS AND CONDITIONS

The following general terms and conditions apply to the Esri Offerings and Services that Esri may offer to its customers pursuant to the terms of this Agreement. 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, the General Use Restrictions set forth in Article 1—General Use Restrictions of Attachment B to the License Agreement will apply to the Esri Offerings and Services provided under this Agreement.

ARTICLE 2—TERM AND TERMINATION

2.1 The rights of termination set forth in Article 2—Term and Termination of Attachment B of the License Agreement apply to the Esri Offerings and Services provided under this Agreement.

ARTICLE 3—LIMITED WARRANTIES AND DISCLAIMERS

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

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

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

3.4 Disclaimers

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

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

ARTICLE 4—LIMITATION OF LIABILITY

4.1 The limits and disclaimers of liability set forth in Article 4—Limitation of Liability of Attachment B of the License Agreement apply to the Esri Offerings and Services provided under this Agreement. For the purposes of interpretation for this Agreement, in each case where "Esri Offerings" appears, such clauses will be read as "Esri Offerings and Services" as defined in this Agreement.

ARTICLE 5—INDEMNIFICATIONS

5.1 The indemnifications set forth in Article 5—Indemnifications of Attachment B to the License Agreement apply to the Esri Offerings and Services provided under this Agreement. For the purposes of interpretation for this Agreement, in each case where "Esri Offerings" appears, such clauses will be read as "Esri Offerings and Services" as defined in this Agreement.

ARTICLE 6—INSURANCE

Article 6—Insurance of Attachment B to the License Agreement applies to the Services as defined in this Agreement.

ARTICLE 7—SECURITY AND COMPLIANCE

7.1 Security. Article 7.2 Security of Attachment B to the License Agreement applies to the Services that Esri provides, and Customer Content provided to Esri pursuant to a Task Order for Cloud Services, as described in this Agreement.

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. Article 7.1 Export Compliance of Attachment B to the License Agreement applies to the Services and Esri Offerings provided under this Agreement.

ARTICLE 8—CLOUD SERVICES

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

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

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

8.3 Customer Content.

- a. Customer grants Esri and its subcontractors a nonexclusive, nontransferable, worldwide right to host, run, modify and reproduce Customer Content as needed to provide Cloud Services to Customer. Esri will not access, use, or disclose Customer Content without Customer's written permission except as reasonably necessary to support Customer's use of Cloud Services. Except for the limited rights granted to Esri under this Agreement, Customer retains all its rights, title, and interest in the Customer Content.
- b. If Customer accesses Cloud Services with an application provided by a third party, Esri may disclose Customer Content to such third party as necessary to enable interoperation between the application, Cloud Services, and Customer Content.
- c. Esri may disclose Customer Content if required to do so by law or regulation or by order of a court or other government body, in which case Esri will reasonably attempt to limit the scope of disclosure.
- d. When Customer's use of Cloud Services ends, Esri will either:
 - (i) Make Customer Content available to Customer for download for a period of 30 days unless Customer requests a shorter window of availability or Esri is legally prohibited from doing so; or
 - (ii) Download all Customer Content in Esri's possession to a medium of Customer's choosing and deliver such Customer Content to Customer.

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

8.4 Removal of Customer Content. Article 8.3 Removal of Customer Content of Attachment B of the License Agreement applies to any Cloud Services provided by Esri pursuant to this Agreement.

8.5 Service Suspension. Article 8.4 Service Suspension of Attachment B of the License Agreement applies to any Cloud Services provided by Esri pursuant to this Agreement.

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

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

ARTICLE 9—GENERAL PROVISIONS

9.1 The clauses of Article 9—General Provisions of Attachment B to the License Agreement apply to this Agreement, as supplemented by the additional general terms listed below.

9.2 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.

9.3 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."