

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201

CONTRACT AWARD COVERPAGE

TO: ESRI, Inc.	DATE ISSUED:	October 22, 2020
380 New York Street	CONTRACT NO:	20-843-SS
Redlands, California 92373	CONTRACT TITLE:	Arc-GIS

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

The Contract documents consist of the Terms and Conditions of Sole Source Contract No. 20-843, including any attachments or amendments thereto.

EFFECTIVE DATE: Date of Execution

EXPIRES: 2023

RENEWALS: N/A

COMMODITY CODE(S): 92032

LIVING WAGE:

ATTACHMENTS:

SOLE SOURCE CONTRACT NO. 20-843

ATTACHMENT A – ESRI Quotation No. Q-401289

ATTACHMENT B – ESRI Enterprise Agreement No. 00279688.0

ATTACHMENT C – ESRI License and Services Agreement No. 319408

EMPLOYEES NOT TO BENEFIT:

NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: Timothy Brazeal

VENDOR TEL. NO.:

(303-449-7779)

EMAIL ADDRESS: TBrazeal@esri.com

COUNTY CONTACT: Gerald Coates

COUNTY TEL. NO.:

(703) 228-4391

COUNTY CONTACT EMAIL: gcoataes@arlingtonva.us

PURCHASING DIVISION AUTHORIZATION

Shirley Diamond Title-Procurement Officer-Date 10-22-20

**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD
SUITE 500
ARLINGTON, VIRGINIA 22201**

SOLE SOURCE AGREEMENT NO. 20-843

THIS AGREEMENT ("Agreement") is made on the date of execution by the County between the COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA ("County") and Environmental Systems Research Institute, Inc., ("Contractor"), a California Corporation located at 380 New York Street, Redlands, California 92373 authorized to do business in the Commonwealth of Virginia. The County and the Contractor, for consideration hereinafter specified.

This Agreement contains the following Exhibits, which are listed in decreasing order of precedence. This Agreement shall take precedence over all Exhibits in the event of any conflicts.

- **Exhibit A – ESRI Quotation NO. Q-401289**
- **Exhibit B – ESRI Enterprise Agreement No. 00279688.0**
- **Exhibit C – ESRI License and Services Agreement. No. 319408**

1. The Contractor agrees to provide the following goods, services and software as set forth in the Quotation No. Q-401289 (Exhibit A) and License and Services Agreement (Exhibit C)

The County will have no obligation to the Contractor if no goods or services are required.

2. The Contractor's provision of these goods or services is subject to review and approval by the County's Project Officer.
3. The Contractor shall provide the goods or services covered by the Contract upon the date of execution of this Agreement. Unless terminated as provided below, the Period of Performance shall be three (3) years from the date of execution of this Agreement.
4. The County will pay the Contractor for services or goods in accordance with Exhibit A.

The County will pay the Contractor net forty-five (45) days from receipt of an invoice that the Project Officer approves.

5. The Contractor is an independent contractor, and the County will not withhold from the Contractor's compensation any federal or Virginia unemployment taxes, federal or Virginia income taxes, Social Security tax or any other amounts for benefits to the Contractor or its agents or employees.
6. The Contractor is obligated to take one of the Two (2) following actions within Seven (7) days after receipt of amounts paid to the Contractor by the County for work performed by any sub-contractor under this Agreement:

- a. Pay the sub-contractor for the proportionate share of the total payment received from the County attributable to the work performed by the sub-contractor under this Agreement; or
- b. Notify the County and the sub-contractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to any sub-contractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after Seven (7) days following receipt by the Contractor of payment from the County for work performed by the sub-contractor under this Agreement, except for amounts withheld as allowed in section b., above. Unless otherwise provided under the terms of this Agreement, interest shall accrue at the rate of One Percent (1%) per month.

The Contractor shall include in each of its sub-contracts a provision requiring each sub-contractor to include or otherwise be subject to the same payment and interest requirements as those contained in this Agreement with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a sub-contractor pursuant to the above provisions may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

7. The County may terminate this Agreement by Thirty (30) days' written notice whenever the Purchasing Agent determines that termination is in the County's best interest. The Contractor will be entitled to receive compensation for all goods or services that the County accepted before the termination notice. The County shall not be entitled to a refund of any fees already paid in the event of such cancellation.
8. The County may terminate this Agreement by Ten (10) days' written notice if the Contractor fails to provide satisfactory goods or services, in the determination of the Project Officer. The notice will be effective upon receipt by the Contractor or Three (3) days after the County mails the notice, whichever is sooner. The Contractor will be entitled to receive compensation only for goods or services that the County received before the County mailed the notice.
9. Time is of the essence and the Contractor agrees that failure to provide timely service will render this Agreement null and void.
10. The Contractor must provide a certificate of proof of the insurance coverages before the start of work:
 - Workers Compensation-Standard Virginia Workers Compensation Policy.
 - Commercial General Liability (CGL)- \$500,000 combined single limit with \$1,000,000 aggregate coverage to include Personal Injury, Completed Operations, Contractual Liability and, where applicable to the services, Products and Independent Contractors. "The County Board of Arlington County, Virginia, and its officers, employees and agents" must be additional named insureds on the CGL policy.
 - Automobile Bodily Injury and Property Damage Liability - \$500,000 Combined Single Limit (Owned, non-owned, or hired, as applicable)

11. The Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, national origin, age, disability or on any other basis prohibited by Virginia or federal law and must post in this nondiscrimination clause in conspicuous places, available to employees and applicants for employment.
- b. The Contractor must state that it is an Equal Opportunity Employer in all solicitations or advertisements for employees that it places or causes to be placed.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall meet the requirements of this section.
- d. The Contractor must include the provisions of the foregoing paragraphs a), b), and c) in every subcontract or Purchase Order in excess of \$10,000.00, so that the provisions will be binding upon each subcontractor and/or supplier.

12. The Contractor must comply with the provisions of the Americans with Disabilities Act of 1990, which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in publicly and privately provided services and activities.

13. The Contractor must provide the following:

- (i) A drug-free workplace for the Contractor's employees;
- (ii) Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of marijuana or any other controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- (iii) Include the provisions of the foregoing clauses in every subcontract or purchase order in excess of \$10,000.00, so that the provisions will be binding upon each subcontractor or supplier. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with this Agreement.

14. If the Contractor employs more than five employees, the Contractor shall (i) provide annual training on the Contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the Contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the Contractor owns or leases for business purposes and (b) the Contractor's employee handbook.

15. The Contractor acknowledges that it does not, and will not during the performance of this Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

16. This Agreement is governed by all applicable provisions of the Arlington County Purchasing Resolution, which is incorporated by reference. The time limit for decision by the County Manager in Contractual Disputes, as that term is used in the Purchasing Resolution, is Thirty (30) days.

17. This Agreement is not effective until the County issues a valid County Purchase Order covering the amount of the Agreement.
18. All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.
19. This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
20. No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public
21. The County does not discriminate against faith-based organizations.
22. The Contractor and its employees, agents and subcontractors will hold as confidential all County Information that they obtain under this Agreement. Confidential Information includes, but is not limited to, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans and expertise. The Contractor must take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of and abide by this requirement. Confidential Information will either be clearly marked as confidential or proprietary, or communicated to Contractor's sales or technical support team.
23. The Contractor must comply with the provisions of Chapter 11 of the Arlington County Code covering business licenses as applicable.
24. The Contractor must remain authorized to transact business in the Commonwealth of Virginia during the term of this Agreement.
25. This Agreement is governed in all respects by the laws of the Commonwealth of Virginia, and the jurisdiction and venue for any litigation is in the Circuit Court for Arlington County, Virginia, and in no other court.
26. The Contractor will defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current employees, departments, agencies, boards and commissions

(collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all damage awards, expenditures, settlement amounts, costs (including awarded court costs and attorneys' fees), or expenses resulting from, arising out of or directly caused by the Contractor's negligent acts or omissions, including the negligent acts or omissions of its employees in performance of Services under the Contract while on County's site. As condition for indemnification, the County will follow Section 5.4 Conditions for Indemnification in the License and Services Agreement.

27. Notices will be effective when made in writing and either (a) delivered in person, (b) delivered to an overnight delivery service or (c) deposited in the United States mail, certified or registered. Notices should be addressed as follows:

TO THE CONTRACTOR:

**Timothy Brazeal, Manager, Communications & Government Contracts
Environmental Systems Research Institute, (ESRI)
380 New York Street
Redlands, California 92373
Telephone: 303-449-7779**

TO THE COUNTY:

**Gerald Coates, GIS Analyst
Arlington County Government
Department of Environmental Services-Technology
2100 Clarendon Boulevard
Suite 813
Arlington, Virginia 22201
Telephone: 703-228-4391**

AND

**Sharon T. Lewis, Purchasing Division Chief
Arlington County, Virginia
2100 Clarendon Boulevard
Suite 500A
Arlington, Virginia 22201
Telephone: 703-228-3294**

TO COUNTY MANAGER'S OFFICE (FOR PROJECT CLAIMS):

**Mark Schwartz, County Manager
Arlington County, Virginia
2100 Clarendon Boulevard
Suite 318
Arlington, Virginia 22201**

28. The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within Fifteen (15) days of the request, at the Contractor's expense.

Should the County's examination reveal any overcharging by the Contractor, the Contractor must,

within Thirty (30) days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor.

If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least Thirty (30) days' notice and must not dispose of the documents if the County objects.

29. The Contractor shall not assign or transfer this Agreement, or any of its rights or interests, without the County's prior written consent, except for a sale of all or substantially all of the assets of Contractor.
30. This Agreement may be modified only by written amendment.
31. All remedies available to the County under this Agreement are cumulative, and no remedy is exclusive of any other that is available to the County at law or in equity.
32. The sections, paragraphs, sentences, clauses and phrases of this Agreement are severable; and if any part is held to be invalid, the rest of the Agreement will remain in effect.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE AFFIXED THEIR SIGNATURES.

**THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA**

**AUTHORIZED
SIGNATURE:** _____

DocuSigned by:
Shirley Diamond
20B6DA8FBF00410...

**PRINTED NAME: Shirley Diamond
PRINTED TITLE: Procurement Officer**

DATE: 10/23/2020

**ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.**

**AUTHORIZED
SIGNATURE:** _____

DocuSigned by:
T-B
567D16D63C104A0

**PRINTED NAME: Timothy Brazeal
PRINTED TITLE: Manager, Commercial &
Government Contracts**

DATE: 10/23/2020

ATTACHMENTS AND FORMS

EXHBIT – A

ESRI QUOTATION NO. Q-401289



Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853 Fax: (909) 307-3049
DUNS Number: 08-313-4175 CAGE Code: 0AMS3

To expedite your order, please attach a copy of
this quotation to your purchase order.
Quote is valid from: 11/6/2019 To: 2/4/2020

Material	Qty	Term	Unit Price	Total
162040	1		\$2,000.00	\$2,000.00
ArcGIS Monitor for ArcGIS Server Up to Four Cores Term License/ 2022				
162071	4		\$250.00	\$1,000.00
ArcGIS Monitor for ArcGIS Server Additional Core Term License/ 2022				

Subtotal:	\$459,000.00
Sales Tax:	\$0.00
Estimated Shipping and Handling (2 Day Delivery):	\$0.00
Contract Price Adjust:	\$0.00
Total:	\$459,000.00

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact: Dawn Matasic	Email: dmatasic@esri.com	Phone: (909) 793-2853 x8647
<p>The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at https://essentials.esri.com/content/dam/esri/usa/legal/product-specific-terms-of-use/s300.pdf, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at https://go.esri.com/MAPS apply to your purchase of that item. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at https://www.esri.com/en-us/legal/terms/state-supplemental apply to some state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin.</p>		

MATASICD

This offer is limited to the terms and conditions incorporated and attached herein.

Quotation # Q-401289

Date: November 6, 2019

Customer # 40348 Contract # ENTERPRISE AGREEMENT

County of Arlington
GIS Mapping Center
2100 Clarendon Blvd
Arlington, VA 22201-5447

ATTENTION Kayvan Patti
PHONE (703) 228-3649
EMAIL kpatti@arlingtonva.us



Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853 Fax: (909) 307-3049
DUNS Number: 06-313-4175 CAGE Code: 0AM53

Quotation # Q-401289

Date: November 6, 2019

Customer # 40348 Contract # ENTERPRISE AGREEMENT

County of Arlington
GIS Mapping Center
2100 Clarendon Blvd
Arlington, VA 22201-5447

*To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 11/6/2019 To: 2/4/2020*

ATTENTION Kayvan Patil
PHONE (703) 226-3849
EMAIL kpatil@arlingtonva.us

If you have made ANY alterations to the line items included in this quote and have chosen to sign the quote to indicate your acceptance, you must fax Esri the signed quote in its entirety in order for the quote to be accepted. You will be contacted by your Customer Service Representative if additional information is required to complete your request.

If your organization is a US Federal, state, or local government agency; an educational facility; or a company that will not pay an invoice without having issued a formal purchase order, a signed quotation will not be accepted unless it is accompanied by your purchase order.

In order to expedite processing, please reference the quotation number and any/all applicable Esri contract number(s) (e.g. MPA, ELA, SmartBuy, GSA, BPA) on your ordering document.

BY SIGNING BELOW, YOU CONFIRM THAT YOU ARE AUTHORIZED TO OBLIGATE FUNDS FOR YOUR ORGANIZATION, AND YOU ARE AUTHORIZING ESRI TO ISSUE AN INVOICE FOR THE ITEMS INCLUDED IN THE ABOVE QUOTE IN THE AMOUNT OF \$ _____, PLUS SALES TAXES IF APPLICABLE. DO NOT USE THIS FORM IF YOUR ORGANIZATION WILL NOT HONOR AND PAY ESRI'S INVOICE WITHOUT ADDITIONAL AUTHORIZING PAPERWORK.

Please check one of the following:

- ☐ I agree to pay any applicable sales tax.
☐ I am tax exempt, please contact me if exempt information is not currently on file with Esri.

Signature of Authorized Representative

Date

Name (Please Print)

Title

The quotation information is proprietary and may not be copied or released other than for the express purpose of system selection and purchase/license. This information may not be given to outside parties or used for any other purpose without consent from Environmental Systems Research Institute, Inc. (Esri).

Any estimated sales and/or use tax reflected on this quote has been calculated as of the date of this quotation and is merely provided as a convenience for your organization's temporary purposes. Esri reserves the right to adjust and collect sales and/or use tax at the actual date of invoicing. If your organization is tax exempt or pays state tax directly, then prior to invoicing, your organization must provide Esri with a copy of a current tax exemption certificate issued by your state's taxing authority for the given jurisdiction.

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact: Dawn Matasic Email: dmatasic@esri.com Phone: (909) 793-2853 x8647

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://www.esri.com/content/dam/esristore/media/eng/product-specific-terms-of-use/300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://www.esri.com/USA/ESR/apply-to-your-purchase-of-that-item> apply to your purchase of that item. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin.

MATASICD

This offer is limited to the terms and conditions incorporated and attached herein.

EXHIBIT -- B

ESRI ENTERPRISE AGREEMENT NO. 00279688.0

Esri Use Only:

Cust. Name County of Arlington
 Cust. # 40348
 PO # _____
 Esri Agreement # 00279688.0



**SMALL ENTERPRISE AGREEMENT
 COUNTY AND MUNICIPALITY GOVERNMENT
 (E214-6)**

This Agreement is by and between the organization identified in the Quotation ("Customer") and **Environmental Systems Research Institute, Inc. ("Esri")**.

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

**Table A
 List of Products**

Uncapped Quantities**Desktop Software and Extensions (Single Use)**

ArcGIS Desktop Advanced
 ArcGIS Desktop Standard
 ArcGIS Desktop Basic
 ArcGIS Desktop Extensions: ArcGIS 3D Analyst,
 ArcGIS Spatial Analyst, ArcGIS Geostatistical
 Analyst, ArcGIS Publisher, ArcGIS Network
 Analyst, ArcGIS Schematics, ArcGIS Workflow
 Manager, ArcGIS Data Reviewer

Enterprise Software and Extensions

ArcGIS Enterprise and Workgroup
 (Advanced and Standard)
 ArcGIS Enterprise Extensions: ArcGIS 3D Analyst,
 ArcGIS Spatial Analyst, ArcGIS Geostatistical
 Analyst, ArcGIS Network Analyst, ArcGIS
 Schematics, ArcGIS Workflow Manager

Enterprise Additional Capability Servers

ArcGIS Image Server

Developer Tools

ArcGIS Engine
 ArcGIS Engine Extensions: ArcGIS 3D Analyst,
 ArcGIS Spatial Analyst, ArcGIS Engine Geodatabase
 Update, ArcGIS Network Analyst, ArcGIS Schematics
 ArcGIS Runtime (Standard)
 ArcGIS Runtime Analysis Extension

Limited Quantities

One (1) Professional subscription to ArcGIS
 Developer*
 Two (2) Esri CityEngine Single Use Licenses
 1,000 ArcGIS Online Viewers
 1,000 ArcGIS Online Creators
 110,000 ArcGIS Online Service Credits
 1,000 ArcGIS Enterprise Creators
 15 Insights in ArcGIS Enterprise
 15 Insights in ArcGIS Online

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	5
Number of Tier 1 Help Desk individuals authorized to call Esri	5
Maximum number of sets of backup media, if requested**	2
Self-Paced e-Learning	Uncapped
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement (Discount does not apply to Small Enterprise Training Package)	

* Maintenance is not provided for these items

**Additional sets of backup media may be purchased for a fee

1.0—ADDITIONAL DEFINITIONS

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

"Case" means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

"Deploy", "Deployed" and "Deployment" mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

"Fee" means the fee set forth in the Quotation.

"Maintenance" means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

"Master Agreement" means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at <https://www.esri.com/en-us/legal/terms/full-master-agreement> and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

"Product(s)" means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

"Quotation" means the offer letter and quotation provided separately to Customer.

"Technical Support" means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

"Tier 1 Help Desk" means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

"Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk.

"Tier 2 Support" means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

2.0—ADDITIONAL GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

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

3.0—TERM, TERMINATION, AND EXPIRATION

3.1 Term. This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

3.2 No Use upon Agreement Expiration or Termination. All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

3.3 Termination for a Material Breach. Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

3.4 Termination for Lack of Funds. For an Agreement with government or government-owned entities, either party may terminate this Agreement before any subsequent year if

Customer is unable to secure funding through the legislative or governing body's approval process.

- 3.5 Follow-on Term.** If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

4.0—PRODUCT UPDATES

- 4.1 Future Updates.** Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

- 4.2 Product Life Cycle.** During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <https://support.esri.com/en/other-resources/product-life-cycle>. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <https://www.esri.com/en-us/legal/terms/maintenance>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
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. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.
5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.
6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support 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. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.

5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

6.0—ENDORSEMENT AND PUBLICITY

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

7.0—ADMINISTRATIVE REQUIREMENTS

7.1 OEM Licenses. Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download, operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee before the annual anniversary date for each year.
- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri's federal ID number is 95-2775-732.

- c. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.

8.2 Order Requirements. Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

- a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.
- b. The following information will be included in each Ordering Document:
 - (1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
 - (2) Order number
 - (3) Applicable annual payment due

9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "Ownership Change"). There will be no decrease in Fee as a result of any Ownership Change.

- 9.1 If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.
- 9.2 If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer

the Products to Customer or uninstall, remove, and destroy all copies of the Products.

- 9.3** This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.

EXHIBIT – C

ESRI ENTERPRISE LICENSE AND SERVICES AGREEMENT NO. 319408



LICENSE AND SERVICES AGREEMENT

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-783-2663 • FAX 909-783-5953

Agreement No. 319408

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

This Agreement is the sole and entire agreement of the parties as to the subject matter of this Agreement and supersedes any previous agreements, understandings, and arrangements relating to such subject matter. All attachments and addendums to this Agreement are incorporated and made part of 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. Neither party has relied on any statement, representation, or warranty not expressly stated in this Agreement. 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:

ARLINGTON COUNTY, VIRGINIA
(Customer)

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.
(Esri)

Legal Address: 2100 Clarendon Blvd, Suite 500, Arlington, VA
22201

380 New York Street, Redlands, CA 92373

By: *Michael E. Bevis*
Authorized Signature

By: *William C. Fleming*
Authorized Signature

Printed Name: Michael E. Bevis

Printed Name: William C. Fleming
Managing Business Attorney

Title: Purchasing Agent

Title: _____

Date: 5/4/2017

Date: 5-3-2017

Customer Contact Information

Contact: Gerald Coates _____

Telephone: 703 228-4391 _____

Address: 2100 Clarendon Blvd, Suite 813 _____

Fax: 703-228-3606 _____

City, State, ZIP: Arlington, VA 22201 _____

Email: Gcoates@arlingtonva.us _____

1.0 GENERAL GRANT OF RIGHTS AND RESTRICTIONS

1.1 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.

1.2 Grant of Rights. In consideration of Customer's payment of all applicable fees and in accordance with this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable right to

- a. Use the Esri Offerings as set forth in the Documentation and applicable Ordering Documents;
- b. Copy and make derivative works of the Documentation for Customer's own Internal use in conjunction with Customer's authorized use of Products. 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.

1.3 Consultant or Contractor Access. Customer may authorize its consultants or contractors to 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.

1.4 Evaluation and Beta Licenses. Products acquired under an 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 content and customizations made during the evaluation term. If Customer does not wish to purchase a license or subscription, Customer should export such 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 non-conflicting terms of this Agreement.

1.8 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 SOFTWARE TERMS OF USE

2.1 License Types. Esri licenses Software under the following license types:

- 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 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 does not apply to Software licensed for Development Use.

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.

2.3 Maintenance. Esri will provide Maintenance in accordance with the Esri Maintenance and Support Program if Customer is in the United States. Customers outside the United States may obtain Maintenance from their local Esri distributor under the distributor's own terms.

3.0 ONLINE SERVICES TERMS OF USE

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 its 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" means a system-generated application login and associated password provided by registering a Value-Added Application with ArcGIS Online, which can be embedded in a Value-Added Application to enable the Value-Added Application to access and use 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 and/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 Provision of Subscription Online Services. For subscription Online Services, Esri will

- a. Provide Online Services to Customer in accordance with the Documentation;
- b. Provide Maintenance in accordance with the Esri Maintenance and Support Program if Customer is in the United States. Customers outside the United States may obtain Maintenance from Esri's distributor under the distributor's own terms.
- c. Provide customer support in accordance with Esri's standard customer support policies and any additional support services Customer may purchase; and
- d. Use commercially reasonable efforts to ensure that Online Services will not transmit to Customer any Malicious Code, provided Esri is not responsible for Malicious Code that was introduced to Online Services through Customer's subscription or through third-party Content.

3.4 Access to Value-Added Applications

- a. Named Users have unique, individual login credentials. Named Users have private access to features of Online Services that are not publicly accessible to Anonymous Users.

- b. Customer may use its Online Services subscription to build 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 Application(s). 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 Application(s). 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 Application(s) 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 revenue-generation purposes.
 - 2. Customer may embed an App Login Credential into Value-Added Applications 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 Application(s).
 - 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 Named User login credentials.

3.5 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. Customer will promptly notify Esri if Customer becomes aware of any unauthorized use of Customer's subscription or any other breach of security.
- b. If Customer is using non-Esri application development tools to build an application that accesses Esri's Online Services, Customer must include attribution acknowledging that its application uses Esri Online Services. Guidelines are provided in the Documentation.

3.6 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.

3.7 Subscription Rate Changes. Esri may increase rates 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 increase monthly subscription rates upon 30 days' notice.

3.8 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 interoperability 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, Online 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 the 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.

3.9 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 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 consumes all its Service Credits. Esri will promptly restore Customer's access to its Online Services once Customer has purchased additional Service Credits.

3.10 ArcGIS Enterprise with Virtual Cloud Infrastructure. Customer will provide information or other materials related to its Content (including copies of any client-side applications) as reasonably requested to verify Customer's compliance with this Agreement. Esri may monitor the external interfaces (e.g., ports) of Customer Content to verify Customer's compliance with this Agreement. Customer will not block or interfere with such monitoring, but Customer may use encryption technology or firewalls to help keep its Content confidential. Customer will reasonably cooperate with Esri to identify the source of any problem with the ArcGIS Enterprise with Virtual Cloud Infrastructure services that may reasonably be attributed to Customer Content or any end-user materials that Customer controls.

4.0 DATA TERMS OF USE

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

- a. "Business Data" means Information about businesses, demographics, and logistics that enables improved decision-making, optimized internal business processes, increased operational efficiency, new revenues, and competitive advantages over business rivals.
- b. "Esri Content Package" 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. Customer may only use Data in connection with the Products with 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 Product(s) to third parties subject to restrictions set forth in this License Agreement, provided that Customer affixes an attribution statement to the Data representations acknowledging Esri and/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 exclusively with licensed ArcGIS Runtime applications, ArcGIS Desktop, and ArcGIS API for Flex apps.
- 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 Data.* Unless authorized in writing, Customer may not use Business 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, and point-to-point routing 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. Route optimization.
- e. *Business Analyst Data.* Data provided with Esri Business Analyst (Server, Desktop) is subject to the following additional terms of use:
 - 1. If Customer orders a license for Esri Business Analyst or Business Analyst (Canadian edition) with a subset of the national dataset (i.e., Region, State, Local), Customer may use only the licensed subset, not any other portion of the national dataset.
 - 2. Data provided with Business Analyst Server may not be cached or downloaded by client applications and devices.

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 flow-down terms are available at <http://www.esri.com/legal/third-party-data>.

ATTACHMENT A GLOSSARY OF TERMS

The following glossary of terms applies to all Esri Offerings and Services that Esri may offer 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.

"API" means application programming interface.

"ArcGIS Website" means <http://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 Offering.

"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 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 applications, software development kits (SDKs), APIs, software libraries, code samples, and other resources.

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

"Customer Content" means any Content that Customer, Customer's end users, or any other user provides to Esri in connection with Customer's use of Esri Offerings; any results derived from the use of Customer Content with Esri Offerings; and any Value-Added Applications Customer builds and deploys with Products. 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. Data excludes any Content that persons other than Esri employees, suppliers, or contractors may directly contribute to Esri's website.

"Deliverables" means anything that Esri delivers to a Customer as a result of performance of Professional Services other than Products, Training, or Maintenance. Deliverables may include, but are not limited to, consulting services, software code, dynamic link libraries (DLLs), and programs delivered on any media provided in source, object, or executable code format(s), inclusive of backups, updates, or merged copies; methods, techniques, or know-how; technical assistance, processes, formulas, or algorithms; designs; data dictionaries and models; compilations; schematics; documentation; specifications; drawings; flowcharts; briefings; or test or quality control procedures.

"Documentation" means all user reference documentation that is delivered with the Product.

"Esri Managed Cloud Services" or "EMCS" means a single-tenant hardware, Software, Data and network platform, and related system monitoring and support services that Esri provides to house and make Customer Content available to Customer or Customer's end users via the Internet.

"Esri Offering(s)" means any Product, Maintenance, or Documentation. If Esri provides Training or Professional Services directly to Customer, then Esri Offerings also include Training Materials and Deliverables.

"GIS" means geographic information systems.

"Maintenance" means a subscription program entitling the Customer to Product updates and other benefits such as access to technical support and access 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" 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 enable access to identity-managed capabilities within a Product for Customer's exclusive benefit. For educational use, Named Users may include registered students.

"Named User Credential" 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 Content" means Content hosted or provided by Esri as part of Online Services, including any map services, task services, image services, SDKs, APIs, software libraries, code samples, and other resources, but excluding Content provided by third parties that Customer accesses through Online Services.

"Online Services" means any commercially available, Internet-based geospatial system, 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, or other document identifying the Products or Services that Customer orders.

"Perpetual License" means a license to use a version of the Product, 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 Cloud Services licensed or subscribed to under the terms of this Agreement.

"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.

"Services" means the technical support provided under Maintenance. If Esri provides Training or Professional Services directly to Customer, then Services also include Training and Professional Services.

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

"Term License" means a license or access provided for use of a Product for a limited time period ("Term") or on a subscription or transaction basis.

"Training" means instructor-led training and coaching services for the use of Esri's GIS Software.

"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" 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 Esri Offerings 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, and/or legends contained in or affixed to any Esri Offerings, output, metadata file, or online and/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 the Esri Offerings into a third-party product or service 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 or to terminate pending Services engagements without further liability. 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 any reason, then Customer may, at its election, also terminate Customer's licenses or subscriptions in 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 Online Services; and
- c. Stop using, 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 the Agreement. This Agreement terminates upon the insolvency, liquidation, or dissolution of either party.

ARTICLE 3—LIMITED WARRANTIES AND DISCLAIMERS

3.1 Limited Warranties. Esri warrants:

- a. For a period of 90 days,
 - 1. Software will substantially conform to the Documentation under normal use and all media will be free from defects in materials and workmanship from the date of delivery;
 - 2. Training Materials will substantially conform to Esri's published course descriptions from the date of delivery;
 - 3. Services will substantially conform to the professional and technical standards of the software industry from the date of performance; and
 - 4. Deliverables provided on a firm-fixed price basis will substantially conform to the specifications set forth in the agreed-upon Ordering Document from the date of acceptance.
- b. During the applicable subscription term,
 - 1. Online Services will substantially conform to the Documentation under normal use;
 - 2. Maintenance will substantially conform to the professional and technical standards of the software industry; and
 - 3. EMCS will conform to the scope, descriptions, and assumptions for EMCS set forth in the Ordering Document.

3.2 Special Disclaimer. Content, Data, samples, hot fixes, patches, updates, Online Services provided at no charge, and 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 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 Online Services.
- b. *Third-Party Content and Websites.* Esri is not responsible for any third-party website or Content that appears in or is referenced by Esri Offerings and 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 limited, at Esri's sole discretion, to (i) replace any defective media; (ii) repair, correct, or provide a workaround for the applicable Esri Offering or Services; or (iii) 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, including 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 warranties, 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, and employees.
- c. "Infringement Claim(s)" means any Claim alleging that Customer's use of or access to Esri Offerings or Services infringe a US 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. In addition to Section 5.2.a above, 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 (ii) modify the Esri Offerings while maintaining substantially similar functionality. If neither alternative is commercially reasonable, Esri may terminate Customer's right to use the Esri Offerings and will refund any (a) applicable Services fees; (b) license fees that Customer paid for the infringing Esri Offerings acquired under a Perpetual License, prorated on a 5-year, straight-line depreciation basis beginning from the initial date of delivery; or (c) 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 with a product, process, system, or element that Esri has not supplied or specified in its Documentation; (ii) Esri Offerings' alteration by anyone other than Esri or its subcontractors; (iii) compliance with Customer's specifications; or (iv) use of Esri Offerings after Esri either provides a modified version to avoid infringement or terminates Customer's right to use the Esri Offerings.

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, and (iv) reasonably cooperate in the defense of the Infringement Claim at Esri's request and expense.

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

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 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 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, 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. Esri will not perform Services or provide Esri Offerings related to any defense article, defense service, or technical data, as defined under the ITAR Sections 120.6, 120.9, and 120.10, respectively, until Esri obtains any necessary export license from the US government. Customer will reasonably assist Esri in applying and obtaining an export license if needed.

7.2 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 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 controlled 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.

ARTICLE 8—CLOUD SERVICES INTERRUPTIONS, TAKEDOWNS, AND SUSPENSIONS**8.1 Prohibited Uses.** Customer may not access or use Cloud Services to

- a. Spam, spoof, or phish email; transmit junk email or offensive or defamatory material; or stalk or make threats of physical harm;
- b. Store or transmit any Malicious Code;
- c. Violate any law or regulation;
- d. Infringe or misappropriate the rights of any third party;
- e. Probe, scan, or test the vulnerability of Cloud Services or breach any security or authentication measures used by Cloud Services; or
- f. Benchmark 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 Online Services. Esri may not be able to provide advance notice of such interruptions.

8.3 Removal of Customer Content. Esri may remove or delete any portions of Customer Content if there is reason to believe that uploading Customer Content to, or using it with, Cloud Services violates this Agreement. If reasonable under these circumstances, Esri will notify Customer before Customer Content is removed. Esri will respond to any Digital Millennium Copyright Act takedown notices in accordance with Esri's copyright policy, available at http://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 damage, liabilities, or losses that may result from any interruption or suspension of Online Services or removal of Customer's content as described above.

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.

9.2 Feedback. Esri may freely use any feedback, suggestions, or requests for Product Improvement that the 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 Taxes and Fees; Shipping Charges. Fees quoted 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.

9.5 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 7 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.

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

9.7 Severability. The parties agree that if any provision of this Agreement is held to be unenforceable for any reason, such provision will be reformed only to the extent necessary to make the intent of the language enforceable.

9.8 Successor and Assigns. Customer will not assign, sublicense, or transfer Customer's rights or delegate Customer's obligations under this Agreement without Esri's and its authorized distributor's prior written consent, and any attempt to do so without consent will be void. This Agreement will be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a contractor under contract to the government to deliver Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Esri, provided the government customer assents to the terms of this Agreement.

9.9 Survival of Terms. The Glossary of Terms and provisions of Articles 3, 4, 5, and 9 of these General Terms and Conditions will survive the expiration or termination of this Agreement.

9.10 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.

9.11 Governing Law. US federal law and the law of the State of California govern this Agreement, excluding their respective choice of law principles. This Agreement is not subject to the United Nations Convention on Contracts for the International Sale of Goods.

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

- a. *Equitable Relief.* Either party will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction without the requirement of posting a bond or proving injury as a condition for relief.
- b. *US Government Agencies.* This Agreement is subject to the Contract Disputes Act of 1978, as amended (41 USC 601–613).
- c. *Other Government Entities.* Esri will comply with mandatory dispute resolutions under applicable law.
- d. *Arbitration.* Except as noted above, the parties will submit to binding arbitration to resolve any dispute arising out of or relating to this Agreement that cannot be settled through negotiation. If Customer is in the United States or one of its territories or outlying areas, the Commercial Arbitration Rules of the American Arbitration Association will govern the arbitration proceedings. If Customer is outside the United States, the Rules of Arbitration of the International Chamber of Commerce will govern the proceedings. The parties will select a single arbitrator in accordance with the applicable arbitration rules. The language of the arbitration will be English. Arbitration will be at an agreed-upon location. Either party will, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

9.13 Force Majeure. A party will not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is due to causes beyond the party's reasonable control. Such causes may include, but are not

limited to, acts of God, war, strikes, labor disputes, cyber attacks, laws, regulations, government orders, or any other force majeure event.

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

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

Environmental Systems Research Institute, Inc.
Attn: Contracts & Legal Department
380 New York Street
Redlands, CA 92373-8100
USA

Tel.: 909-793-2853
Email: LegalNotices@esri.com



Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2653 • FAX 909-793-5653

ADDENDUM 1 PRODUCT-SPECIFIC TERMS OF USE

SOFTWARE

The following table 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 the Agreement. The definitions for each footnote follow the table. 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 <ul style="list-style-type: none"> • 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 <ul style="list-style-type: none"> • ArcGIS Enterprise <ul style="list-style-type: none"> – Standard or Advanced (21; 31) – Workgroup Standard or Advanced (21; 28; 29; 30; 32) – ArcGIS GIS Server (Standard or Advanced) (31) – ArcGIS GIS Server Basic (39) – ArcGIS GIS Server Workgroup (Standard or Advanced) (28; 29; 30; 32) – ArcGIS GIS Server Workgroup Basic (39) – ArcGIS GIS Server Extension – ArcGIS Maritime Server (2) – ArcGIS Image Server, ArcGIS GeoEvent Server, ArcGIS GeoAnalytics Server (4) • Esri Business Analyst Server <ul style="list-style-type: none"> – Workgroup (28; 29; 30; 31; 39) – Enterprise (31; 39) • World Geocoder for ArcGIS Basic (67) 	Developer Tools <ul style="list-style-type: none"> • AppStudio for ArcGIS Standard (11, 16, 19) • ArcGIS Runtime SDK for Android, iOS, Java, Mac OS X, Microsoft .NET Framework (Windows [desktop], Windows Phone, Windows Store), Qt, or WPF (16; 19) • ArcGIS Runtime Standard Level 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) Other <ul style="list-style-type: none"> • Navigator for ArcGIS (14)
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Footnotes:

1. Reserved.
2. Not for use in navigation.
3. Licensed for Personal Use only.
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. "Dual Use License" means the Software may be installed on a desktop computer and used 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 one time.
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 the Value-Added Applications anywhere not prohibited under export regulation.
17. Reserved.
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. Customer may reproduce and distribute the Software provided all the following occur:
 - a. The Software is reproduced and distributed in its entirety;
 - b. A license agreement accompanies each copy of the Software that protects the Software to the same extent as this License Agreement, and the recipient agrees to be bound by the terms and conditions of the license agreement;
 - c. All copyright and trademark attributions/notices are reproduced; and
 - d. There is no charge or fee attributable to the use of the Software.
21. Customer may build a Value-Added Application(s) for use by Customer's Named Users. Customer may not embed a Named User credential into a Value-Added Application. Customer may not embed or use App Login Credentials in Value-Added Applications. Value-Added Applications require Named User login credentials.
22. a. An end user must license 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. Value-Added Applications and map caches can be used with Staging and Deployment ArcGIS Enterprise servers. Software and Data may be installed on multiple computers for use by any ArcGIS Developer Subscribers with Extend or higher plan subscriptions; all other Software is licensed as a Single Use License.
25. Reserved.
26. A Personal Edition 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. Customer may have redundant Esri Server Software installation(s) for failover operations, but the redundant Software can only be operational during the period the primary site is nonoperational (active-passive failover). The redundant Software installation(s) shall remain dormant, except for system maintenance and updating of databases, while the primary site or any other redundant site is operational.
32. Redundant Software installation for failover operations is not permitted.
- 33-38. Reserved.

- 39. Any editing functionality included with ArcGIS GIS Server is not permitted for use with ArcGIS GIS Server Basic (Workgroup or Enterprise).
- 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.
- 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 Application(s) for web deployment must be used in conjunction with other Esri Product(s). Third-party technologies may also be used in conjunction with Value-Added Application(s) as long as the Value-Added Application(s) is always used in conjunction with other Esri Product(s).
- 65. Can 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 Product(s).
- 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.

ONLINE SERVICES

The following table 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 table. Unless otherwise noted in the applicable Ordering Document, extensions to Software follow the same scope of use as that granted for the corresponding Software.

<ul style="list-style-type: none"> • ArcGIS Online subscriptions are available through multiple Selling Programs: <ul style="list-style-type: none"> – Commercial Retail, EAs; Government Programs (1; 2; 3; 11; 12; 14; 20) – Education Program (1; 2; 8; 10; 14; 19) – Non-Profit Program (1; 2; 8; 14; 19; 20) • ArcGIS Online Developer Deployment subscriptions are available through multiple Selling Programs: <ul style="list-style-type: none"> – Commercial Retail, EAs; Government Programs <ul style="list-style-type: none"> ▪ Free Subscription (1; 8; 9; 10; 13; 19; 20) ▪ Paid Subscription (1; 8; 9; 10; 11; 13; 20) – Education, NGO/NPO, Press/Media Programs <ul style="list-style-type: none"> ▪ Free Subscription (1; 3; 4; 5; 6; 9; 10; 13; 19) ▪ Paid Subscription (1; 3; 4; 5; 6; 9; 10; 13; 19) – NGO/NPO, Press/Media Programs <ul style="list-style-type: none"> ▪ Free Subscription (1; 3; 4; 5; 6; 9; 10; 13; 19; 20) ▪ Paid Subscription (1; 3; 4; 5; 6; 9; 10; 13; 19; 20) • Public Plan <ul style="list-style-type: none"> – Commercial Retail, EAs; Government; NGO/NPO; Press/Media Programs (1; 4; 5; 6; 7; 9; 10; 15; 19; 20) – Education Programs (1; 4; 5; 6; 7; 9; 10; 15; 19) 	<ul style="list-style-type: none"> • Esri Business Analyst Online (16) • Esri Business Analyst Online Mobile (16) • Esri Community Analyst (16) • Esri MapStudio (17)
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Footnotes:

1. In addition to the common terms of use of Online Services:

- a. Customer may use Customer's Esri Online Services subscription to build a Value-Added Application(s) for Customer's internal use.
- b. Customer may also provide access to Customer's Value-Added Application(s) to third parties, subject to the following terms:
 - i. Customer may allow Anonymous Users to access Customer's Value-Added Application(s).
 - ii. Customer shall not add third parties as Named Users to Customer's ArcGIS Online subscription for the purpose of allowing third parties to access Customer's Value-Added Application(s). This restriction does not apply to third parties included within the definition of Named Users.
 - iii. Customer shall 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 Application(s). This restriction does not apply to third parties included within the definition of Named Users.
 - iv. Customer is solely responsible for providing technical support for Customer's Value-Added Application(s).
 - v. Customer may not remove or obscure any trademarks or logos that would normally be displayed through the use of the Online Services without written permission. Customer must include attribution acknowledging that

its application is using Online Services provided by Esri. If attribution is not automatically displayed through the use of Online Services. Guidelines are provided in the Documentation.

- vi. Customer may not embed a Named User credential into a Value-Added Application. An App Login Credential may only be embedded into Value-Added Applications that are used to provide public, anonymous access to ArcGIS Online. Customer may not embed or use ArcGIS Online App Login Credentials in Value-Added Applications for internal use. Value-Added Applications used internally require Named User login credentials.
- c. World Geocoding Service: Customer may not store the geocoded results generated by the service without an ArcGIS Online subscription.
- d. Infographics Service: Customer may use the data accessible through this service for display purposes only. Customer is prohibited from saving any data accessible through this service.
- 2. May be used for any business purpose of the Customer's organization.
- 3. May be used for development and test purposes for the Customer's organization.
- 4. May be used for teaching purposes in educational organizations.
- 5. May be used for the benefit of the 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. Subscriber's Value-Added Applications must be published for public access.
- 9. May not be used for the benefit of a for-profit or government 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 basemap and 1,000,000 geosearch Transactions per month in conjunction with Customer's subscription. "Transaction" is defined in the Documentation at ArcGIS Resources at <http://links.esri.com/ago/transactiondef>.
- 14. Each subscription is limited to a combined 50,000,000 basemap and geosearch Transactions per month. "Transaction" is defined in the Documentation at ArcGIS Resources at <http://links.esri.com/ago/transactiondef>.
- 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 display or post any combination of more than 100 Esri Business Analyst Online or Community Analyst Reports and maps on Customer's external websites.
- 17. Customer may create, publicly display, and distribute maps in hard copy and static electronic format for news-reporting purposes, subject to any restrictions for ArcGIS Online Data.
- 18. Reserved.
- 19. Customer may not make Value-Added Applications available to third parties for a fee.
- 20. Licensee is not permitted to be the licensee for or on behalf of a third party.



Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
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DUNS Number: 06-313-4175 CAGE Code: 0AMS3

To expedite your order, please attach a copy of
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Quote is valid from: 11/6/2019 To: 2/4/2020

Quotation # Q-401289

Date: November 6, 2019

Customer # 40348 Contract # ENTERPRISE
AGREEMENT

County of Arlington
GIS Mapping Center
2100 Clarendon Blvd
Arlington, VA 22201-5447

ATTENTION Kayvan Patti
PHONE (703) 226-3649
EMAIL kpatti@arlingtonva.us

Material	Qty	Term	Unit Price	Total
168182	1	Year 1	\$150,000.00	\$150,000.00
Populations of 150,001-250,000 Small Government Term Enterprise License Agreement/ 2020				
168182	1	Year 2	\$150,000.00	\$150,000.00
Populations of 150,001-250,000 Small Government Term Enterprise License Agreement/ 2021				
168182	1	Year 3	\$150,000.00	\$150,000.00
Populations of 150,001-250,000 Small Government Term Enterprise License Agreement/ 2022				
162040	1		\$2,000.00	\$2,000.00
ArcGIS Monitor for ArcGIS Server Up to Four Cores Term License/2020				
162071	4		\$250.00	\$1,000.00
ArcGIS Monitor for ArcGIS Server Additional Core Term License/ 2020				
162040	1		\$2,000.00	\$2,000.00
ArcGIS Monitor for ArcGIS Server Up to Four Cores Term License/ 2021				
162071	4		\$250.00	\$1,000.00
ArcGIS Monitor for ArcGIS Server Additional Core Term License/ 2021				

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact: Dawn Matasic	Email: dmatasic@esri.com	Phone: (909) 793-2853 x8647
The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at: https://esri.com/contract/dm/esri/medialibrary/product-specific-terms-of-use-300.pdf , and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at https://go.esri.com/MAES apply to your purchase of that item. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at https://www.esri.com/en-us/legal/terms/state-supplemental apply to some state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin.		

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