

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number  
**24-1150**

SAP Number

## Innovation and Technology Department

Department Contract Representative	Christine Onyango
Telephone Number	909-388-5943
Contractor	Environmental Systems Research Institute, Inc.
Contractor Representative	Jacqueline Scott
Telephone Number	909-793-2853
Contract Term	12/9/2024 through 11/30/2027
Original Contract Amount	\$6,000,000
Amendment Amount	N/A
Total Contract Amount	\$6,000,000
Cost Center	1200101000
Grant Number (if applicable)	N/A

**Briefly describe the general nature of the contract:** Enterprise Agreement with Environmental Systems Research Institute, Inc., for the provision of proprietary software licensing with maintenance and support services, implementation services, and training in the amount of \$6,000,000, for the period of December 9, 2024, through November 30, 2027.

### FOR COUNTY USE ONLY

Approved as to Legal Form

► *Bonnie Uphold*  
Bonnie Uphold, Supv. Deputy County Counsel

Date 12/2/2024

Reviewed for Contract Compliance

► \_\_\_\_\_

Date \_\_\_\_\_

Reviewed/Approved by Department

► \_\_\_\_\_

Date \_\_\_\_\_



This Enterprise Agreement ("EA") is by and between the organization identified in the signature line below with its principal place of business at the address provided below ("Customer") and **Environmental Systems Research Institute, Inc. ("Esri")**.

This EA sets forth the terms and conditions for Customer's use of EA Products, Rolled-In Software, Unit-Priced Items, provision of Esri User Conference registrations, Training, and Services as specified herein and in the Proposal Letter. The rights granted in this EA apply only to the EA Products listed in the Proposal Letter.

This EA is comprised of the Proposal Letter and this Enterprise Agreement E512N document and incorporates by reference the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this EA, the order of precedence for the documents shall be as follows: (i) the Enterprise Agreement E512N document, (ii) the Master Agreement, and (iii) the Proposal Letter. For the avoidance of doubt, Article 5—Term, Termination, and Expiration of this EA supersedes any termination language in the Master Agreement for all items in the Proposal Letter.


If the Proposal Letter includes Services other than Maintenance, the applicable Services terms and conditions take precedence over the provisions of this EA with respect to those Services. Customer's centralized point of contact identified in the Proposal Letter will approve work under the Advantage Program or Customer will notify Esri of an alternative contact.

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

The parties acknowledge that they have read and understand this EA and agree to be bound by the terms and conditions contained herein. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

ACCEPTED AND AGREED:

SAN BERNARDINO COUNTY  
(Customer)

By:   
Authorized Signature

Printed Name: Dawn Rowe

Title: Chair, Board of Supervisors


Date: NOV 19 2024

Address: \_\_\_\_\_

SIGNED AND CERTIFIED THAT A COPY OF  
THIS DOCUMENT HAS BEEN DELIVERED  
TO THE CHAIRMAN OF THE BOARD  
LYNNA MONELL  
Clerk of the Board of Supervisors  
of the County of San Bernardino

By:   
Deputy

ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
(Esri)

By:   
Authorized Signature

Printed Name: Timothy Brazeal

Title: Sr. Manager, Commercial and Government Contracts

Date: Oct 24, 2024

Enterprise Agreement No. 00330023.0

## 1.0—DEFINITIONS

Capitalized terms used in this EA and Proposal Letter will have the same meaning they do in the Master Agreement. In addition, the following definitions apply to this EA:

- **"Authorized Entity"** means Eligible Agency.
- **"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 EA Products and related Authorization Codes within Customer's organization and to Authorized Entities.
- **"EA Fee"** means the fee set forth in the EA Fee Schedule contained in the Proposal Letter.
- **"EA Maintenance"** means Tier 2 Support provided to Customer as described in Article 3—EA Maintenance.
- **"EA Products"** means the Products identified in the Proposal Letter, excluding Unit-Priced Items.
- **"Effective Date"** means the date specified in the Proposal Letter as the Effective Date and if no Effective Date is specified, the last date of signature on the Enterprise Agreement.
- **"Eligible Agency"** means the political subdivisions identified in Appendix A as eligible to participate under this EA. Pursuant to section 3.3 below, an Eligible Entity may be added after the Effective Date of this EA if approved by Esri and Customer in writing.
- **"Master Agreement"** means the Master Agreement, Products and Services (E204) contract number 00330024.0 attached hereto and incorporated herein by reference. The Master Agreement includes Advantage Program terms and conditions.
- **"Proposal Letter"** means the attached offer document that includes, at a minimum, the EA Products and EA Fee and may also include additional Esri Products and Services.
- **"Rolled-In Software"** means Products (excluding Term licenses or subscriptions) of the same type as EA Products that Customer acquired for use prior to the Effective Date, that are current on paid maintenance (as shown in Esri's customer service records), and that receive EA Maintenance during the term of the EA. If this EA is extended or renewed, Rolled-In Software shall include EA Products Deployed prior to the then-current renewal period.
- **"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 contacts in My Esri, including from Authorized Entities, to provide all Tier 1 Support within Customer's organization and Authorized Entities.
- **"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.
- **"Unit-Priced Items"** means separately orderable Products or Services that are optional for an additional fee. Pricing for Unit-Priced Items is valid for one (1) year from the Effective Date, unless a different duration is identified in the Proposal Letter.

## 2.0—GRANT OF LICENSE

- 2.1 Grant of License.** Subject to the terms and conditions of this EA, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the EA Products listed in the Proposal Letter for the term of the EA (i) for the applicable EA Fee and (ii) in accordance with the Master Agreement. Unit-Priced Items and Rolled-In Software, if listed in the Proposal Letter, will be licensed in accordance with the Master Agreement. Beta licenses are not available under this EA as EA Products.
- 2.2 Authorized Entity Access.** Customer may permit Authorized Entities to use EA Products, provided Customer ensures that Authorized Entities use the EA Products in accordance with the terms and conditions of this EA and Customer is liable and solely responsible for the use or misuse of EA Products by Authorized Entities. Within thirty (30) calendar days of a request from Esri, Customer will provide Esri a list of Authorized Entities and their business addresses.
- 2.2.1 Eligible Agency.** Prior to any Deployment to an Eligible Agency that Customer does not have the authority to bind, Customer shall provide each such Eligible Entity with a copy of the License Agreement and the Eligible Agency Acknowledgment Statement (Appendix B) and require that such Eligible Entity return a signed Appendix B to County. County shall keep a copy of the signed original acknowledgment for its records and forward a copy of the signed original to Esri. Esri may pursue remedies against Customer or an individual Eligible Agency for material breach. Only Customer has a right to Deploy the EA Products identified in the Proposal Letter.
- 2.3 Consultant Access.** Esri grants Customer the right to permit Customer's consultants or contractors to use the EA Products exclusively for Customer's benefit in accordance with the Master Agreement. Customer will be solely responsible for compliance by consultants and contractors with this EA and will ensure that the consultant or contractor discontinues use of EA Products upon completion of work for Customer. Access to or use of EA Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install 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 EA Products on contractor servers for the benefit of Customer.
- 2.4 Additional Permitted Uses.** For the term of the EA, Customer may copy and Deploy the EA Products to Customer's organization and Authorized Entities up to the quantities of licenses identified in the Proposal Letter. No other entity has a right to copy (except as permitted in the Master Agreement) or Deploy the EA Products. Customer may only transfer, redistribute, and Deploy the EA Products within the continental United States; Hawaii; Alaska; and U.S. territories, excluding Puerto Rico and the U.S. Virgin Islands.
- 2.5 Uses Not Permitted.** Customer shall not transfer, redistribute, or assign EA Products to any third party without the prior written permission of Esri. Customer shall not use the EA Products outside the United States or its territories or possessions without the prior written permission of Esri and agreement on additional fees, if any. Any such export will be subject to U.S. Export Control Regulation requirements of the Master Agreement.

## 3.0—EA MAINTENANCE

- 3.1 EA Maintenance** is included in the EA Fee. Rolled-In Software and EA Products will receive EA Maintenance, provided that standard maintenance is available for each item. EA Maintenance includes benefits specified in the most current applicable Esri Maintenance and Support Program document (found at <https://www.esri.com/en-us/legal/terms/maintenance>) as modified by this Section 3.1. If Unit-Priced Items are included in the Proposal Letter, annual maintenance fees for Unit-Priced Items will be in addition to the Fee and ordered separately from this EA.
- a. **Tier 1 Support**
1. The Tier 1 Help Desk will provide Tier 1 Support to all Customer's authorized users and Authorized Entities.
  2. The Tier 1 Help Desk will be fully trained in the EA 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, data, databases, or other information 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. Customer may assign named Tier 1 Help Desk individuals up to the quantity listed in the Proposal Letter. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals through the My Esri portal.

b. Tier 2 Support

1. Tier 2 Support analysts will log the calls received from the Tier 1 Help Desk.
2. Tier 2 Support analysts 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 analysts 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 analysts will assist the Tier 1 Help Desk individuals and attempt to resolve the Case.
5. When the Case is resolved, Tier 2 Support analysts will communicate the information to the Tier 1 Help Desk, and the Tier 1 Help Desk will disseminate the resolution to the users.
6. For Tier 2 Support, contact Esri through My Esri at <https://my.esri.com>, via the web at <https://support.esri.com>, or by phone at 909-793-3774 (within the United States only).

3.2 **Product Life Cycle.** During the term of this EA, some EA Products may be retired or may no longer be available to Deploy in the identified quantities. Customer and Authorized Entities may continue to use EA Products that have been Deployed, but updates for EA Products and Rolled-In Software in the mature and retired phases may not be available. 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> by selecting the product type and clicking the Product Life Cycle link for specific product plans.

#### 4.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

##### 4.1 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 EA Products. Delivery of updates/new versions of EA Products will be made in the same manner. Customer will establish a single point of contact who will be responsible for Deployment. Esri may invoice the EA Fee up to thirty (30) calendar days before (i) the payment dates identified in the Proposal Letter; or (ii) if no payment dates are identified, the annual anniversary date for each year of the EA.
- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri reserves the right to suspend Customer's access to and use of EA Products if Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at the lesser of one percent (1.0%) per month or the maximum monthly rate permitted by applicable law on any overdue fees plus all expenses of collection for any overdue balance that remains unpaid ten (10) days after Esri has notified Customer of the past-due balance.
- c. Esri's federal ID number is 95-2775-732.

- d. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB destination, with shipping charges prepaid by Customer. 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 applicable sales or use tax associated with the receipt of tangible media.
- 4.2 **Order Requirements.** Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own internal process, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before (i) the payment dates identified in the Proposal Letter; or (ii) if no payment dates are identified, the annual anniversary date for each year of the EA. Any purchase orders that Customer issues will reference, incorporate, and be subject to the terms and conditions of the EA. Additional or conflicting terms in any purchase orders, invoices, or other documents exchanged during the ordering process, other than the terms of this EA, Product or Services descriptions, quantities, pricing, and delivery instructions, are void and of no effect.
- a. All orders pertaining to this EA will be processed through Customer's centralized point of contact on the Proposal Letter. Customer can send order processing questions to Customer Service at Esri 380 New York Street Redlands, CA 92373-8100; send emails to [service@esri.com](mailto:service@esri.com); or call Esri at 888-377-4575.
- 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; for Unit-Priced Items, the name of the product and quantity
  - 4. The following printed statement "Governed by and subject to the signed Enterprise Agreement number 00330023.0."

## 5.0—TERM, TERMINATION, AND EXPIRATION

- 5.1 **Term.** This EA and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Proposal Letter. Except as otherwise authorized in this Section 5, this EA is for the committed duration identified in the Proposal Letter. If the Proposal Letter includes optional years, Customer may exercise each optional year by providing written notice to Esri Customer Service sixty (60) calendar days prior to the end of the then-current year. If more than one optional year is identified in the Proposal Letter, then each optional year must be exercised consecutively, or the EA will expire at the end of the then-current year. An optional year may be a duration other than twelve (12) months and will be identified in the Proposal Letter. If the Proposal Letter includes Training Pass days, unused Training Pass days do not rollover to subsequent years and expire at the end of each annual term.
- 5.2 **Use upon Expiration.** Upon full payment of the EA Fee and expiration of this EA, the Master Agreement will survive, and Customer and Authorized Entities may continue to use the perpetual licenses of Deployed EA Products included in the final Deployment Report and Rolled-In Software in accordance with the terms and conditions set forth in the Master Agreement. Customer shall notify Esri of the quantity and type of licenses for which Customer and Authorized Entities, as may be applicable, elect to purchase standard maintenance. If maintenance is not ordered for Rolled-In Software or EA Products upon expiration of the EA, it lapses. If, at a later date, Customer or Authorized Entities decide to reinstate maintenance, Customer or Authorized Entity, as may be applicable, must pay maintenance reinstatement fees from the date the EA expired (i.e., back maintenance fees). Customer and Authorized Entities may only purchase standard maintenance or reinstate maintenance on licenses that were included in the final Deployment Report. Customer shall not Deploy additional copies of the EA Products beyond the quantities in use upon termination or as of the date of expiration. All term licenses and subscription licenses of Deployed EA Products terminate upon expiration of the EA. Esri User Conference registrations, Advantage Program Learning and Services credits, and Training Pass days terminate upon expiration.
- 5.3 **Term Enterprise Agreement.** If the EA Products are all term licenses and subscription licenses, Customer and Authorized Entities are only authorized to use EA Products during the term identified in the Proposal

Letter and all EA Products, all Maintenance, and Esri User Conference registrations terminate upon termination of the EA.

- 5.4 **Termination of a Particular Authorized Entity.** If Authorized Entities are included in the Proposal Letter, Esri may elect to terminate the license rights of a particular Authorized Entity for material breach without terminating this EA with Customer or other Authorized Entities. The breaching Authorized Entity will be given a period of ten (10) business days from date of written notice to cure any material breach. Upon termination of Authorized Entity, all Deployed EA Products provided to Authorized Entity will also terminate. Customer shall reasonably cooperate with Esri in termination of an Authorized Entity in material breach of this EA, including enforcement of the EA with respect to such Authorized Entity. There will be no reduction in the EA Fee if an Authorized Entity's rights are terminated. The terminated Authorized Entity will have no further access to any benefits, entitlements, rights, or other items included in or otherwise related to this EA.
- 5.5 **Termination for a Material Breach.** Either party may terminate this EA 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. Upon termination of this EA by Esri for a material breach by Customer, all licenses Deployed will also terminate, and the full amount of unpaid EA Fee will be due and payable by Customer within thirty (30) days from the date of termination.
- 5.6 **Termination for Lack of Funds.** For an EA with government or government-owned entities, either party may terminate this EA before any subsequent year if Customer is unable to secure funding through the legislative or governing body's approval process.
- 5.7 **Termination for Convenience.** Neither Customer nor Esri may terminate the EA for convenience.
- 5.8 **Use Upon Termination.** For termination under Sections 5.3 – 5.6, Customer and Authorized Entities shall uninstall, remove, and destroy all EA Products; training materials; and any whole or partial copies, modifications, or merged portions in any form. Upon request, Customer shall deliver evidence of such destruction to Esri (e.g., certification letter). Except in the event that the Master Agreement has been terminated for Customer's uncured material breach, Customer and Authorized Entities may continue to use Rolled-In Software, provided Customer and Authorized Entities comply with the terms and conditions of the Master Agreement. Further, Esri agrees that Customer and Authorized Entities are not required to pay a maintenance reinstatement fee for lapsed maintenance for Rolled-In Software if Customer and Authorized Entities, as may be applicable, order maintenance at time of EA termination. Other items that may be included in this EA—such as Advantage Program, Training Pass days, access codes, and Esri User Conference registrations—will also terminate if this EA is terminated.

## 6.0—CONFIDENTIALITY

- 6.1 **Esri Confidential Information.** This Agreement is subject to compliance with the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 7920.005) (collectively, "Regulations").
- 6.2 **Disclosure of Fees for Unit-Priced Items.** Customer will use reasonable means to ensure that Confidential Information is safeguarded, but will not be held liable for inadvertent disclosure of the information. If Customer receives a subpoena, other validly issued administrative or judicial process, or public records request requesting Confidential Information of Esri, Customer will, to the extent legally permissible, promptly notify Esri and if requested by Esri, tender to Esri the defense of the subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, Customer will be entitled to comply with the request to the extent permitted by law.

## 7.0—ADMINISTRATIVE REQUIREMENTS

- 7.1 **Esri Partner Original Equipment Manufacturer (OEM) Bundled or Embedded Items/Services.** 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 EA. Customer and Authorized Entities will not seek any

discount from the OEM partner or Esri based on the availability of EA Products under this EA. Customer and Authorized Entities will not decouple Esri products or services from the OEM partners' application or service. Esri products or services embedded in third-party products or services are not EA Products.

- 7.2 Annual Report of Deployments.** At each anniversary date and ninety (90) calendar days prior to the expiration of this EA, Customer will provide Esri with a written report, in a form acceptable to Esri, detailing all Deployments (each a "Deployment Report"). Upon request, Customer will provide records sufficient for Esri to verify the accuracy of the Deployment Report.
- 7.3 Esri User Conference Registration.** Esri shall provide Esri User Conference registrations to Customer annually during the term of this EA in the quantities set forth in the Proposal Letter. Customer is responsible for distributing the registrations internally and to Authorized Entities. Third parties may not represent or attend on behalf of Customer at any Esri User Conference.
- 7.4 Limited Quantity or Unit-Priced Items.** Esri reserves the right to exclude new Products from uncapped Deployment if added to this EA. New Products may contain or be developed with (i) newly acquired technology obtained through a significant investment or (ii) third-party intellectual property that requires a unit-based royalty fee or prohibits Deployment under a site or enterprise license. Such items can be made available to Customer or Authorized Entities on a limited-quantity basis or as unit-priced items.
- 7.5 Relationship of the Parties.** This EA will not be construed or interpreted as an exclusive dealings agreement. This EA does not constitute a partnership, joint venture, or agency between Esri and Customer. Neither Esri nor Customer will hold itself out as such, nor shall Esri or Customer be bound or become liable because of any representation, action, or omission of the other.
- 7.6 GIS Standard.** Either party may publicize the existence of this EA. Customer shall officially name Esri as its GIS standard and act as a reference for other Esri customers and potential customers as long as the EA remains in effect.
- 7.7 Force Majeure.** If the performance of any obligation under this EA is prevented, restricted, or interfered with by reason of fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war; threat of or actual terrorist act, cyber-attack, or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any government agency; or any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, will be provided a temporary extension for a period of time as may be reasonably necessary to allow for such delay, prevention, interference, or restriction.
- 7.6 Campaign Contribution Disclosure.** Esri has disclosed to Customer using Attachment A - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 to any member of the San Bernardino County ("County") Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Esri's proposal to Customer, or (2) 12 months before the date this EA was approved by the County Board of Supervisors. Esri acknowledges that under California Government Code section 84308, Esri is prohibited from making campaign contributions of more than \$250 to any member of the County Board of Supervisors or other County elected officer for 12 months after the County's consideration of the EA. In the event of a proposed amendment to this EA, Esri will provide Customer a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the County Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment. Campaign contributions include those made by any agent/person/entity on behalf of Esri or by a parent, subsidiary or otherwise related business entity of Esri.

## **8.0—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 or an Authorized Entity with or into another corporation or entity; (ii) Customer's or Authorized Entity's acquisition, in whole or in part, of another entity or its assets; or (iii) a transfer or sale of all or

part of Customer's or an Authorized Entity's organization (subsections i, ii, and iii, separately or collectively referred to as "**Ownership Change**"). There will be no decrease in the EA Fee as a result of any Ownership Change.

- 8.1 Customer may not transfer or Deploy EA Products to any third party in connection with a divestiture, merger, or sale of Customer or its assets, in whole or in part. If an Ownership Change results in a divestiture or a transfer or sale of a portion of Customer's or an Authorized Entity's organization or its assets, that portion of Customer's or the Authorized Entity's organization will return the EA Products to Customer or the applicable Authorized Entity or uninstall, remove, and destroy all copies of the EA Products.
- 8.2 This EA 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 and Authorized Entities will require any successor entity to uninstall, remove, and destroy the EA Products. This Agreement will terminate upon such Ownership Change.
- 8.3 If Customer or an Authorized Entity merges with or acquires part of another entity or its assets, Esri reserves the right to increase the EA Fee in proportion to the anticipated increase in Deployments or terminate this EA and the parties will negotiate a new agreement. If Customer or an Authorized Entity acquires another entity and Customer would like to Deploy EA Products to that entity, Esri and Customer must first sign an amendment to this EA adding the new entity as an Authorized Entity and agree to an increase in the EA Fee.

#### 9.0—GENERAL PROVISIONS

- 9.1 **Governing Law.** This EA shall be governed by and construed in accordance with the governing law identified in the Master Agreement.
- 9.2 **Legal Notices.** Please send all legal notices to Esri 380 New York Street Redlands, California 92373-8100 Attention: Director of Contracts and Legal or email [legalnotices@esri.com](mailto:legalnotices@esri.com).
- 9.3 **Survival of Certain Clauses.** The provisions of Sections 2.2 and 5.2 and Article 6 will survive the expiration or termination of this EA.

## **APPENDIX A**

### **LIST OF ELIGIBLE AGENCIES**

1. San Bernardino County
2. Big Bear Valley Recreation and Park District
3. Bloomington Recreation and Park District
4. Board Governed County Service Areas
5. In-Home Supportive Services Public Authority
6. Inland Counties Emergency Medical Agency
7. San Bernardino County Fire Protection District
8. San Bernardino County Flood Control District

## APPENDIX B

### ELIGIBLE AGENCY ACKNOWLEDGMENT STATEMENT

**Environmental Systems Research Institute, Inc. ("Esri")**, having an address at 380 New York Street, Redlands, CA 92373, and **San Bernardino County ("County")**, have entered into an Enterprise Agreement (EA) identified as Enterprise Agreement No. 00330023.0, for licensing certain Esri Products and for the provision of maintenance, premium support services, and Advantage Program. Esri has authorized County to Deploy specific EA Products to Eligible Agency entities during the term of the EA. Deployment by County of EA Products to each Eligible Agency and its use of the EA Products is subject to the terms of the Master Agreement contained in the EA and the additional requirements below. "EA Products" means the Products identified in the EA.

Accordingly, Eligible Agency, identified below, represents that it has received and read the Master Agreement, and understands and agrees to be bound by the terms of the Master Agreement **00330024.0** and the below additional requirements for use of any EA Products Deployed by County to it. Eligible Agency agrees that Esri may pursue remedies against Eligible Agency for material breach of the Master Agreement or the below additional requirements. All Deployments made by County to Eligible Agency will be made through County's centralized point of contact and will cease upon expiration or termination of County EA. County shall pass through updates and provide Tier 1 Support to Eligible Agency during the term of the EA for applicable EA Products.

- (1) Beta licenses are not available during the term of the EA.
- (2) The Consultant or Contractor Access section in the Master Agreement is modified to add the following restriction: Access to any EA Products is restricted to use by consultants and contractors for the sole benefit of Eligible Agency while (i) working on-site at Eligible Agency's facilities; (ii) remotely accessing or using EA Products from Eligible Agency's on-site computers or machines; or (iii) remotely accessing or using EA Products from a third party's computers or machines under contract to Eligible Agency. Eligible Agency shall require any consultant or contractor to discontinue access to and use of EA Products upon completion of work for Eligible Agency.
- (3) Eligible Agency remains subject to Export Compliance requirements as outlined in the Master Agreement.
- (4) Transfer, redistribution, or assignment of EA Products to any third party without Esri's written permission is prohibited.
- (5) EA Products are restricted to use within the United States.
- (6) During the term of the EA, licenses Deployed by County to Eligible Agency may be terminated if County or Eligible Agency is in material breach.
- (7) Upon expiration of County EA, the Master Agreement will survive, and Eligible Agency may continue to use the EA Products Deployed to it in accordance with the terms and conditions set forth in the Master Agreement.

In the event of a conflict in the terms and conditions of this acknowledgment and the Master Agreement, the terms and conditions of this document shall have precedence over those contained in the Master Agreement. No other rights are granted to Eligible Agency under this acknowledgment.

ACCEPTED AND AGREED:

\_\_\_\_\_  
(Eligible Agency)

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

August 21, 2024

Lynn Fyhrlund  
San Bernardino County  
670 E. Gilbert Street  
San Bernardino, CA 92415

Dear Lynn:

As a follow-up to our meeting last week regarding the Enterprise Agreement renewal for San Bernardino County, I am providing an updated proposal letter with pricing and key business terms below.

The Esri Enterprise Agreement (EA) will become effective as of December 9, 2024, and will remain in effect until November 30, 2027, and grant San Bernardino County uncapped access to the Esri products listed below.

Maintenance on all listed software, including maintenance on listed software deployed before the agreement, is included in the terms of the EA.

As you are aware, ArcGIS Desktop enters mature support on March 1, 2024. At this Mature Support milestone, you can only access technical support – software updates, hotfixes, and patches will cease. This EA renewal includes a capped quantity of ArcGIS Desktop licenses and a mix of ArcGIS Online & SaaS products, apps for ArcGIS Online, Enterprise, and ArcGIS Online User Types, and other subscription products to transition users based on their workflows. This will allow for a smoother transition to WebGIS and ArcGIS Pro. ArcGIS Pro is a full-featured professional desktop GIS application. ArcGIS Pro allows you to explore, visualize, and analyze data; create 2D maps and 3D scenes; and share your work to ArcGIS Online and ArcGIS Enterprise portal.

Recently we had the pleasure of meeting with Jack, and your Executive Staff and better understand the County's priorities and challenges. GIS can be instrumental in visualizing, sharing, and monitoring those high-level priorities. Here is an overview of those discussion topics:

- **Parcel Fabric Support:** Public Parcel Viewer/Better information on roads
- **Economic Development:** Internal & External tools to attract, retain, and expand businesses within the County
- **Disaster Response:** Emergency Management Solutions and tools
- **Family & Child Services:** Develop Case Tracking/Research Hub with University
- **Asset Management:** County Building Inventory – Owned vs. Leased
- **Homelessness:** Data Sharing; Services; Performance Monitoring
- **Infrastructure in Relation to Climate Change**
- **Land Use:** Public Dashboards – Geohazards, Cost Estimates, Transportation, Right of Way

Although your organization has already deployed a considerable amount of Esri technology, our experience with similar customers indicates there is significant potential to apply GIS in many additional areas within your organization. For these reasons, we believe your organization will greatly benefit from an Enterprise Agreement. An EA offers numerous benefits including:

A lower cost per unit for licensed software

Substantially reduced administrative and procurement expenses

Maintenance on all Esri software identified in this proposal and deployed within the organization

Complete flexibility to deploy software products when and where needed

Proposed payment terms for the EA, developed to reflect your organization's anticipated deployment schedule, are as follows:

	*Term 1	Term 2	Term 3	Total
Annual EA Fee	\$1,660,000	\$1,700,000	\$1,730,000	<b>\$5,090,000</b>

\*Credit for overlapping dates of service from the current 2022 to 2024 agreement will be issued. This credit may be applied to Term 1 fees of this agreement.

Esri products and services to which San Bernardino County will have uncapped deployment rights during the term of this agreement include:

**EA Products—Uncapped Quantities**

Product	Total
<b>ArcGIS Enterprise:</b> ArcGIS Enterprise (Advanced and Standard)	Uncapped
<b>ArcGIS Enterprise Extensions:</b> ArcGIS 3D Analyst, ArcGIS Data Reviewer, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Spatial Analyst, and ArcGIS Workflow Manager	Uncapped
<b>ArcGIS GIS Server:</b> Advanced, Standard, Basic	Uncapped
<b>ArcGIS Enterprise Additional Capability Servers:</b> ArcGIS Image Server, ArcGIS GeoEvent Server	Uncapped
<b>ArcGIS Monitor</b>	Uncapped
<b>ArcGIS Runtime Advanced</b>	Uncapped
<b>ArcGIS Runtime Analysis Extension</b>	Uncapped

The Enterprise Agreement also includes:

**EA Products—Capped Quantities**

<b>Perpetual Products</b>	<b>Rolled-In Qty. (if applicable)</b>	<b>Qty. to Be Deployed</b>	<b>Total</b>
ArcGIS Desktop Advanced Concurrent Use Desktop	150	-	150
ArcGIS Desktop Standard Concurrent Use Desktop	100	-	100
ArcGIS Desktop Basic Concurrent Use Desktop	50	-	50
ArcGIS 3D Analyst Desktop Concurrent Use Extension	150	-	150
ArcGIS Data Reviewer Desktop Concurrent Use Extension	150	-	150
ArcGIS Geostatistical Analyst Desktop Concurrent Use Extension	50	-	50
ArcGIS Network Analyst Desktop Concurrent Use Extension	100	-	100
ArcGIS Spatial Analyst Desktop Concurrent Use Extension	300	-	300
ArcGIS Workflow Manager Desktop Concurrent Use Extension	50	-	50
ArcGIS Data Interoperability for Desktop Concurrent Use Extension	6	-	6
ArcGIS Image Analyst (for use with ArcGIS Pro) Concurrent Use Extension	1	-	1
ArcGIS CityEngine Desktop Concurrent Use Extension	1	-	1
ArcGIS Roads & Highways for Desktop Concurrent Use Extension	1	-	1
ArcGIS Business Analyst Desktop Standard (State of California Dataset) Concurrent Use	1	-	1
ArcGIS Reality Desktop Single Use (Includes ArcGIS Reality Studio and ArcGIS Reality for ArcGIS Pro)	0	1	1
ArcGIS Utility Network Management Enterprise Extension	1	-	1
ArcGIS Utility Network Management Staging Enterprise Extension	1	-	1
ArcGIS Notebook Server Advanced	1	-	1
ArcGIS Notebook Server Advanced Staging	0	1	1
ArcGIS Mission Server	1	-	1
ArcGIS Mission Server Staging	1	-	1

<b>ArcGIS Online &amp; SaaS Products</b>			
<b>ArcGIS Online User Type Products</b>	<b>Number of Subscriptions</b>	<b>Total Users</b>	<b>Annual Credits per User</b>
ArcGIS Online Organizational Subscription	8	-	-
ArcGIS Online Viewer Annual Subscription	-	600	
ArcGIS Online Contributor Annual Subscription	-	300	250
ArcGIS Online Mobile Worker Annual Subscription	-	300	250

ArcGIS Online Mobile Worker Annual Subscription Restricted Use*	-	350	250
ArcGIS Online Creator Annual Subscription	-	900	500
ArcGIS Online Creator Annual Subscription Restricted Use*	-	1225	500
ArcGIS Online Professional Plus Annual Subscription	-	50	500
ArcGIS Online Professional Annual Subscription	-	25	500

<b>ArcGIS Apps for use with ArcGIS Online</b>	<b>Quantity</b>
ArcGIS Drone2Map Advanced for ArcGIS Online Annual Subscription	3
ArcGIS Insights in ArcGIS Online Annual Subscription	15
ArcGIS Navigator for ArcGIS Online Annual Subscription	75
ArcGIS Location Sharing User Type Extension for ArcGIS Online Annual Subscription	50
ArcGIS CityEngine for ArcGIS Online Annual Subscription	1
ArcGIS Urban Suite, Annual Subscription	10

<b>ArcGIS Pro Extensions for ArcGIS Online</b>	<b>Quantity</b>
ArcGIS 3D Analyst for ArcGIS Pro Online Annual Subscription	75
ArcGIS Data Reviewer for ArcGIS Pro Online Annual Subscription	75
ArcGIS Geostatistical Analyst for ArcGIS Pro Online Annual Subscription	50
ArcGIS Network Analyst for ArcGIS Pro Online Annual Subscription	25
ArcGIS Spatial Analyst for ArcGIS Pro Online Annual Subscription	100
ArcGIS Workflow Manager for ArcGIS Pro Online Annual Subscription	75
ArcGIS LocateXT for ArcGIS Pro Online Annual Subscription	5
ArcGIS Data Interoperability for ArcGIS Pro Online Annual Subscription	6
ArcGIS Image Analyst for ArcGIS Pro Online Annual Subscription	5
ArcGIS Production Mapping for ArcGIS Pro Online Annual Subscription	10
ArcGIS Roads and Highways (Location Referencing) for ArcGIS Pro (Add-on App) for ArcGIS Online Creator or GIS Professional User Type Annual Subscription	2

<b>ArcGIS Online Other Subscription Products</b>	<b>Quantity</b>
ArcGIS Business Analyst Web App Standard Online Annual Subscription	40
ArcGIS Business Analyst Standard Online Bundle Annual Subscription	20
ArcGIS Business Analyst Advanced Online Bundle Annual Subscription	2

<b>ArcGIS Enterprise Subscription Products</b>	<b>Quantity</b>
ArcGIS Enterprise Mobile Worker Annual Subscription for Public Safety Continually Staffed Environment	400
ArcGIS Enterprise Creator Annual Subscription	300
ArcGIS Enterprise Contributor Annual Subscription	100
ArcGIS Location Sharing User Type Extension for ArcGIS Enterprise Annual Subscription	25
ArcGIS Insights in ArcGIS Enterprise Annual Subscription	15

<b>Other Subscription Products</b>	<b>Quantity</b>
ArcGIS Developer Bundle Annual Subscription	3
ArcGIS Hub Premium ArcGIS Online Community Annual Subscription	1
ArcGIS Hub Premium Additional 1,000 ArcGIS Online Community Creator Annual Subscription	5
ArcGIS Hub Premium Unlimited ArcGIS Online Community Population > 1M Annual Subscription	1
ArcGIS Velocity Dedicated US Region Annual Subscription	1
Site Scan for ArcGIS Single Operator Annual Subscription	4
Site Scan for ArcGIS Single Access Annual Subscription	1
ArcGIS Indoors Maps for ArcGIS Online Annual Subscription	1
ArcGIS Indoors Spaces for ArcGIS Online Annual Subscription	1
ArcGIS StreetMap Premium for ArcGIS Pro Online USA State Annual Subscription	5
ArcGIS Online Premium Feature Data Store M-2 Annual Subscription	1

The EA also includes the following additional components:

<b>Additional Benefits</b>	<b>Quantity</b>
Esri International User Conference Registrations	75
Back-Up Media	0
Authorized Tier-Two Standard Support Callers	20

**Advantage Program:** One annual subscription to the Advantage Program.

- This program includes the following components per year for three years:
  - Up to 100 Technical Advisor hours
  - Annual one-day Planning Meeting
  - Quarterly Technology Webcasts
  - 200 Learning and Services credits that your organization can apply towards:

- **Business and Technical Consulting:** Access to a range of industry, business, and technical domain consultants. Get advice and hands-on help from GIS experts, industry specialists, developers, and designers.
  - **Training:** Access to an extensive curriculum of instructor-led training at either an Esri facility or client site, conditions and Esri policy allowing, or instructor-led online training. A complete list of Esri training facilities and course catalog are available at [www.esri.com/training](http://www.esri.com/training).
  - **Esri Managed Cloud Services:** Access to a variety of hosting options for the ArcGIS platform that leverage a cloud environment designed to be reliable, cost-effective, and secure.
- Unused Learning and Services credits will expire 24 months from their purchase date, or one month after the expiration of the program, whichever is first. Learning and Services credits are a flexible way for your organization to receive focused technical enablement support. These credits are not intended for use on project-specific professional services. Any project-related activities requiring Esri Project Services support will be scoped, budgeted, and scheduled outside of the Advantage Program. You can find more information about the Advantage Program at [www.esri.com/services/eeap](http://www.esri.com/services/eeap).
  - Any activities proposed to be completed under the Advantage Program would be subject to review and approval by Esri to ensure alignment with the intent of the Advantage Program.
  - At time of renewal, Esri reserves the right to update Advantage Program (AP) terms to reflect the latest program offering.

**Esri Premium Support Services (PSS):** One annual PSS subscription with a total of two authorized callers and up to 10 premium support cases. PSS gives your organization the convenience of prioritized case management and personalized technical support for Esri customers. Premium Support Services complement and extend existing standard technical support options by providing focused industry-centric support. The PSS program has been designed to meet the needs of Esri customers who are developing, implementing, or supporting complex, mission-critical GIS applications. With the Premium Support Services program, your organization will benefit from the highest level of technical support that Esri offers.

- PSS key components include:
  - An assigned Technical Account Manager who acts as your organization's liaison within Esri Support Services and across Esri departments
  - 24/7/365 case response and work clock
  - Prioritized case management
  - One-hour response time for all reported PSS issues
  - Daily status updates for all PSS cases
  - Premium access to the My Esri Portal
  - Quarterly review of PSS cases and service
  - Other benefits exclusive to PSS customers
- You can find more information about PSS at <https://support.esri.com/en-us/support-services/premium>

This proposal is valid for 30 days. In order to complete the agreement within this timeframe, I ask that you contact me within the next seven days to work through any questions or concerns you may have.

Esri and San Bernardino County have a long and rich history working together. I appreciate the opportunity to present you with this proposal, as I believe it will greatly benefit your organization. Thank you very much for your consideration.

Best regards,

Jacqueline Scott  
Sr. Account Manager

### CUSTOMER CONTACT INFORMATION

1. Customer centralized point of contact for order release and administrative issues:

Contact Name: Steven Raughley \_\_\_\_\_  
Email: steven.raughley@itd.sbcounty.gov \_\_\_\_\_  
Phone: 909-388-5500 \_\_\_\_\_

2. All invoices to Customer will be mailed to the address listed below:

Office: Innovation and Technology Department \_\_\_\_\_  
Contact Name: Steven Raughley \_\_\_\_\_  
Address: 670 East Gilbert Street \_\_\_\_\_  
San Bernardino, CA 92415 \_\_\_\_\_

3. Ship To address (if the same as above leave blank):

Office: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

# Master Agreement Product and Services



## Agreement No. 00330024.0

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

This Agreement and Enterprise Agreement number 00330023.0 are the sole and entire agreement of the parties as to the subject matter of this Agreement and supersedes any previous agreements, understandings, and arrangements relating to such subject matter. Neither party has relied on any statement, representation, or warranty not expressly stated in this Agreement. This Agreement comprises this signature page, the terms and conditions that begin on the following page, and all referenced attachments. Except for Product or Service descriptions, quantities, pricing, and delivery instructions, or as agreed in an Ordering Document signed by both parties, all terms included in any Ordering Document are void and of no effect. Any modification(s) or amendment(s) to this Agreement must be in writing and signed by both parties.

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

## 1.0 GENERAL GRANT OF RIGHTS AND RESTRICTIONS

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

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

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

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

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

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

**1.4 Customer Content.** Esri does not acquire any rights in Customer Content under this Agreement other than as needed to provide Esri Offerings and Services to Customer.

## 2.0 SOFTWARE AND ONLINE SERVICES

### 2.1 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 Customer's Value-Added Applications.
- b. **"App Login Credential(s)"** means a system-generated application login and associated password, provided when registering a Value-Added Application with Online Services, which when embedded in a Value-Added Application allows the Value-Added Application to access and use Online Services.
- c. **"Commercial App Deployment License"** means a license to distribute Value-Added Applications to third parties for a fee.
- d. **"Concurrent Use License"** means a license to install and use Software on computer(s) on a network, provided that 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.
- e. **"Deployment License"** means a license to incorporate ArcGIS Runtime components in Value-Added Applications and distribute Value-Added Applications to Customer's end users.
- f. **"Deployment Server License"** means a license to use Software under a Server License for all uses permitted in this Agreement and as described in the Documentation.
- g. **"Development Server License"** means a license to use Software under a Server License only to build and test Value-Added Applications as described in the Documentation.
- h. **"Development Use"** means the right to install and use Products to build and test Value-Added Applications as described in the Documentation.
- i. **"Failover License"** means a license to 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.
- j. **"Named User(s)"** is Customer's employee, agent, consultant, or contractor to whom Customer has assigned a unique, secure login credential (identity) enabling access to a Product that requires such identity in order to access identity-managed capabilities within a Product for Customer's exclusive benefit. For educational use, Named Users may include registered students.
- k. **"Named User Credential(s)"** means an individual person's login and associated password enabling that person to access and use Products.
- l. **"Named User License"** means the right for a single Named User to use a specific Esri Offering.
- m. **"Online Services Subscription"** means a limited-term subscription conveying the right for one or more Named Users to access and use Online Services.
- n. **"Redistribution License"** means a license to reproduce and distribute Software provided that
  1. Customer reproduces and distributes the Software in its entirety;
  2. A license agreement that protects the Software to the same extent as this Agreement accompanies each copy of the Software, and the recipient agrees to the terms and conditions of the license agreement;
  3. Customer reproduces all copyright and trademark attributions and notices; and
  4. Customer does not charge a fee to others for the use of the Software.
- o. **"Server License"** means a license to install and use Software on any computer being used as a server. 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 rights, each Server License includes a Failover License.
- p. **"Sharing Tools"** means publishing capabilities included with Customer's authorized use of Online Services or ArcGIS Enterprise that allow Customer to make Customer Content and Value-Added Applications available to third parties or Anonymous Users.
- q. **"Single Use License"** means a license for a single authorized end user to install and use Software on a single computer. The single authorized end user may also 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.

- r. **"Staging Server License"** means a license to use Software under a Server License to build and test Value-Added Applications and map caches; conduct user acceptance, performance, and load testing of other third-party software; stage new commercial data updates; and conduct training activities as described in the Documentation. Customer may use Value-Added Applications and map caches with Development and Deployment Server Licenses.

**2.2 License and Subscription Types.** Esri provides Products under one or more of the license or subscription types identified in the definitions above. The Documentation and Ordering Documents identify which license or subscription type(s) applies to the ordered Products.

### **2.3 Software Terms of Use.**

- a. Customer may
1. Install, access, or store Software and Data on electronic storage device(s);
  2. Make archival copies and routine computer backups;
  3. Install and use a newer version of Software concurrently with the version to be replaced during a reasonable transition period not to exceed 6 months, provided that the deployment of either version does not exceed Customer's licensed quantity; thereafter, Customer will not use more Software in the aggregate than Customer's total licensed quantity. This concurrent use right does not apply to Software licensed for Development Use;
  4. Move Software in the licensed configuration to a replacement computer;
  5. Distribute Software and any associated Authorization Codes required for use of a Deployment License to third parties; and
  6. Governmental or not-for-profit organizations that operate a website or offer Internet services may use server Software for revenue-generating purposes 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 the Documentation.
- c. Customer may use all fonts provided with Software for any authorized use of the Software. Customer may also use Esri fonts separately to print any output created by the Software. Any use restrictions for third-party fonts included with the Software are set forth in the font file itself.
- d. Esri publishes Product-specific Software terms of use at <https://www.esri.com/legal/scope-of-use>.

### **2.4 Online Services Terms of Use.**

- a. **Online Services Descriptions.** Esri publishes Online Services Subscription-specific terms of use at <https://www.esri.com/legal/scope-of-use>. Use of Online Services is also subject to the Cloud Services terms found in [Attachment B](#).
- b. **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 when applicable, Esri will issue a prorated refund.
- c. **Sharing Customer Content.** Sharing Customer Content using Sharing Tools enables 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. Customer's use of Sharing Tools is at Customer's sole risk.

**2.5 Named User Licenses.** Except as expressly set forth in this Agreement, the following terms apply to Software and Online Services for which Customer acquires Named User Licenses.

#### **a. Named Users.**

1. Named User login credentials are for designated users only and may not be shared with other individuals.

2. Customer may reassign a Named User License to another user if the former user no longer requires access to the Software or Online Services.
  3. Customer may not add third parties as Named Users, other than third parties included within the definition of Named Users.
- b. **Anonymous Users.** Anonymous Users may only access Software or Online Services through Value-Added Applications that provide access to services or Content, that has been published for shared access through the use of Sharing Tools.

## 2.6 Value-Added Applications.

1. Customer is responsible for the development, operation, and technical support of Customer Content and Value-Added Applications.
2. Customer may not embed a Named User Credential into Value-Added Applications. Value-Added Applications that enable access to Customer Content that is not publicly shared through the use of Sharing Tools must require individual users to log in to the application(s) with their unique Named User login credentials.
3. Customer may embed an App Login Credential into Value-Added Applications that provide access by Anonymous Users to services or Content, that has been published for shared access by Anonymous Users through the use of Sharing Tools.
4. Customer may not embed an App Login Credential into Value-Added Applications that enables access to Customer Content that is not publicly shared through the use of Sharing Tools. Value-Added Applications that enable access to Customer Content that is not publicly shared through the use of Sharing Tools must require individual users to log in to the application(s) with their unique Named User login credentials.
5. Customer may not provide a third party, other than third parties included within the definition of Named Users, with access to Software or Online Services, other than through Customer's Value-Added Application(s).
6. Customer may transfer Value-Added Applications to any third party for use in conjunction with the third party's own Software license or Online Services Subscription.

## 2.7 Limited-Use Programs.

- a. **Trial, Evaluation, and Beta Programs.** Products acquired under a trial, evaluation, or Beta program are licensed 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 trial, evaluation, or Beta license, Customer may lose any Customer Content and customizations made during the license term. If Customer does not wish to purchase a license or subscription, Customer should export such Customer Content before the license expires.
- b. **Educational Programs.** Customer agrees to use Products 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.
- c. **Grant Programs.** Customer may use Products provided under a grant program for noncommercial purposes only. Except for cost recovery of using and operating the Products, Customer shall not use Products for revenue-generating or for-profit purposes.
- d. **Other Esri Limited-Use Programs.** If Customer acquires Products under any limited-use program not listed above, Customer's use of the Products may be subject to the terms set forth in the applicable launching page or enrollment form or as described on Esri's website in addition to the nonconflicting terms of this Agreement.

### 3.0 DATA

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

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

### 3.2 Permitted Uses.

- a. Unless otherwise authorized in writing, Customer may only use Data with the Products for which Esri has provided the Data.
- b. Subject to the restrictions set forth in this Agreement and provided that Customer affixes an attribution statement to the Data representations acknowledging Esri or its applicable licensor(s) as the source of the portion(s) of the Data used for the Data representation, Customer may:
  - 1. Create representations of Data in hard-copy or static, electronic format (e.g., PDF, GIF, JPEG, HTML); in ArcGIS Web Maps; or in Esri Story Maps apps for the purposes of visualizing Data (including basic interactions such as panning, zooming, and identifying map features with simple pop-ups); and
  - 2. Use and include such representations of Data in presentation packages, marketing studies, or other reports or documents containing map images or data summaries derived from the use of Esri Products to third parties.
- c. Customer may take Online Services basemaps offline through Esri Content Packages and subsequently deliver (transfer) them to any device for use with licensed ArcGIS Runtime applications and ArcGIS Desktop. Customer may not otherwise scrape, download, or store Data.
- d. Customer may make any internal use of geocoded results that are obtained and stored in compliance with this Agreement. Customer may not redistribute geocoded results except to (i) use and/or display on a map in connection with Customer's public, non-revenue generating website(s), (ii) permit access to third-parties for the purposes of Customer's business, or (iii) deliver to third parties, on a noncommercial/non-revenue generating basis, static results, static output or static base map renderings.

### 3.3 Use Restrictions.

- a. Customer may not act directly or authorize its customers to cobrand Data, use Data in any unauthorized service or product, or offer Data through or on behalf of any third party.
- b. Customer may not use or allow third parties to use Data, for the purpose of compiling, enhancing, verifying, supplementing, adding to, or deleting from compilation of information that is sold, rented, published, furnished, or in any manner provided to a third party.
- c. *Business Listing Data.* Unless authorized in writing, Customer may not use Business Listing Data for any direct marketing purposes, resale publication, or distribution to any third party as part of any mailing list, directory, classified advertising, or other compilation of information.
- d. *Street Data.* Customer may use Street Data for mapping, geocoding, routing, and transportation network analysis purposes. Unless otherwise authorized in writing, Customer may not use Street Data for
  - 1. Real-time navigational guidance, including alerting a user about upcoming maneuvers, such as warning of an upcoming turn or calculating an alternate route if a turn is missed;
  - 2. Synchronized multivehicle routing; or
  - 3. Synchronized route optimization.
- e. *Business Analyst Data.* Customer may cache Data provided with ArcGIS Business Analyst Mobile App on a mobile device for use in conjunction with its use of ArcGIS Business Analyst Server. Customer may not otherwise cache or download such Data.

- f. *Partial Dataset Licenses*: If Customer orders a subset of a dataset (e.g., a country, region, state, or local portion of a global database), Customer may use only the licensed subset, not any other portion of the full dataset.
- g. *Michael Bauer Research International Boundaries Data ("MBR Data")*. Customer's right to use data downloaded to Customer's premises (e.g., MBR Data stored in ArcGIS Enterprise, ArcGIS Desktop) terminates 2 years after download.

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

## **4.0 MAINTENANCE**

**4.1 US Customers.** Esri will provide Maintenance for Software and Online Services in accordance with the Esri Maintenance and Support Program and this Agreement.

## **5.0 PROFESSIONAL SERVICES**

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

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

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

### **5.3 Task Orders and Project Schedule.**

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

### **5.4 Ownership of Deliverables and Inventions.**

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

## 5.5 Acceptance.

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

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

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

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

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

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

## 5.9 Payment; Invoices.

- a. **For Firm Fixed Price Task Orders.** Unless otherwise specified in a Task Order, Esri will prepare and submit monthly invoices based on the percentage of completion for each Deliverable as of the end of the preceding month. Upon acceptance of all Deliverables under a Task Order, the unpaid balance of the total Task Order value is due.
- b. **For Professional Service Packages.** Esri will submit an invoice for Professional Service Packages on receipt of an agreed-upon Task Order. Esri may, at its sole discretion, stop work to avoid exceeding the total

labor hours or number of days allotted in the applicable Professional Service Package description set forth in the applicable scope of work. Professional Service Packages expire if not used within 12 months of the Esri invoice date.

**c. For Time and Materials Task Orders.**

1. Esri will submit to Customer written monthly invoices to the Customer address provided in the Task Order. The invoices will include the payment due for work performed, including travel time, and any other direct costs (ODCs) incurred as authorized under a Task Order. The amount invoiced for labor will be equal to the number of hours expended during the previous month, multiplied by the applicable labor rates. Esri will invoice meals on a per diem basis in accordance with the full daily limits specified on the government Defense Travel website at <https://www.defensetravel.dod.mil/site/perdiemCalc.cfm>. Esri and Customer may include hourly labor rates in this Agreement; if the parties elect to do so, Attachment D will identify the hourly labor rates for each labor category. Esri may change hourly labor rates for Services; any increase in the first 5 years will not exceed 5 percent per year. Esri will invoice ODCs, including travel-related expenses incurred, plus a 15 percent burden.
2. Esri may reallocate the budget between activities, labor categories, and ODCs as necessary to facilitate the work effort, provided the overall price is not exceeded. If Esri reaches the funded not-to-exceed Task Order value and the activities are not completed, Customer may increase the order funding to allow additional work to be performed, or Esri may stop work without further obligation or liability.

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

## **6.0 ESRI MANAGED CLOUD SERVICES**

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

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

### **6.2 Provision of Esri Managed Cloud Services.**

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

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

## 7.0 TRAINING

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

- a. **"Customer-Supplied Training Data"** means any digital dataset(s) including, but not limited to, geographic vector data, coordinates, raster data reports, or associated tabular attributes supplied by Customer for use in training.
- b. **"Esri Academy LMS Integration Subscription"** means an optional term-limited subscription to Esri Academy enabling a specific number of unique Customer student(s) access to Self-Paced E-Learning through the customer's Learning Management System.
- c. **"Esri E-Learning Content (SCORM Format) License"** means an optional term-limited license that provides Esri customers with Esri's e-learning content in SCORM (Shareable Content Object Reference Model) format to import into their Learning Management System.
- d. **"Esri Mobile Lab"** means a service in which Esri will deliver and set up a training environment at the Customer's site for use in conjunction with scheduled Esri Training Events only. The Esri Mobile Lab will include certain hardware, software, power cords, and network switches necessary for the instructor to set up the environment.
- e. **"Esri Training Event(s)"** means an Esri site class, Esri instructor-led online class, a Customer site/private class, workshop, or coaching services.
- f. **"Esri Training Representative"** means Customer's primary Esri liaison in organizing private Esri Training Events.
- g. **"Student(s)"** means a Customer employee or agent who is a registered participant in a specific Esri Training Event or Training-related services. If Customer is an individual, then Student means Customer.
- h. **"Training Pass"** means a nonrefundable, nontransferable block of prepaid training days with a fixed price per day throughout the Term of the Training Pass.
- i. **"Esri Mobile Router"** means a service in which Esri will deliver and setup a mobile router at the Customer's site for use in conjunction with a scheduled Esri Training Event only. The mobile router provides high-speed wireless internet access needed to run the Esri Training Event.
- j. **"Learning Management System" or "LMS"** shall mean third-party software acquired separately by Customer that allows Customer to consume E-Learning Content (SCORM Format) for the purpose of reserving it to the Customer's internal employees.

## 7.2 Permitted and Prohibited Uses.

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

## 7.3 Esri's Responsibilities.

Esri will

- a. Provide an instructor qualified to conduct Training;
- b. Provide all necessary Training Materials for Student; and

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

#### **7.4 Customer's Responsibilities.**

Customer will

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

#### **7.5 Student Registration and Training Event Change Policy.**

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

#### **7.6 Invoicing; Prepaid Fees.**

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

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

This section 7.6 does not apply to Training provided under the Advantage Program.

## 7.7 Availability and General Provision of Wireless Service

- a. Esri 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 wireless service interruptions or unavailability.

## 7.8 Esri E-Learning in the Customer's Learning Management System

- a. Esri E-Learning Content (SCORM format) License, specific terms of use incorporated by reference are found at <https://www.esri.com/content/dam/esrisites/en-us/media/legal/scorm-lms/scorm-terms-and-conditions.pdf>
- b. Esri Academy LMS Integration Subscription, specific terms of use incorporated by reference are found at <https://www.esri.com/content/dam/esrisites/en-us/media/legal/scorm-lms/lms-terms-and-conditions.pdf>

## 8.0 ADVANTAGE PROGRAM

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

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

**8.2 Advantage Program Description.** The Advantage Program is provided on an order-by-order, annual subscription basis and provides strategy and planning support in addition to a menu of items including Professional Services, Training, PSS, and Esri Managed Cloud Services that Customer can select to best meet its needs with guidance from Advisor. The Advantage Program may change from time to time. The Advantage Program includes the following:

- a. **Advisor.** Customer will receive up to the number of Advisor hours ordered. Customer may elect to retain additional Advisor hours for a supplemental price.
- b. **Annual Planning Meeting.** A 1-day annual planning meeting is included.
- c. **Work Plan.** A collaboratively developed document is designed to drive the program's implementation through definition of Customer's GIS vision, goals, and objectives.
- d. **Learning and Services Credits.** Customer will receive the number of Learning and Services Credits ordered. Customer may use the credits toward any combination of Professional Services, Training, PSS, Esri Managed Cloud Services, or related travel expenses. Customer may order, for an additional price, additional Learning and Services Credits. Learning and Services Credits may be exchanged as described at the applicable

Advantage Program website. Esri will provide a monthly report outlining usage of Learning and Services Credits to date to the Authorized Contact.

- e. **Technology Webcasts.** Esri will provide an email invitation to the Authorized Contact for webcasts presenting business and technical information related to enterprise GIS.
- f. **No Project Services.** The Advantage Program is not designed for Esri to provide project-specific Professional Services such as custom application or database development for solutions or applications. Esri will not provide these types of Professional Services under the Advantage Program and does not warrant that Deliverables provided under an Advantage Program will comply with Specifications.

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

(to be completed by Customer):

Contact Name: Steven Raughley \_\_\_\_\_  
Address: 670 East Gilbert Street \_\_\_\_\_  
City, State, ZIP: San Bernardino, CA 92415 \_\_\_\_\_  
Email: steven.raughley@itd.sbcounty.gov \_\_\_\_\_  
Telephone: 909-388-5500 \_\_\_\_\_

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

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

**8.6 Activity Descriptions for Esri Managed Cloud Services.** The Activity Description for Esri Managed Cloud Services orders must include the following:

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

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

**8.7 Travel and Per Diem Expenses.** Any Esri travel and per diem expenses will be quoted separately. Travel expenses will include a 15 percent burden, and per diem will be determined in accordance with the full daily limits specified on the government Defense Travel website at <https://www.defensetravel.dod.mil/site/perdiemCalc.cfm>. Customer will use Learning and Services Credits for travel and per diem expenses.

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

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

**8.10 Invoicing.**

- a. Esri shall invoice Customer as quoted for the Advantage Program subscription, additional Learning and Services Credits, or Advisor services upon receipt of Customer's order. Subsequently, Esri will invoice annually at least 45 days in advance of the Advantage Program subscription expiration date. Esri will extend the Advantage Program subscription for a subsequent annual term upon receipt of Customer's payment of the renewal invoice. Esri will invoice fees for additional Learning and Services Credits or Advisor services upon receipt of Customer's order.
- b. Pricing for program renewals and new or additional Services will be in accordance with Esri's standard pricing at the time of purchase or renewal.

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

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

## ATTACHMENT A GLOSSARY OF TERMS

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

**"API"** means application programming interface.

**"ArcGIS Website"** means [www.arcgis.com](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 Offerings.

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

**"Cloud Services"** means Online Services and Esri Managed Cloud Services.

**"Content"** means data, images, photographs, animations, video, audio, text, maps, databases, data models, spreadsheets, user interfaces, graphics components, icons, software, and other resources used in connection with Esri Offerings and Services.

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

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

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

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

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

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

**"GIS"** means geographic information system.

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

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

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

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

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

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

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

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

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

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

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

**"Subscription"** means a license for use of an Esri Offering for a limited time period or a right to receive Services for a limited time period.

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

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

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

**"Training"** means (i) Product training or (ii) related training that Esri provides under this Agreement.

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

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

## **ATTACHMENT B GENERAL TERMS AND CONDITIONS**

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

### **ARTICLE B.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 Services or Esri Offerings;
- b. Distribute or provide direct access to Services or Esri Offerings to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs;
- c. Distribute Authorization Codes to third parties;
- d. Reverse engineer, decompile, or disassemble any Product or Deliverable delivered in compiled form;
- e. Make any attempt to circumvent the technological measure(s) that controls access to or use of Esri Offerings;
- f. Store, cache, use, upload, distribute, or sublicense Content or otherwise use Esri Offerings in violation of Esri's or a third-party's rights, including intellectual property rights, privacy rights, nondiscrimination laws, export laws, or any other applicable law or regulation;
- g. Remove or obscure any Esri or its licensors' patent, copyright, trademark, proprietary rights notices, or legends contained in or affixed to any Esri Offerings, output, metadata file, or online or hard-copy attribution page of any Data or Documentation;
- h. Unbundle or independently use individual or component parts of Esri Offerings;
- i. Incorporate any portion of Esri Offerings into a product or service for third-party use that competes with the Esri Offerings;
- j. Publish or in any other way communicate the results of benchmark tests run on Beta Products without the prior written permission of Esri and its licensors; or
- k. Use, incorporate, modify, distribute, provide access to, or combine any Esri Offerings in a manner that would subject any Esri Offering to open-source or open-database license terms (e.g. GPL) that require any part of the Esri Offering to be subject to additional terms, for example
  - 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; or
- l. Generate revenue by providing access to Software or Online Services through a Value-Added Application.

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

### **ARTICLE B.2—TERM AND TERMINATION**

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

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

**B.2.3** Upon any termination or expiration of a license or subscription, Customer will

- a. Stop accessing and using the terminated or expired Esri Offerings;
- b. Clear any client-side data cache derived from the terminated or expired Cloud Services; and
- c. Stop using and uninstall, remove, and destroy all copies of the terminated or expired Esri Offerings in Customer's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Esri or its authorized distributor.

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

## **ARTICLE B.3—LIMITED WARRANTIES AND DISCLAIMERS**

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

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

**B.3.3 General Disclaimer.** Except for the express limited warranties set forth in this Agreement, Esri disclaims all other warranties or conditions of any kind, whether express or implied, including, but not limited to, warranties or conditions of merchantability, fitness for a particular purpose, and noninfringement of intellectual property rights. Esri is not responsible for any nonconformities with Specifications or loss, deletion, modification, or disclosure of Customer Content caused by Customer's modification of any Esri Offering other than as specified in the Documentation. Esri does not warrant that Esri Offerings, or Customer's operation of the same, will be uninterrupted, error free, fault tolerant, or fail-safe or that all nonconformities can or will be corrected, or will result in Customer's compliance with any applicable law. 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.

**B.3.4 Disclaimers.**

- a. **Internet Disclaimer.** Neither party will be liable for damages under any theory of law related to the performance or discontinuance of operation of the Internet or to regulation of the Internet that might restrict or prohibit the operation of Cloud Services.
- b. **Third-Party Websites; Third-Party Content.** Esri is not responsible for any third-party website or Third-Party Content that appears in or is referenced by Esri Offerings or Esri websites, including [www.esri.com](http://www.esri.com), [developers.arcgis.com](http://developers.arcgis.com), [livingatlas.arcgis.com](http://livingatlas.arcgis.com) and [www.arcgis.com](http://www.arcgis.com). Providing links to third-party websites and resources does not imply an endorsement, affiliation, or sponsorship of any kind.
- c. **Artificial Intelligence (AI)/Machine Learning (ML) Disclaimer.** As specified in the Documentation, certain Esri Offerings may integrate third-party AI/ML software libraries and third-party or Esri created pre-trained AI/ML models for various tasks including, but not limited to, object detection, image obfuscation, image classification, or text or speech recognition. Customer may use these capabilities at its option and such AI/ML capabilities are delivered "as is" and without warranty of any kind. In certain cases, the Esri Offering may provide Customers the ability to configure their own custom

**AI/ML models to meet Customer's unique requirements, which except for the express warranties contained in this Agreement, shall be at Customer's own risk.**

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

#### **ARTICLE B.4—LIMITATION OF LIABILITY**

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

**B.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.

**B.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.**

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

#### **ARTICLE B.5—INDEMNIFICATIONS**

**B.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 any Esri Offering or Service infringes a patent, copyright, trademark, or trade secret.
- d. **"Loss(es)"** means expenditure, damage award, settlement amount, cost, or expense, including awarded attorneys' fees.

##### **B.5.2 Infringement Indemnity.**

- a. Esri will defend, hold all Indemnitees harmless from, and indemnify any Loss arising out of an Infringement Claim.
- b. If Esri determines that an Infringement Claim is valid, Esri may, at its expense, either (i) obtain rights for Customer to continue using the Esri Offerings or Services or (ii) modify the Esri Offerings or Services while maintaining substantially similar functionality. If neither alternative is commercially reasonable, Esri may terminate Customer's right to use the Esri Offerings or Services and will refund any (a) license fees that Customer paid for the infringing Esri Offerings or Services acquired under a Perpetual License, prorated on a 5-year, straight-line depreciation basis beginning from the initial date of delivery or (b) unused portion of fees paid for Term Licenses, subscriptions, and Maintenance.
- c. Esri has no obligation to defend an Infringement Claim or to indemnify Customer to the extent the Infringement Claim arises out of (i) the combination or integration of Esri Offerings or Services with a product, process, system, or element that Esri has not supplied or specified in the Specification; (ii) alteration of Esri Offerings or Services by anyone other than Esri or its vendors; (iii) compliance with Customer's express

written instructions specifications and is not attributable to Esri's exercise of discretion in meeting the specifications; or (iv) use of Esri Offerings or Services after Esri either provides a modified version to avoid infringement or terminates Customer's right to use the Esri Offerings or Services.

**B.5.3 General Indemnity.** Esri will defend and hold all Indemnitees harmless from, and indemnify any Loss arising out of, any Claim for bodily injury, death, or tangible or real property damage brought against any of the Indemnitees to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents performing Services while on Customer's site.

**B.5.4 Conditions for Indemnification.** As conditions for indemnification, but for those defined as Infringement Claims (see B.5.2 c.), 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 Claim, and (iv) reasonably cooperate in the defense of the Claim at Esri's request and expense. Notwithstanding B.5.4(iii), Esri may not settle any Claim absent the written consent of Customer unless such settlement (a) includes a release of all claims pending against Customer, (b) contains no admission of liability or wrongdoing (except that the infringement occurred) by Customer, and (c) imposes no obligations upon Customer other than an obligation to stop using the Offerings or Services that are the subject of the Claim.

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

## **ARTICLE B.6—INSURANCE**

"County" in this Article B.6 means San Bernardino County.

**B.6.1 Additional Insured.** All policies, except for the Workers' Compensation and Employers Liability policies, shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as an additional insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Notwithstanding any provision to the contrary in this section B.6.1, policies to which Article B.6 refers have a blanket endorsement honoring contractual requirements to add another entity as an additional insured. A certificate of insurance will be annotated to confirm that the County and its officers, employees, agents and volunteers are covered under the blanket endorsement.

**B.6.2 Waiver of Subrogation Rights.** Esri shall require the carriers of the above-required coverage's to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, Contractors, and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Esri and Esri's employees or agents from waiving the right of subrogation prior to a loss or claim. Subject to policy terms, Esri hereby waives all rights of subrogation against the County for any claims made under the policies described in this Article B.6.

**B.6.3 Policies Primary and Non-Contributory.** Except for Technology Errors & Omissions including Network Security and Privacy (Cyber Liability Insurance), all policies required under this Article B.6 are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

**B.6.4 Severability of Interests..** Subject to policy limits and the terms of the applicable policy, the insurance applies as if each named insured were the only named insured and separately to each insured against whom claim is made or suit is brought.

**B.6.5 Proof of Coverage.** Esri shall furnish certificates of insurance to the County at: Christine Onyango 670 E. Gilbert Street, San Bernadino, CA 92415 or [christine.onyango@itd.sbcounty.gov](mailto:christine.onyango@itd.sbcounty.gov) evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder and Esri shall maintain such insurance from the time Esri commences performance of services hereunder until the completion of such services. The certificate of insurance attached hereto satisfies the insurance policies and requested coverages under this Agreement. Insurance shall not terminate or expire without prompt written notice from Esri to the County point of contact described above in

Article B.6.5 Proof of Coverage, provided that no such notice is required if Esri buys a replacement policy that ensures continuous coverage and otherwise complies with the insurance requirements of this Agreement.

**B.6.6 Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VIII" or better.

**B.6.7 Deductibles and Self-Insured Retention.** Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared in the certificate of insurance..

**B.6.8 Failure to Procure Coverage.** In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract subject to Esri's right to cure described above in Article B2.1.

**B.6.9 Insurance Review..** Any change requiring additional types of insurance coverage or higher coverage limits must be made by written amendment to this EA mutually signed by the parties. Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance requirements will not be deemed as a waiver of any rights on the part of the County.

**B.6.10 Insurance Specifications.** Esri agrees to provide insurance set forth in accordance with the requirements in this Article B.6. If Esri uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Esri agrees to amend, supplement or endorse the existing coverage to do so. Without in anyway affecting the indemnity herein provided and in addition thereto, Esri shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

**B.6.11 Workers' Compensation/Employers Liability.** A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of Esri and risks covered under the terms of the policies to such persons under this Contract.

If Esri has no employees, it may certify or warrant to County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

**B.6.12 Commercial/General Liability Insurance.** Esri shall carry General Liability Insurance covering all operations performed by or on behalf of Esri providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations)
- e. Personal Injury
- f. Contractual liability
- g. \$2,000,000 general aggregate limit

**B.6.13 Automobile Liability Insurance.** Primary insurance coverage shall be written on ISO Business Auto coverage form or a substantially similar form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If Esri is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If Esri owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

**B.6.14 Technology Errors & Omissions including Network Security and Privacy (Cyber Liability Insurance).** With limits of no less than \$2,000,000 for each claim with an annual aggregate of \$2,000,000 on a claims made basis (retro date 7/16/87) covering claims involving:

- **Technology Errors and Omissions:** any loss caused by an error, omission or negligence by the primary insured (amended to include software copyright infringement)
- **Communications and Media Liability:** Communications & Media Liability (trademark, copyright infringement, plagiarism); Copyright and Trademark infringement claims in advertising, internet, and other material (excluding infringement of copyrighted software).
- **Network & Information Security Liability:** virus transmission, denial of service, breach of privacy or confidentiality obligations

## **ARTICLE B.7—SECURITY AND COMPLIANCE**

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

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

**B.7.3 Export Compliance.** Each party will comply with all applicable export and trade sanctions 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), the US Department of Treasury, Office of Foreign Assets Control (OFAC) Regulations, and other applicable export laws. Customer will not export, reexport, transfer, release, or otherwise dispose of, in whole or in part, or permit access to or transfer or use of Services or Esri Offerings to any United States embargoed countries currently including Iran, Syria, North Korea, Cuba, Crimea region of Ukraine, the Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR), or denied entities or persons except in accordance with all then-current applicable US government export laws and regulations. Customer will not export, reexport, transfer, or use Services or Esri Offerings for certain missile, nuclear, chemical, or biological activities or end uses without proper authorization from the US government. Customer shall immediately notify Esri in writing if any US government entity or agency denies, suspends, or revokes Customer's export privileges. Customer will not upload, store, or process in Cloud Services any Customer Content that (i) has an Export Control Classification Number (ECCN) other than EAR99 or (ii) is controlled for export from the United States under ITAR. Customer will notify Esri in advance if Esri's performance of any Services or provision of any Esri Offerings is related to any defense article, defense service, or technical data, as defined under the ITAR Sections 120.31, 120.32 and 120.33, respectively; Esri will not perform any such Services or provide any such Esri Offerings until Esri obtains any necessary export license from the US government. Customer will reasonably assist Esri in applying for and obtaining an export license if needed.

**B.7.4 Privacy.** Esri will process personal data according to the terms of the Data Processing Addendum available at <https://www.esri.com/en-us/privacy/overview>.

## ARTICLE B.8—CLOUD SERVICES

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

- a. Creates or transmits spam, spoofings, or phishing email or offensive, hate related or defamatory material; or stalks or makes threats of physical harm;
- b. Stores or transmits any Malicious Code;
- c. Violates any law or regulation;
- d. Infringes or misappropriates the rights of any third party;
- e. Probes, scans, or tests the vulnerability of Cloud Services or breach any security or authentication measures used by Cloud Services without written approval from Esri's Product Security Officer; or
- f. Benchmarks the availability, performance, or functionality of Cloud Services.

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

### **B.8.3 Customer Content.**

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

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

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

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

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

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

## **ARTICLE B.9—GENERAL PROVISIONS**

**B.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.

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

**B.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.

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

**B.9.5 Taxes and Fees; Shipping Charges.** Pricing of Esri Offerings and Services that Esri quotes to Customer is 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; shipping and handling charges; and vendor enrollment fees. Esri will add any fees that it is required to pay to the total amount of its invoice to Customer. Esri may include estimated taxes and shipping and handling charges in its quotations but may adjust these fees on invoicing.

**B.9.6 Compliance Review.** Customer will keep accurate and complete records and accounts pertaining to its compliance with its obligations under this Agreement. Esri or its authorized distributor may conduct a compliance review of these records and accounts with no less than 14 business days' written notice or may appoint an independent third party to conduct such a compliance review on its behalf. Customer will promptly correct any noncompliance identified during the compliance review. Neither Esri nor Esri's authorized 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.

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

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

**B.9.9 Successor and Assigns.** Customer will not assign, sublicense, or transfer Customer's rights or delegate Customer's obligations under this Agreement without Esri's and its authorized distributor's prior written consent, and any attempt to do so without consent will be void. Esri may not assign this Agreement without Customer's prior written consent, except as part of a corporate reorganization, consolidation, merger, or sale of all of its assets, and provided that Esri provides Customer with prompt prior written notice of such assignment, or if legally prohibited from providing prior notice, promptly after the effective date of the assignment, and Customer has the right to terminate this Agreement, if required by applicable law. This Agreement will be binding on the respective successors and assigns of the parties to this Agreement. Notwithstanding, a contractor under contract to the government to deliver Products may assign this Agreement and Products acquired for delivery to its government customer upon written notice to Esri, provided the government customer assents to the terms of this Agreement. Upon mutual agreement, Esri's Eligible Agency s may provide Services under the terms of this Agreement; in such cases, the Ordering Documents will identify the Eligible Agency as the party that provides the Services. Esri's authorized distributors are not Eligible Agency s of Esri.

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

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

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

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

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

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

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

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

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

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

Esri Agreement No. \_\_\_\_\_

Task Order No. \_\_\_\_\_

\_\_\_\_\_, ("Customer Address"), this Task Order authorizes preparation and provision of the Deliverables described and in accordance with the terms, schedule, and start/end date(s) specified below.

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

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

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

ACCEPTED AND AGREED:

[sample only—do not sign]  
(Customer)

Signature: [sample only—do not sign]

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
(Esri)

Signature: [sample only—do not sign]

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT D**  
**TIME AND MATERIALS RATE SCHEDULE**

See Quotation for Pricing.