

MEMORANDUM

TO: ELVIS MELLA, DIR. OF INFORMATION TECHNOLOGY

FROM: LINA BUSBY, ASSISTANT CITY ATTORNEY *LB*

CC: ANDREW DEGRAFFENREIDT, CITY ATTORNEY
RANDY SHERMAN, DIR. OF FINANCE & ADMIN. SERVICES
ALLISON GOLDBERG, GIS COORDINATOR, IT DEPARTMENT

DATE: JUNE 26, 2017

RE: REVIEW OF ENTERPRISE AGREEMENT WITH ESRI FOR GIS SOFTWARE PACKAGES

You requested the City Attorney's Office review the attached ESRI Small Municipal and County Government Enterprise License Agreement ("ELA Agreement") which incorporates the (i) Quotation and (ii) the License Agreement.

Upon review, the ESRI Agreement is legally sufficient. It is a standard agreement issued to all municipalities and counties. Both Broward and Palm Beach counties, in addition to countless local municipalities, have entered into the same standard licensing ELA Agreement and currently use the references software technology.

The signatory page requires the signature of the Licensee, therefore, it is returned to your Department for execution with and at the direction of the City Council.

LB:syj

Attachment

City of Riviera Beach Information Technology Division

RECEIVED

JUN 01 2017

CITY ATTORNEY'S OFFICE

Memorandum

To: City Attorney Department
From: Elvis Mella
CC: Allison Goldberg, Randy Sherman

Dear City Attorney,

The Information Technology Division is looking to enter into an Enterprise Agreement with ESRI for all our GIS Software Packages. Can you please take the time to review this Enterprise Agreement to validate that it is legally sufficient to take to Council.

Thank you for your time and assistance in this matter.

Sincerely,



Elvis A. Mella
IT Manager



March 15, 2017

Ms. Allison Goldberg
City of Riviera Beach
600 Blue Heron Blvd
Riviera Beach, FL 33404-4311

Dear Allison,

The Esri Small Municipal and County Government Enterprise License Agreement (ELA) is a three-year agreement that will grant your organization access to Esri® term license software on an unlimited basis including maintenance on all software offered through the ELA for the term of the agreement. The ELA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply geographic information system (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an enterprise license agreement.

An ELA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Maintenance on all Esri software deployed under this agreement
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the ELA.
- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the ELA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the ELA who may directly contact Esri for Tier 2 technical support.
- The organization will provide an annual report of installed Esri software to Esri.

- Esri software and updates that the organization is licensed to use will be automatically available for downloading.
 - The organization will act as an Esri reference site and will permit Esri to publicize its use of Esri software and services.
 - The fee and benefits offered in this ELA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government ELA terms and conditions.
-
- Licenses are valid for the term of the ELA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have. To expedite your acceptance of this ELA offer:

1. Sign and return the whole agreement per the instructions in the terms and conditions.
2. On the first page of the ELA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.
3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.
4. Send the purchase order and agreement to the address, email or fax noted below:

Esri
Attn: Customer Service SG-ELA
380 New York Street
Redlands, CA 92373-8100

e-mail: service@esri.com
fax documents to: 909-307-3083

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Robyn Garrett
rgarrett@esri.com
704-541-9810 *1-8640



Quotation # 20502907

Date: February 24, 2017

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.

3325 Springbank Ln, Ste 200

Charlotte, NC 28226-3343

Phone: (704) 541-9810

Fax: (704) 541-7620

DUNS Number: 06-313-4175 CAGE Code: OAMS3

Customer # 263463 Contract #

City of Riviera Beach

Information Technology Dept

600 Blue Heron Blvd

Riviera Beach, FL 33404-4311

To expedite your order, please attach a copy of this quotation to your purchase order.

Quote is valid from: 02/24/2017 To: 05/25/2017

ATTENTION: Allison Goldberg

PHONE: (561) 845-4061

FAX: (561) 840-3188

Material	Qty	Description	Unit Price	Total
110036	1	Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement 2017 payment	35,000.00	35,000.00
144584	1	Esri Enterprise Advantage Program (EEAP): 50 Learning and Service Credits - Annual subscription designed to provide enterprise-wide visioning and geospatial enablement through technical advisory, an annual planning meeting, a collaboratively developed technical work plan, and access to exclusive quarterly technology webcasts. The program also provides access to a combination of consulting, premium support, and training services. This configuration includes a one day annual planning session; up to 100 Technical Advisor hours; Quarterly Technology Webcasts and 50 Learning and Services Credits. Subject to the terms & conditions of the attached Enterprise Advantage Program Agreement (E125). 2017 payment	57,000.00	57,000.00
110036	1	Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement 2018 payment	35,000.00	35,000.00
144584	1	Esri Enterprise Advantage Program (EEAP): 50 Learning and Service Credits - Annual subscription designed to provide enterprise-wide visioning and geospatial enablement through technical advisory, an annual planning meeting, a collaboratively developed technical work plan, and access to exclusive quarterly technology webcasts. The program also provides access to a combination of consulting, premium support, and training services. This configuration includes a one day annual planning session; up to 100 Technical Advisor hours; Quarterly Technology Webcasts and 50 Learning and Services Credits. Subject to the terms & conditions of the attached Enterprise Advantage Program Agreement (E125). 2018 payment	57,000.00	57,000.00
110036	1	Populations of 25,001 to 50,000 Small Government Term Enterprise License Agreement 2019 payment	35,000.00	35,000.00

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

For questions contact: Robyn Garrett	Email: rgarrett@esri.com	Phone: (704) 541-9810 x8640
<p>The items on this quotation are subject to the terms set forth herein and the terms of your signed agreement with Esri, if any, or, where applicable, Esri's standard terms and conditions at www.esri.com/legal, which are incorporated by reference. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Acceptance is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's products and services.</p>		
<p>If sending remittance, please address to: Esri, File No. 54630, Los Angeles, Ca 90074-4630</p>		



Quotation # 20502907

Date: February 24, 2017

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City of Riviera Beach
Information Technology Dept
600 Blue Heron Blvd
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ATTENTION: Allison Goldberg
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Charlotte, NC 28226-3343
Phone: (704) 541-9810 Fax: (704) 541-7620
DUNS Number: 06-313-4175 CAGE Code: OAMS3

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 02/24/2017 To: 05/25/2017

Material	Qty	Description	Unit Price	Total
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Item Total:	276,000.00
Subtotal:	276,000.00
Sales Tax:	0.00
Estimated Shipping & Handling(2 Day Delivery) :	0.00
Contract Pricing Adjust:	0.00
Total:	\$276,000.00

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

For questions contact: Robyn Garrett

Email: rgarrett@esri.com

Phone: (704) 541-9810 x8640

The items on this quotation are subject to the terms set forth herein and the terms of your signed agreement with Esri, if any, or, where applicable, Esri's standard terms and conditions at www.esri.com/legal, which are incorporated by reference. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Acceptance is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's products and services.

If sending remittance, please address to: Esri, File No. 54630, Los Angeles, Ca 90074-4630



Esri Use Only:
 Cust. Name _____
 Cust. # _____
 PO # _____
 Esri Agreement # _____

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

**SMALL ENTERPRISE AGREEMENT
 COUNTY AND MUNICIPALITY GOVERNMENT
 (E214-2)**

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

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

**Table A
 List of Products**

Uncapped Quantities

Desktop Software and Extensions

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

Enterprise Software and Extensions

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

Enterprise Optional Server

ArcGIS Image Server

Developer Tools

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

Limited Quantities

One (1) Annual Subscription to Esri Developer Network
 (EDN) Standard*
 Two (2) Esri CityEngine Advanced Single Use Licenses
 100 Level 1 ArcGIS Online Named Users
 100 Level 2 ArcGIS Online Named Users
 17,500 ArcGIS Online Service Credits
 100 Level 1 ArcGIS Enterprise Named Users
 100 Level 2 ArcGIS Enterprise Named Users
 3 Insights for ArcGIS

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	3
Number of Tier 1 Help Desk individuals authorized to call Esri	3
Maximum number of sets of backup media, if requested**	2
Self-Paced e-Learning	Uncapped
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement (Discount does not apply to Small Enterprise Training Package.)	

*Maintenance is not provided for these items

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

Licensee may accept this Agreement by signing and returning the whole Agreement with a signed sales quotation, purchase order, or other document that matches the Quotation and references this Agreement ("Ordering Document"). **ADDITIONAL OR CONFLICTING TERMS IN LICENSEE'S ORDERING DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of Licensee's Ordering Document incorporating this Agreement by reference, unless otherwise agreed to by the parties ("Effective Date").

Term of Agreement: Three (3) years _____

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

(Licensee)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

LICENSEE CONTACT INFORMATION

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, Postal Code: _____

E-mail: _____

Country: _____

Quotation Number (if applicable): _____

1.0—ADDITIONAL DEFINITIONS

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

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

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

"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.

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

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

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

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

"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 Licensee's point of contact(s) to provide all Tier 1 Support within Licensee's organization(s).

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

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

2.0—ADDITIONAL GRANT OF LICENSE

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

2.2 Consultant Access. Esri grants Licensee the right to permit Licensee's consultants or contractors to use the Products exclusively for Licensee's benefit. Licensee will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Licensee. Access to or use of Products by consultants or contractors not exclusively for Licensee's benefit is prohibited. Licensee 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 Licensee locations, except for the purpose of hosting the Software or Data on Contractor Servers for the benefit of Licensee.

3.0—TERM, TERMINATION, AND EXPIRATION

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

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

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

3.4 Termination for Lack of Funds. For an Agreement with government or government-owned entities, either party may terminate this Agreement before any subsequent year if Licensee is unable to secure funding through the legislative or governing body's approval process.

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

4.0—PRODUCT UPDATES

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

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

5.0—MAINTENANCE

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

a. Tier 1 Support

1. Licensee will provide Tier 1 Support through the Tier 1 Help Desk to all Licensee's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.

3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.

4. The Tier 1 Help Desk will be the initial points of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case. The Tier 1 Help Desk may also use any other information and databases that may be developed to satisfactorily resolve 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 Licensee.

6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Licensee may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.

2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.

3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.

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

6.0—ENDORSEMENT AND PUBLICITY

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

7.0—ADMINISTRATIVE REQUIREMENTS

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

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

8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Licensee and provide Authorization Codes to activate the nondestructive copy protection program that enables Licensee to download, operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee thirty (30) calendar days before the annual anniversary date for each additional year.
- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri's federal ID number is 95-2775-732.
- c. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Licensee 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 Licensee will pay any such sales or use tax associated with the receipt of tangible media.

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

- a. All orders pertaining to this Agreement will be processed through Licensee's centralized point of contact.
- b. The following information will be included in each Ordering Document:

- (1) Licensee name; Esri customer number, if known; and bill-to and ship-to addresses
- (2) Order number
- (3) Applicable annual payment due

9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

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

- 9.1 If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.
- 9.2 If an Ownership Change results in transfer or sale of a portion of Licensee's organization, that portion of Licensee's organization will transfer the Products to Licensee or uninstall, remove, and destroy all copies of the Products.
- 9.3 This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Licensee will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.



ESRI ENTERPRISE ADVANTAGE PROGRAM
AGREEMENT (E125)

Esri, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-2853 • FAX 909-793-5953

EEAP Agreement No. _____

This Esri Enterprise Advantage Program Agreement ("EEAP Agreement") is entered into by and between **Environmental Systems Research Institute, Inc. ("Esri")**, a California corporation, located at 380 New York Street, Redlands, California 92373-8100, and _____ ("Licensee"), a _____ corporation, located at _____

Esri offers the Esri Enterprise Advantage Program to Licensees that are current on Esri software maintenance and implementing or have implemented a geographic information system (GIS) enterprise solution based on Esri technology. Licensee agrees to contract with Esri for and Esri agrees to provide Licensee with certain enhanced consulting services, training, Premium Support Services (PSS), and Managed Services available under the Esri Enterprise Advantage Program for the authorized Licensee location as described herein. The Esri Enterprise Advantage Program is not designed for Esri to provide project-specific professional services such as custom application or database development for solutions or applications. If these types of professional services are required, Licensee will need to enter into an agreement for use of Esri Professional Services.

This EEAP Agreement does not modify the terms of the License Agreement governing Licensee's use of Software, Data, Online Services, and Documentation.

ARTICLE 1—DEFINITIONS

Capitalized terms that have not been defined in this EEAP Agreement shall have the meaning found in the applicable Esri License Agreement.

1.1 "Activity Description" means the confirmation email or document received from Licensee that describes the number of Learning and Services Credits Esri estimates is required to perform an activity and authorizes Esri to begin work based on such estimate.

1.2 "Authorized EEAP Contact" means the Licensee point of contact identified on the signature page of this EEAP Agreement.

1.3 "End User" means any third party or entity that accesses or uses any Licensee Content via Licensee Website.

1.4 "Esri Mobile Lab" means Esri hardware, shipped to domestic US Licensee site training events if Licensee does not have the required hardware to host a scheduled training event, consisting of laptops preconfigured with Esri Software, Training Materials, hard drives, power cords, and network switches.

1.5 "Hosting" means the business of housing and making accessible Licensee Content via the Internet.

1.6 "License Agreement" means the applicable license agreement incorporated by this reference that is

- a. Found at <http://www.esri.com/legal/software-license> and composed of the General License Terms and Conditions (E204) and Exhibit 1, Scope of Use (E300), and available in the installation process requiring acceptance by electronic acknowledgment, or
- b. A signed license agreement between Esri and Licensee that supersedes such electronically acknowledged license agreement.

1.7 "Licensee Authorized Contact(s)" or "LAC" means up to two individuals selected by Licensee to report Premium Support Reports and work directly with Esri's Technical Account Manager (TAM) regarding all such reports. A Licensee that has purchased unlimited PSS may designate additional LAC upon payment of additional fees.

1.8 "Licensee Content" means items including, but not limited to, custom software applications owned or licensed by Licensee, photos, journal text, geospatial data, nongeospatial data, user interfaces, graphics components, and icons, plus any personally identifiable information, supplied by or on behalf of Licensee.

1.9 "Licensee Website" means Licensee Content viewed through a user interface and made available via the Internet under the domain name reserved for the website.

1.10 "Managed Services" means Hosting and the provision of the Managed Services Environment, enhanced by the provision of related services (such as system monitoring and support associated with providing Licensee access to the Managed Services Environment), required to make Licensee Content available to Licensee or Licensee's End Users.

1.11 "Managed Services Environment" means the hardware, Software, Data, Online Services, and network that Esri or its third-party suppliers/partners make available as the underlying environment for Hosting the Licensee Content.

1.12 "Premium Support Report(s)" means a communication via telephone or email by Licensee to Support Services regarding technical problems with Software, Data, or Documentation.

1.13 "Protected Information" means any information, whether in written or digital format, that incorporates content from a protected category, including, but not limited to, personally identifiable information, Customer Proprietary Network Information (CPNI), Protected Health Information (as it is defined by the Health Insurance Portability and Accountability Act of 1996 [HIPAA]), Unclassified Controlled Technical Information (as it is defined by DFARS Section 204.73), and data controlled by the International Traffic and Arms Regulations (ITAR) classified as other than EAR99, all of which may require a greater degree of control, monitoring, and security than is typically established for Esri's Managed Services offering.

1.14 "PSS" means Premium Support Services, which is a prioritized incident management and technical support program as further described at <http://support.esri.com/en/support/premium>.

1.15 "Renewal Period" means any one (1)-year extension of this EEAP Agreement.

1.16 "Secure Formats" means object code, executable code, or similar formats.

1.17 "Student(s)" means a registered participant for a specific training course, Licensee coaching services, or training-related services.

1.18 "Technical Account Manager" (TAM) means a designated support resource who acts as the primary point of contact to Licensee for the purpose of coordinating Premium Support Reports through Esri's support processes.

1.19 "Term" means the initial term of this EEAP Agreement as described in Section 7.1.

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

1.21 "Work Product" means reports, documented analysis, sample code, prototype/unsupported code, or technical memorandums provided as a result of the consulting services performed under this EEAP Agreement.

ARTICLE 2—ESRI ENTERPRISE ADVANTAGE PROGRAM

2.1 Esri Enterprise Advantage Program Description. The Esri Enterprise Advantage Program is a menu of consulting services, training, PSS, and Managed Services that provides Licensee with the flexibility to select components that best meet its needs. The Esri Enterprise Advantage Program includes the following components as further described at www.esri.com/services/eeap/components, which may be changed from time to time.

- a. *Technical Advisor.* Licensee will receive up to the number of Technical Advisor hours ordered. Licensee may elect to retain additional Technical Advisor hours for a supplemental price.
- b. *Annual Account Planning Session.* A one (1)-day annual account planning and review meeting.

- c. *Technical Work Plan.* A collaboratively developed document designed to drive the program's implementation through definition of Licensee's GIS vision, goals, and objectives.
- d. *Learning and Services Credits.* Licensee will receive the number of Learning and Services Credits ordered. Licensee may use the credits toward any combination of consulting services support, training, PSS, or related travel expenses. Licensee may order, for an additional price, additional Learning and Services Credits. Learning and Services Credits may be exchanged as described at the following website: <http://www.esri.com/services/eeap/components#learning>. Esri will provide the Authorized EEAP Contact with a monthly report outlining usage of Esri Enterprise Advantage Program Learning and Services Credits to date.
- e. *Quarterly Technology Webcast.* Esri will provide an email invitation to the Authorized EEAP Contact for a quarterly webcast presenting business and technical information related to enterprise GIS.

2.2 Learning and Services Credit Use

2.2.1 Current on Maintenance. Licensee must remain current on standard maintenance during the Term of this EEAP Agreement. Standard maintenance is described at <http://www.esri.com/legal>, which may be changed from time to time.

2.2.2 Authorization of Credit Use. Licensee will contact its Account Manager or Technical Advisor to consume Learning and Services Credits for a particular request. Esri will submit to Licensee a Learning and Services Credit estimate by email for confirmation and authorization to use the credits. This confirmation email or document is hereafter referred to as an Activity Description. The total credits quoted in the Activity Description will be drawn from the unused Learning and Services Credits available, in a single transaction, upon Esri's receipt of approval via email from the Authorized EEAP Contact.

2.2.3 Travel and Per Diem. Any Esri travel and per diem will be quoted separately. Licensee may direct Esri to use credits for travel and per diem, as stated in Esri Enterprise Advantage Program Description, Section 2.1 above, or Licensee will issue a purchase order and Esri will invoice Licensee for the travel and per diem expenses as described below in Article 6.

2.2.4 Notification of Consumed Credits. Esri will notify Licensee in the event the authorized Learning and Services Credits are consumed prior to completion of the requested work. Licensee may elect to direct use of additional credits, if available; procure additional Learning and Services Credits; or notify Esri to stop work on such requested work. Esri reserves the right to discontinue work when the authorized credits are consumed.

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

2.3 Defense or Military Application. At the time the Learning and Services Credits are requested or before any services are provided by the Technical Advisor, Licensee will inform Esri if any of the requested services, consulting, training, or support provided by Esri is directly related to a defense article or for a military application.

ARTICLE 3—OWNERSHIP; LICENSE GRANT

3.1 For Training

3.1.1 Software. The terms of the Esri License Agreement shall be applicable to all Licensee course participants and for all of Esri's Software, Data, Online Services, and Documentation used by Student during any training event. Esri may issue temporary Software licenses when there is an insufficient number of Software licenses available at Licensee's training facility. Upon conclusion of the training event, Licensee shall uninstall the temporary Software licenses and return to Esri any media provided.

3.1.2 Training Materials. This EEAP Agreement gives Student certain limited rights to use electronic and tangible versions of the Training Materials. Esri and its licensor(s) retain exclusive rights, title, and ownership to the copy of Training Materials licensed under this Agreement. Training Materials are protected by United States copyright laws and applicable international copyright treaties and/or conventions. All rights not specifically granted in this Agreement are reserved to Esri and its licensor(s). Esri grants to Student a personal, nonexclusive, nontransferable license to use Training Materials for Student's own training purposes. Student may run and install one (1) copy of Training Materials and reproduce one (1) copy

of Training Materials. Student may make one (1) additional copy of the original Training Materials for archive purposes only, unless Esri grants in writing the right to make additional copies.

3.1.3 Prohibited Uses. Training Materials are intended solely for the use of the training of the individual Student who registered and attended a specific training course. Student may not

- a. Separate the component parts of the Training Materials for use on multiple systems or in the cloud, use in conjunction with any other software package, and/or merge and compile into a separate database(s) or documents for other analytical uses;
- b. Make any attempt to circumvent the technological measure(s) (e.g., software or hardware key) that effectively controls access to Training Materials;
- c. Remove or obscure any copyright, trademark, and/or proprietary rights notices of Esri or its licensor(s); or
- d. Use audio and/or video recording equipment during a training course.

3.1.4 Licensee-Supplied Training Data. Licensee will retain ownership of any Licensee-supplied data.

3.2 For Work Product

3.2.1 Ownership. Except as specifically granted in this EEAP Agreement, Esri or its licensors own and retain all right, title, and interest in the Work Product.

3.2.2 License Grant. Esri hereby grants to Licensee a nonexclusive, royalty-free license in the Work Product to use in connection with Licensee's authorized use of the Software and Data for support of which the Work Product was supplied.

3.2.3 Patents and Inventions. Each party shall retain title to any inventions, innovations, and improvements ("Inventions") made or conceived solely by its principals, employees, consultants, or independent contractors (hereinafter called "Inventors") during the term of this Agreement. The parties shall jointly own any Invention(s) made or conceived jointly by Inventors from both parties. With respect to such Inventions of Licensee relating to the Esri Software, Licensee hereby grants and agrees to grant to Esri an irrevocable, royalty-free, nonexclusive, worldwide right and license, with right to sublicense, use, make, sell, offer to sell, or import such Inventions for any purpose, whether or not patented in the country of such past or intended use. Except as provided below, where an Invention is jointly owned, each party shall share equally the costs of acquiring protection for the Invention and furnish the other joint owner with assistance reasonably required for acquiring protection. Neither party may license, transfer, sell, or otherwise alienate or encumber its interest in jointly owned Inventions without the written consent of the other party, which is hereby given to Esri for Inventions relating to the Esri Software and shall otherwise not be unreasonably withheld by either party.

3.3 For PSS. The terms and conditions of the License Agreement for the affected Software will govern any updates, patches, hot fixes, or software provided pursuant to Esri's performance of the PSS ordered under this EEAP Agreement.

3.4 For Managed Services. Esri or its affiliates shall retain at all times the right, title, and interest in the Managed Services Environment.

3.5 Licensee Content

3.5.1 Ownership. All Licensee Content submitted by Licensee to Esri under this EEAP Agreement shall at all times remain the intellectual property of Licensee or its licensor(s). Rights maintained in intellectual property by Licensee or its licensor(s) shall mean any and all now known or hereafter known

- a. Rights associated with works of authorship throughout the universe, including, but not limited to, copyrights, moral rights, and mask works;
- b. Trademark and trade name rights and similar rights;
- c. Trade secret rights;
- d. Patents, designs, algorithms, and other industrial property rights;
- e. Other intellectual and industrial property rights of every kind and nature throughout the universe and however designated (including logos, "rental" rights, and rights to remuneration), whether arising by operation of law, contract, license, or otherwise; and

- f. Registrations, initial applications, renewals, extensions, continuations, divisions, or reissues hereof now or hereafter in force (including any rights in any of the foregoing).

Esri shall have no rights to such Licensee Content other than the limited right to use such content for the purposes expressly set forth in Subsections 3.5.2 and 11.9 of this EEAP Agreement.

3.5.2 License to Licensee Content. During the term of the Activity Description, Licensee hereby grants to Esri and its affiliates permission to use Licensee Content to support the provision of Managed Services. Such permission shall include, but not be limited to, the grant of rights and license to manipulate, publish, distribute, and implement Licensee Content within the Managed Services Environment in any reasonable manner needed to support the provision of Managed Services.

ARTICLE 4—WARRANTIES AND DISCLAIMERS

4.1 Warranties

4.1.1 Esri will perform its obligation under this EEAP Agreement in a professional and workmanlike manner.

4.1.2 Esri warrants for a period of ninety (90) days after delivery of the services that the services will conform to professional and technical standards of the software industry.

4.1.3 During the term of the Managed Services as described in the Activity Description, Esri warrants that the Managed Services will conform to the scope, descriptions, and assumptions for Managed Services set forth at <http://www.esri.com/services/emcs/packages>. Licensee's exclusive remedy and Esri's entire liability for breach of the limited warranty set forth in this article shall be limited, at Esri's sole discretion, to

- a. Providing a correction or a workaround for the Managed Services, or
- b. Returning the Managed Services fees paid for up to three (3) months prior to Licensee's invocation of the limited warranty, provided Licensee ceases to use the Managed Services.

4.1.4 Esri warrants that the media upon which Training Materials is provided will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt. Licensee's exclusive remedy and Esri's entire liability for breach of the limited warranties set forth in this Article 4.1.4 shall be limited, at Esri's sole discretion, to

- a. Replacement of any defective Training Materials;
- b. Repair, correction, or a workaround for Training Materials; or
- c. Return of the fees paid by Licensee for Training Materials that do not meet Esri's limited warranty, provided that Licensee uninstalls, removes, and destroys all copies of the Training Materials and executes and delivers evidence of such actions to Esri.

4.1.5 Licensee warrants that Licensee Content will not

- a. Infringe or misappropriate any third-party intellectual property rights or proprietary rights;
- b. Violate any third party's privacy rights or any applicable law; or
- c. Contain or transmit to a third party any software viruses; worms; time bombs; Trojan horses; or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment.

Except as prohibited by applicable law, Licensee agrees to defend, indemnify, and hold Esri harmless from and against any claim, action, liability, or demand arising out of a breach of the foregoing warranties.

4.2 Data Disclaimer. Data may contain nonconformities, defects, errors, or omissions. Licensee should verify data accuracy before use. ALL DATA THAT ESRI PROVIDES IS "AS IS" WITHOUT WARRANTY OF ANY KIND.

4.3 General Disclaimer. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ESRI DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO,

THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. ESRI DOES NOT WARRANT AND DISCLAIMS THAT THE ESRI ENTERPRISE ADVANTAGE PROGRAM OR ANY WORK PRODUCT PROVIDED HEREUNDER WILL MEET LICENSEE'S NEEDS; THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED, ERROR FREE, FAULT TOLERANT, OR FAIL-SAFE; OR THAT ALL NONCONFORMITIES CAN OR WILL BE CORRECTED. WORK PRODUCT IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS THAT MAY LEAD TO DEATH, PERSONAL INJURY, OR PHYSICAL PROPERTY/ENVIRONMENTAL DAMAGE. ANY SUCH USE SHALL BE AT LICENSEE'S OWN RISK AND COST.

4.4 Internet Disclaimer. LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE INTERNET (INCLUDING, WITHOUT LIMITATION, THE WEB) IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT

- a. THE INTERNET IS NOT A SECURE INFRASTRUCTURE;
- b. ESRI HAS NO CONTROL OVER THE INTERNET; AND
- c. ESRI IS NOT LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE LICENSEE WEBSITE.

ARTICLE 5—LIMITATION OF LIABILITY

5.1 Disclaimer of Certain Types of Liability. ESRI IS NOT LIABLE TO LICENSEE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOST PROFITS, LOST SALES, OR BUSINESS EXPENDITURES; INVESTMENTS; BUSINESS COMMITMENTS; LOSS OF ANY GOODWILL; OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS EEAP AGREEMENT OR USE OF THE WORK PRODUCT, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, WHETHER OR NOT ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

5.2 General Limitation of Liability. ESRI'S TOTAL CUMULATIVE LIABILITY HEREUNDER FOR DIRECT DAMAGES SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE ESRI ENTERPRISE ADVANTAGE PROGRAM.

5.3 Applicability of Disclaimers and Limitations. The parties agree that Esri has set its prices and entered into this EEAP Agreement in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties, and that the same form an essential basis of the bargain between the parties. THESE LIMITATIONS APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

ARTICLE 6—COMPENSATION

6.1 Upon execution of this EEAP Agreement or the inception of a Renewal Period, Esri shall invoice Licensee as quoted for the Esri Enterprise Advantage Program annually in advance. Fees for additional Learning and Services Credits or Technical Advisor Services will be invoiced upon receipt of Licensee's order. Licensee shall pay Esri within thirty (30) calendar days of receipt of invoice.

6.2 Pricing for annual program renewals and new or additional Esri service offerings will be in accordance with Esri's most current price schedule at the time of purchase or renewal.

6.3 For Esri travel-related expenses, Licensee may elect to do one of the following: (1) use Learning and Services Credits to pay for Esri travel-related expenses including Esri's standard handling fee or (2) request a separate invoice for Esri's travel-related expenses including Esri's standard handling fee. Esri will invoice for all meals (excluding incidental expenses) on a per diem basis in accordance with the per diem rates specified on the government General Services Administration (GSA) website at <http://gsa.gov/>.

ARTICLE 7—TERM AND TERMINATION

7.1 Initial Term; Renewals. This EEAP Agreement is effective as of the last date of signature on the signature page and expires one (1) year thereafter (the "Term"). Prior to the end of the Term, Esri may provide Licensee with a quotation for a Renewal Period. If Licensee accepts the quote, the following terms will apply:

- a. Esri will submit an invoice to Licensee for the quoted annual Esri Enterprise Advantage Program price and Licensee will pay in accordance with Section 6.1 of this EEAP Agreement;
- b. This EEAP Agreement will automatically extend for the Renewal Period; and
- c. The Learning and Services Credits remaining at the end of the initial Term or any subsequent Renewal Period will remain valid for use for a period not to exceed two (2) years following the initial purchase date.

7.2 Termination for Convenience. Licensee may terminate this EEAP Agreement without cause upon delivery of thirty (30) days' prior written notice or may simply choose not to renew the EEAP Agreement.

7.3 Termination for Cause by Licensee. Licensee may terminate this EEAP Agreement for Esri's material breach of its obligations under this EEAP Agreement upon thirty (30) days' prior written notice to Esri providing Esri the opportunity to cure. If termination is due solely to Esri's failure to perform a material term of this EEAP Agreement, Esri will refund a prorated share of amounts paid to Esri equal to the credits not used by Licensee.

7.4 Termination for Cause by Esri. Esri may terminate this EEAP Agreement for Licensee's material breach of its obligations under this EEAP Agreement upon thirty (30) days' prior written notice to Licensee providing Licensee the opportunity to cure. In such event, Esri is not obligated to refund any amounts paid for credits not used.

7.5 Survival. Upon termination or expiration of this EEAP Agreement

- a. Technical Advisor, Annual Account Review, and Activity Description services will end as of the expiration or termination date;
- b. Unless either party terminates this EEAP Agreement for cause, Licensee may apply any unused Learning and Services Credits toward any consulting services support, training, premium support, or related travel expenses that are scheduled as of the termination or expiration date, provided that the Learning and Services Credits are used within three (3) months after the termination or expiration date. Any other unused Learning and Services Credits will expire thirty (30) days after the expiration or termination date; if Licensee renews the EEAP Agreement within this time period, any unused Learning and Services Credits will carry over for up to two (2) years from their purchase date, or termination of the EEAP Agreement, whichever comes first;
- c. Unless Esri terminates this EEAP Agreement for Licensee's breach, Licensee retains the right to use any Training Materials and Work Product.

ARTICLE 8—CONFIDENTIALITY OBLIGATIONS

8.1 Obligations Pertaining to PSS. It may be necessary for Esri or Licensee to disclose to the other party certain confidential information under this EEAP Agreement. Confidential information shall be designated by Disclosing Party in writing or orally and confirmed in writing within thirty (30) calendar days of disclosure as "Confidential," "Proprietary," "Trade Secret," or other similar term. Each party shall use the confidential information described above only for exchanging information needed to provide the PSS contemplated by this EEAP Agreement. Within sixty (60) days of termination of this EEAP Agreement, each party shall promptly return or destroy and provide a certification of destruction of the confidential information of the other party.

8.2 Obligations Pertaining to Training. Except as described in Section 8.4, Esri or Licensee may disclose to the other party certain confidential information under this EEAP Agreement. The disclosing party shall identify the information as confidential information at the time of disclosure. Each party shall use the confidential information described above only for exchanging information needed to provide the training contemplated by this EEAP Agreement. Within fourteen (14) days of completion of the training, each party shall return or destroy and provide written notification of destruction of the other party's confidential information.

8.3 Obligations Pertaining to Work Product

8.3.1 Any Work Product provided to Licensee is deemed confidential information of Esri. Insofar as its rights may be legally restricted, Licensee agrees not to reverse engineer or decompile Work Product delivered in Secure Formats. For Work Product delivered in source code or other human-readable formats, Licensee will have met its obligations under this EEAP Agreement if its disclosure of Work Product is limited to such items in Secure Formats, provided that the means for reverse engineering, decompiling, or disassembling such Work Product is withheld from such disclosure, and the person or entity in receipt of such Work Product similarly agrees not to perform such acts or allow others to do so.

8.3.2 Except as provided in the preceding paragraph, Licensee shall not disclose the Work Product to employees or third parties without the advance written consent of Esri. However, Licensee may, without such consent, make such disclosures to employees to the extent reasonably required to allow Licensee to use the Software or Data in a manner authorized under applicable licenses.

8.3.3 The disclosures permitted under this section shall not relieve Licensee of its obligation to maintain the Work Product in confidence and comply with all applicable laws and regulations of the United States, including, without limitation, its export control laws. Furthermore, before disclosing all or any portion of the Work Product to employees or third parties as permitted in the preceding paragraph, Licensee shall inform such employees or third parties of the obligations in this EEAP Agreement and obtain their agreement to be bound by them.

8.4 Excluded Information. Licensee shall not provide to Esri or disclose to the instructor any data or information that is personally identified information (PII), including, but not limited to, Gramm-Leach-Bliley Act (GLBA)- or HIPAA-type data or information or critical infrastructure information (CII) from the US Department of Homeland Security. Notwithstanding anything in this Agreement to the contrary, Esri retains the right to refuse acceptance of any nonpublic personal information (NPI) or customer information regardless of the form of disclosure. Esri will only accept receipt of information from Licensee that comports with the exceptions set forth in Subsections 4(B) and 4(C)(ii) of Section 509 of the Gramm-Leach-Bliley Act (PL 106-102) (15 USC Section 6809) and implementing regulations thereof.

8.5 Other Exchange of Confidential Information. Any other exchange of confidential information between the parties shall require execution of a nondisclosure agreement signed between the parties separate from this EEAP Agreement.

ARTICLE 9—PREMIUM SUPPORT SERVICES TERMS AND CONDITIONS

9.1 Application. Should Licensee choose to use Learning and Services Credits for PSS, the terms of this Article 9 shall also apply.

9.2 PSS Availability. Licensee may use Learning and Services Credits for PSS (annually) for any product covered under Esri's standard maintenance subscription, provided that Licensee is current on maintenance for applicable Esri Software. Esri shall provide PSS for the Term of the EEAP Agreement as further described at <http://support.esri.com/en/support/premium>.

9.3 Premium Support Description. PSS shall provide

- a. A designated TAM;
- b. The ability for LAC to submit Premium Support Reports or escalate standard technical support incidents to Premium Support Reports via telephone or the Esri My Support Portal twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year;
- c. Priority Incident Management; and
- d. Additional enhanced support and services, as described at <http://support.esri.com/en/support/premium>.

9.4 PSS Restrictions and Exclusions

9.4.1 Excluded Software. PSS is not available for third-party software. Esri is not responsible for errors attributable to third-party software used in conjunction with or built on Software.

9.4.2 English Language. All communications will be conducted in the English language except by agreement of both parties.

9.4.3 Acknowledgment. Licensee acknowledges and agrees that the report of an error or defect of any Software is not a guarantee that it can or will be corrected. At Esri's sole discretion, Software is corrected on a priority basis and is subject to release schedules determined by Esri.

9.4.4 Exceptions to PSS. The following are not covered by PSS:

- a. Any problem resulting from Licensee's misuse, improper use, unauthorized modification, or damage of the Software or Licensee's combining or merging the Software with any hardware or software not supplied or identified as compatible by Esri;
- b. Any problem resulting from third-party hardware or software;
- c. Errors in any version of the Software other than the officially supported version of Software; and
- d. Any support or implementation services, on-site or otherwise, including, but not limited to, those provided by Esri Professional Services or any third party.

ARTICLE 10—TRAINING TERMS AND CONDITIONS

10.1 Application. Should Licensee choose to use Learning and Services Credits for training or coaching services, the terms of this Article 10 shall also apply.

10.2 Training Descriptions. Esri offers instructor-led training and client coaching services in the use of Esri's Software as described below:

- a. Instructor-led training is offered online in a cloud-based environment, at a Licensee site, or at an Esri Learning Center. Course information, location, dates, number of maximum participants, and registration requirements can be found in the Esri Training catalog located at <http://training.esri.com>. Courses are conducted in close conformance with the course description outlined in the Esri Training catalog and are subject to change due to limitations or constraints including, but not limited to, technical capabilities and Licensee's needs.
- b. Client coaching services are available for Licensee to enhance the learning experience by providing extra time to review and practice course concepts with an instructor's on-site guidance.

10.3 Esri's Responsibilities. Esri will

- a. Provide the training in a manner consistent with the technical and professional standards of the industry.
- b. Provide an instructor qualified to conduct the course(s).
- c. Provide all necessary training materials for Student(s).
- d. Confirm class approximately ten (10) business days prior to the scheduled start date. For Licensee site and private classes, confirmation is dependent on receipt of the completed Licensee site training request form and intended method of payment.

10.4 Licensee's Obligations; Limitations

10.4.1 Licensee will

- a. Ensure that all Students have received confirmation from Esri to participate in an Esri training event. Unregistered student(s) will not be permitted to view or participate in an Online Classroom training event. Esri reserves the right to disconnect any Student who permits access to unregistered student(s).
- b. Confirm that all Students meet the minimum prerequisites for the applicable training event set forth on Esri's Training website.
- c. Submit registrations with a confirmed payment commitment at least seven (7) business days prior to the scheduled start date. Registrations submitted without payment commitment will not be guaranteed a reservation and will be added to a wait list pending payment confirmation. All wait list reservations are subject to availability.
- d. Submit to the Esri Training Event Assistant a list of the names and email addresses of Students that are to attend a Licensee site or private training event at least three (3) business days prior to the scheduled start date. Subject to compliance with Section 12.12—Export Control Regulations, any Student that is a resident of a US embargoed country or found on any of the various US Government Lists of Parties of Concern or Specially Designated Nationals lists will not be permitted to attend the training event.

- e. Be responsible for all Student travel arrangements. Esri is not responsible for losses from nonrefundable travel arrangements due to the denial of a Student's participation based on US government export regulation requirements, course scheduling changes, or cancellations.
- f. Complete and submit an Esri Licensee site training request form, if applicable, and ensure that the class environment adheres to the requirements for Esri Training as found online at <http://training.esri.com/gateway/index.cfm?fa=classroom.requirements>.
- g. Ensure that Student use of Training Materials provided by Esri complies with the terms of this Agreement.
- h. Assume full responsibility for Student attending training course(s) under this Agreement. Licensee agrees to indemnify Esri, its officers, directors, and employees for any and all claims, liabilities, and expenses (including reasonable legal fees) arising out of or based on any uncured material breach by Student of the terms and conditions of this Agreement.
- i. Ensure that Student does not use audio and/or video recording equipment within the classroom without prior written approval from Esri.

10.4.2 The Esri Mobile Lab option is available for domestic US Licensee site training events if Licensee does not have the required hardware to host a scheduled class. If the Esri Mobile Lab is used, Licensee will

- a. Immediately report any damage to the Esri Mobile Lab equipment to the Training Event Assistant upon receipt of the equipment.
- b. Keep the Esri Mobile Lab equipment in a secure, locked area between training event sessions.
- c. Ensure that only Students use the Esri Mobile Lab equipment.
- d. Be responsible for loss of, damage to, and/or theft of the Esri Mobile Lab equipment while in Licensee's possession.
- e. Warrant that it maintains sufficient insurance coverage obligations created by this Agreement and required by law.
- f. Allow the Esri instructor to check all Esri Mobile Lab equipment following the completion of training. Any damage to the Esri Mobile Lab equipment due to Student use, excluding normal wear and tear, will be brought to the attention of Licensee by written notice. Licensee hereby agrees to be financially responsible for any repair or replacement of equipment resulting from such damage.
- g. Make the Esri Mobile Lab equipment available for freight pickup upon the conclusion of the training event.

10.5 Student Registration and Training Event Change Policy

10.5.1 Individual Student Seats. Licensee will provide written notice to Esri's Customer Service department at service@esri.com of any Student transfer, cancellation, or substitution requests at least three (3) business days before the scheduled start date, subject to the following conditions:

- a. Multiple requests and any requests that occur without the three (3) business days' advance notice are subject to a fee, as determined by Esri.
- b. Cancellation of Student registrations that occur without the three (3) business days' advance notice is subject to the full training event fee.
- c. Substitute Students must be from the same organization as the Student being replaced.

10.5.2 Licensee Site/Private Class/Client Coaching Services (Training Event). Licensee will provide written notice to Esri's Customer Service department at service@esri.com of any training event reschedule, cancellation, or Student substitution requirements at least three (3) business days before the scheduled start date.

- a. Training event reschedules and cancellations that occur without the three (3) business days' advance notice are subject to the full training event fee. Licensee will be responsible for all of Esri's reasonable travel expenses and shipping costs (including Esri Mobile Lab), for all rescheduled or canceled training events.
- b. Student substitutions that occur without the three (3) business days' advance notice are subject to a fee. Substitute Students must be from the same organization as the student being replaced.

10.5.3 If cancellation of a training event is necessary due to Force Majeure as described in Article 12.5 below, the affected party is released in full from the three (3)-business-day notification requirement. The affected party will either reschedule or cancel the training without that affected party incurring any liability.

10.5.4 If Esri is unable to conduct the training on the scheduled date, Esri will notify Licensee at least three (3) business days before the scheduled start date.

10.6 Unless specifically authorized in writing by Esri, Licensee is not authorized to resell seat(s) to an Esri training event.

10.7 **Indemnification.** Esri will indemnify and hold harmless Licensee and each of its directors and officers (collectively, the "Indemnified Parties") from and against any and all damages, losses, liabilities, claims, judgments, and settlements, including all reasonable costs, expenses, and attorneys' fees, arising out of any action or claim for bodily injury, death, or property damage brought against any of the Indemnified Parties to the extent arising from any negligent act or omission or willful misconduct by Esri or its directors, officers, employees, or agents while engaged in or as a result of the training or coaching services provided by Esri pursuant to this Agreement while on Licensee's site.

ARTICLE 11—MANAGED SERVICES TERMS AND CONDITIONS

11.1 **Documentation.** The Activity Description must define the following:

- a. The Hosting term—This is the duration in which the Managed Services Environment is available to Licensee via HTTP or HTTPS access through the Internet. The Hosting term does not begin until setup and deployment of the data and application are complete.
- b. Targeted system availability—"System availability" means that Licensee and associated End Users are able to have external HTTP or HTTPS access to the application and associated data content through the Internet. Examples of supported levels of system availability are ninety-five percent (95%), ninety-nine percent (99%), and ninety-nine point nine percent (99.9%). Not all Managed Services offerings include a targeted system availability.
- c. Number of anticipated requests—A request is made by an End User through a client (e.g., desktop computer, web application, mobile device) and sent to server(s) that is set up in the Managed Services Environment by Esri and performs computational tasks on behalf of 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—"Data storage" refers to the components required to retain digital data, which is to be used and consumed in Licensee GIS applications and/or Online Services, and
- e. The quote for the applicable price in terms of Learning and Services Credits.

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

11.2 **Requirements Planning.** It is Licensee's responsibility to plan for and address with Esri changes to Licensee's requirements, such as the need for additional capacity, the update of an application or dataset, or increased level of system availability.

11.3 **Licensee Content Licensing and Deployment Confirmation.** Licensee is responsible for maintaining the appropriate licensing to the Licensee Content. Provision of Managed Services will be subject to Licensee's compliance of all relevant Esri and third-party licensing agreement terms, conditions, and arrangements. Licensee will confirm access to the Managed Services Environment within five (5) days of receiving notification from Esri that the Managed Services Environment and Licensee Content are accessible.

11.4 **Risk of Loss.** Risk of loss for all Licensee Content shall at all times remain with Licensee, and it is Licensee's sole responsibility to maintain regular backups of Licensee Content. Risk of loss for the Managed Services Environment shall at all times remain with Esri.

11.5 **Protected Information.** Prior to providing any Licensee Content under this EEAP Agreement, Licensee shall notify Esri if Licensee Content includes Protected Information.

11.6 **Public Software.** Licensee may not upload, use, process, modify, or combine any Open-Source Materials in a manner that requires Esri to (i) disclose or distribute in source code form; (ii) make available free of charge; or (iii) permit others to modify, without charge, any component of the Managed Services. "Open-Source Materials" means any software, documentation, or other material that contains or is derived (in whole or in part) from any software, documentation, or other material distributed as free or open source software or under other similar licensing or distribution models.

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

11.8 Prohibited Use. Licensee may not access or use Managed Services to do any of the following, which hereafter will collectively be referred to as "Prohibited Use":

- a. Spam, spoof, phish, or transmit junk email or offensive or defamatory material;
- b. Stalk or make threats of physical harm;
- c. Store or transmit any software viruses; worms; time bombs; Trojan horses; or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment;
- d. Violate any law;
- e. Infringe or misappropriate the rights of any third party;
- f. Process, store, or transmit any data, information, or technology that is controlled for export under the International Traffic in Arms (ITAR) regulations, is unclassified controlled technical information (UCTI) under DFARS 204.73, or is protected health information (PHI) under HIPAA; or
- g. Otherwise violate a material term of this EEAP Agreement.

11.9 Takedowns and Service Suspension. If Esri believes that any Licensee's use of the Managed Services constitutes a Prohibited Use or if Licensee Content violates the restrictions listed in Section 11.8, Esri will notify Licensee, request Licensee to stop the Prohibited Use, and may request that such Licensee Content be removed from Managed Services Environment or access to it be disabled. Esri may remove or disable access to any such Licensee Content without prior notice as permitted under applicable law or as required to comply with any judicial, regulatory, or other governmental order. Esri may also suspend Licensee's access to Managed Services Environment at any time

- a. For scheduled downtime to conduct maintenance or make modifications to Managed Service(s); or
- b. In the event of a threat or attack on Managed Service(s) (including a denial-of-service attack) or other event that may create a risk to the applicable part of Managed Services.

If feasible under these circumstances, Licensee will be notified of any service suspension beforehand and allowed reasonable opportunity to take remedial action. In the event that Esri removes Licensee Content or suspends access to Managed Services Environment without prior notice, Esri will provide prompt written notice to Licensee unless prohibited by law.

ARTICLE 12—GENERAL PROVISIONS

12.1 Relationship of the Parties. The parties hereto agree that each is an independent contractor with respect to this EEAP Agreement; that this EEAP Agreement does not constitute an agency, partnership, franchise, or joint venture; and that nothing herein contained is intended to constitute, nor shall it be construed to constitute, the parties as agents, partners, franchisor/franchisee, or co-venturers of each other. Except as expressly provided in this EEAP Agreement, neither party shall have any power or authority to act in the name or on behalf of the other party except with the prior, express written consent of the other party.

12.2 Intellectual Property Rights Attribution. Licensee shall retain any copyright, patent, or trademark notices on all items licensed under this EEAP Agreement and shall take other necessary steps to protect Esri's or its licensor's intellectual property rights. Licensee shall not copy or distribute, or permit a third party to copy or distribute, any of Esri's Training Materials.

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

12.4 Severability. If any provision of this EEAP Agreement is determined to be invalid, illegal, or unenforceable, the parties agree the remaining provisions of this EEAP Agreement shall remain in full force if both the economic and legal substance of the transactions contemplated by this EEAP Agreement are not affected in any manner that is materially adverse to either party by severing the provision determined to be invalid, illegal, or unenforceable.

12.5 Force Majeure. If the performance of this EEAP Agreement, or any obligation except the making of payments, 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, terrorist act, cyber attack, or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental 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, shall be excused from such performance to the extent of such prevention, restriction, or interference.

12.6 Applicable Laws. This EEAP Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to conflict of laws principles.

12.7 Nonsolicitation of Contractor Personnel. Licensee shall not solicit for hire any Esri employee who is associated with efforts called for under this Agreement during the Term of this EEAP Agreement and for a period of one (1) year thereafter. In the event the foregoing provision is breached, Licensee shall pay Esri liquidated damages for recruiting and training costs equal to twelve (12) months of the employee's compensation plus any legal expenses associated with the enforcement of this provision.

12.8 Taxes. Services provided are quoted exclusive of all state, local, value-added, or other taxes, customs, or duties, or other charges (other than income taxes payable by Esri). In the event such taxes and/or charges become applicable to Esri's services, applications, or data, Licensee shall pay any such applicable tax upon receipt of written notice that such taxes are due.

12.9 UCC Inapplicability. Any services provided under this EEAP Agreement will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of the UCC.

12.10 Assignment and Delegation. Esri may, in whole or in part, assign any of its rights or delegate any performance under this EEAP Agreement, provided that Esri shall remain responsible for the performance it delegates. This EEAP Agreement binds and benefits successors or assigns permitted under this Section 12.10.

12.11 Insurance. Each party shall, throughout the term of this EEAP Agreement, obtain and maintain at its own cost and expense from a qualified insurance company an appropriate commercial general liability (CGL) insurance policy, including coverage for products liability, naming the other party as an additional named insured. Such policy shall provide protection against any and all claims, demands, and causes of action arising out of any error, omission, failure to perform, or defect, alleged or otherwise, of goods and services used in connection therewith or any use thereof. The amount of coverage shall be in the minimum amount of one million US dollars (US\$1,000,000).

12.12 Export Control Regulations. Licensee expressly acknowledges and agrees that Licensee shall not export, reexport, transfer, or release Software, Data, Online Services, or Documentation, in whole or in part, to

- a. Any US embargoed country (or to a national or resident of any US embargoed country);
- b. Any person on the US Treasury Department's list of Specially Designated Nationals;
- c. Any person or entity on the US Commerce Department's Denied Persons List, Entity List, or Unverified List; or
- d. Any person or entity where such export or reexport violates any US export control laws or regulations including, but not limited to, the terms of any export license or license exemption and any amendments and supplemental additions to US export laws as they may occur from time to time.

12.13 Headers. Headers are for convenience only and are not to be used in the interpretation of this EEAP Agreement.

12.14 Entire Agreement. This EEAP Agreement constitutes the sole and entire agreement of the parties and supersedes any previous agreements, understandings, and arrangements between the parties relating to the Esri Enterprise Advantage Program. Other than information regarding the services or Software being ordered and shipping instructions, if any, additional or different terms contained on Licensee's purchase order are objected to and shall not apply even if accepted or acknowledged by Esri unless specifically included in a modification to this EEAP Agreement. Any modifications or amendments to this EEAP Agreement must be in writing and signed by an authorized representative of each party.

The parties acknowledge that they have read and understand this EEAP Agreement, have the authority to bind their respective organizations, and agree to be bound by its terms and conditions.

(Licensee)

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(Esri)

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

All Licensee contact regarding the Esri Enterprise Advantage Program shall be through the point of contact identified below.

**Authorized EEAP Contact Information
(to be completed by Licensee)**

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, ZIP: _____

Email: _____
