

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN LARAMIE COUNTY,
THE CITY OF CHEYENNE, THE CHEYENNE BOARD OF PUBLIC UTILITIES, THE
CHEYENNE/LARAMIE COUNTY BOARD OF HEALTH, and THE CHEYENNE
REGIONAL AIRPORT BOARD
REGARDING THE MANAGEMENT OF THE ESRI
ENTERPRISE AGREEMENT**

THIS Memorandum of Understanding (hereinafter "MOU") is made and entered into by and between Laramie County, 310 West 19th Street, P.O. Box 608, Cheyenne Wyoming, 82003-0608 (hereinafter referred to as "COUNTY"), the City of Cheyenne, 2101 O'Neil Avenue, Cheyenne, Wyoming 82001 (hereinafter referred to as "CITY"), the City of Cheyenne Board of Public Utilities, 2416 Snyder Avenue, Cheyenne, Wyoming 82001 (hereinafter referred to as "BOPU"), the Cheyenne/Laramie County Board of Health, 100 Central Avenue, Cheyenne, Wyoming 82001 (hereinafter referred to as "HEALTH") and the Cheyenne Regional Airport Board, 4020 Airport Parkway West, Cheyenne, Wyoming 82003 (hereinafter referred to as "AIRPORT"). The parties agree as follows:

I. PURPOSE

The purpose of this MOU is to define the management and coordination strategy in administering the Small Government Enterprise Agreement and the Addendum (hereinafter referred to as "SGEA") by and between the COUNTY and Environmental Systems Research Institute, Inc., 380 New York Street, Redlands, California 92373-8100 (hereinafter referred to as "ESRI"). This is a renewal of an existing SGEA that benefits the members of the Cheyenne and Laramie County GIS Cooperative (hereinafter referred to as "CLCGISC") in coordinating and collaborating on ESRI software licensing and maintenance.

II. SGEA MANAGEMENT

- A. The COUNTY will serve as the Lead agency for the EA. This includes acting as the contractual agency with ESRI in approval of the SGEA Terms and Conditions; managing a budget line item for pooling of funds from all agencies participating in the EA; and payment of the annual ESRI SGEA invoice.
- B. The Cheyenne/Laramie County GIS Cooperative Coordinator will be the point of contact with ESRI in managing the SGEA to include the following items:
 - 1. Act as single point of contact for orders and deliveries of software and redistribution to eligible users. Total backup media will not exceed two (2). Additional back up media is available for purchase by the requesting agency.
 - 2. Provide ESRI with annual report of GIS software installations of software products referenced in the EA.

3. Account for the below amounts in the CLCGISC Operational Budget annually and invoice each agency as part of the normal invoicing process for the CLCGISC.
- C. The parties to this MOU agree to fund the SGEA for their proportional share as follows with the SGEA start date of January 20, 2024, and for each year of the 3-year SGEA term:

Year One (1/20/24 – 1/19/25)

COUNTY	\$ 25,200
CITY	31,050 (Includes MPO Share: \$5,850)
BOPU	25,200
HEALTH	7,830
AIRPORT	<u>720</u>
Total Due	\$90,000

Year Two (1/20/25 – 1/19/26)

COUNTY	\$ 28,000
CITY	34,500 (Includes MPO Share: \$6,500)
BOPU	28,000
HEALTH	8,700
AIRPORT	<u>800</u>
Total Due	\$ 100,000

Year Three (1/20/26 – 1/19/27)

COUNTY	\$ 30,800
CITY	37,950 (Includes MPO Share: \$7,150)
BOPU	30,800
HEALTH	9,570
AIRPORT	<u>880</u>
Total Due	\$ 110,000

- D. Additional members of the CLCGISC are allowed to participate in the SGEA and their share of the annual maintenance costs will be determined by the appropriate agency named in this MOU. If the SGEA is not renewed after this 3-year term, then ESRI software licensing and maintenance costs will be determined by ESRI and paid by the individual member agencies or appropriate governmental entity.
- E. The parties to this MOU will provide an annual report of installed ESRI software within their jurisdiction to the CLCGISC Coordinator 30 days prior to the SGEA anniversary date. Deployments of software covered by this SGEA within agencies not named or under the direct guidance of a named party to this MOU must be covered under a separate agreement between this new agency and ESRI.

- F. The Tier 1 support center and Tier 2 technical support will consist of the following individuals who are authorized to contact ESRI directly for technical support:

BOPU GIS Supervisor
CITY GIS Coordinator
COUNTY GIS Coordinator
MPO GIS Coordinator

Additional ESRI users requiring technical support will first contact one of these individuals prior to contacting the CLCGISC Coordinator.

- G. Four (4) ESRI User Conference complimentary passes will be shared between the named entities in this MOU. Two passes will be designated for use by BOPU each year and if they choose to not use one or both passes then these passes will be made available for use by the remaining entities. Use of these passes will be determined each year by mutual understanding between the parties.

III. GENERAL PROVISIONS

A. Entire Agreement: This MOU, consisting of six (6) pages, represents the entire and integrated agreement and understanding between the parties and supersedes all prior negotiations, statements, representations and agreements, whether written or oral.

B. Assignment: Neither this MOU, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party.

C. Modification: This MOU shall be modified only by a written agreement, duly executed by all parties hereto.

D. Invalidity: If any provision of this MOU is held invalid or unenforceable by any court of competent jurisdiction, or if the named entities are advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties that the provisions of this MOU are fully severable.

E. Applicable Law and Venue: The parties mutually understand and agree this MOU shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning this MOU or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming. This provision is not intended nor shall it be construed to waive the parties' governmental immunity as provided in this MOU.

F. Contingencies: The parties mutually certify and warrant that no gratuities, kick-backs or contingency fees were paid in connection with this MOU, nor were any fees, commissions, gifts or other considerations made contingent upon the award of this MOU.

G. Discrimination: The parties agree they will not discriminate against any person who performs work under the terms and conditions of this MOU because of race, color, gender, creed, handicapping condition, or national origin.

H. ADA Compliance: The parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans With Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, *et seq.*, and/or any properly promulgated rules and regulations relating thereto.

I. Governmental/Sovereign Immunity: The parties do not waive their Governmental/Sovereign Immunity, as provided by any applicable law including W.S. § 1-39-101 *et seq.*, by entering into this MOU. Further, the parties fully retain all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this MOU.

J. Indemnification: Each party to this MOU shall be responsible for any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.

K. Third Parties: The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only between the parties to the MOU, and shall inure solely to the benefit of the parties to this MOU.

L. Conflict of Interest: COUNTY, CITY, BOPU, HEALTH and AIRPORT affirm that to their knowledge no employee has any personal beneficial interest whatsoever in the MOU described herein. No staff members of the parties, compensated either partially or wholly with funds from this MOU, shall engage in any conduct or activity which would constitute a conflict of interest relative to this MOU.

M. Force Majeure: No party shall be liable to perform under this MOU if such failure arises out of causes beyond control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.

N. Notices: All notices required and permitted under this MOU shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when personally delivered to such party. A party may change its address for notice hereunder by giving written notice to the other party.

O. Compliance with Laws: All parties warrant that they will comply with all applicable laws, regulations and ordinances, whether Federal, State or local in carrying out the purposes of this MOU.

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN LARAMIE COUNTY, THE CITY OF CHEYENNE, THE CHEYENNE BOARD OF PUBLIC UTILITIES, THE CHEYENNE/LARAMIE COUNTY BOARD OF HEALTH, and THE CHEYENNE REGIONAL AIRPORT BOARD REGARDING THE MANAGEMENT OF THE ESRI ENTERPRISE AGREEMENT

Signature Page 1

This Agreement is effective the date of the last signature affixed to this page.

LARAMIE COUNTY, WYOMING

By: _____ Date _____
Troy Thompson, Chairman,
Laramie County Commissioners

ATTEST:

By: _____ Date _____
Debra Lee, Laramie County Clerk

CITY OF CHEYENNE

By: _____ Date _____
Patrick Collins, Mayor

ATTEST:

By: _____ Date _____
Kris Jones, City Clerk

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN LARAMIE COUNTY, THE CITY OF CHEYENNE, THE CHEYENNE BOARD OF PUBLIC UTILITIES, THE CHEYENNE/LARAMIE COUNTY BOARD OF HEALTH, and THE CHEYENNE REGIONAL AIRPORT BOARD REGARDING THE MANAGEMENT OF THE ESRI ENTERPRISE AGREEMENT

Signature Page 2

CITY OF CHEYENNE BOARD OF PUBLIC UTILITIES

By: _____ Date _____
Brad Brooks, Director


CHEYENNE/LARAMIE COUNTY BOARD OF HEALTH

By: _____ Date _____
Dr. Lorie Chesnut, President

CHEYENNE REGIONAL AIRPORT BOARD

By: _____ Date _____
Timothy Bradshaw, A.A.E., Director of Aviation

REVIEWED AND APPROVED AS TO FORM ONLY:

By:  _____ Date 5/1/2023
Rebekkah K. Dostal, Laramie County Attorney

By: _____ Date _____
_____, City Attorney



Quotation #Q-494968

Date: April 18, 2023

Customer #11677 Contract #

County of Laramie
 Information Technology Dept
 310 W 19th St Ste 410
 Cheyenne, WY 82001-4449

ATTENTION: Jordan Evans
 PHONE: +1-307-631-7483
 EMAIL: jevans@laramiecounty.com

Environmental Systems Research Institute, Inc.
 380 New York St
 Redlands, CA 92373-8100
 Phone: (909) 793-2853
 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: 4/18/2023 To: 10/15/2023

Material	Qty	Term	Unit Price	Total
168180	1	Year 1	\$90,000.00	\$90,000.00
Populations of 100,001 to 125,000 Small Government Enterprise Agreement Annual Subscription				
168180	1	Year 2	\$100,000.00	\$100,000.00
Populations of 100,001 to 125,000 Small Government Enterprise Agreement Annual Subscription				
168180	1	Year 3	\$110,000.00	\$110,000.00
Populations of 100,001 to 125,000 Small Government Enterprise Agreement Annual Subscription				

Subtotal:	\$300,000.00
Sales Tax:	\$0.00
Estimated Shipping and Handling (2 Day Delivery):	\$0.00
Contract Price Adjust:	\$0.00
Total:	\$300,000.00

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: John Gamido	Email: jgamido@esri.com	Phone: 909-793-2853 x3580
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The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://go.esri.com/MAPS> apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.



Quotation #Q-494968

Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

Date: April 18, 2023
Customer #11677 Contract #

County of Laramie
Information Technology Dept
310 W 19th St Ste 410
Cheyenne, WY 82001-4449

To expedite your order, please attach a copy of this quotation to your purchase order. Quote is valid from: 4/18/2023 To: 10/15/2023

ATTENTION: Jordan Evans
PHONE: +1-307-631-7483
EMAIL: jevans@laramiecounty.com

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

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

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

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

Please check one of the following:

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

Signature of Authorized Representative Date

Name (Please Print)

Title

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

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

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

For questions contact: John Ganido Email: jganido@esri.com Phone: 909-793-2853 x3580

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at https://go.esri.com/MAPS apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at https://www.esri.com/en-us/legal/terms/state-supplemental apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.

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

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



**SMALL ENTERPRISE AGREEMENT
 COUNTY AND MUNICIPALITY GOVERNMENT
 (E214-4)**

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

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

**Table A
 List of Products**

Uncapped Quantities

Desktop Software and Extensions (Single Use)

ArcGIS Desktop Advanced

ArcGIS Desktop Standard

ArcGIS Desktop Basic

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

Enterprise Software and Extensions

ArcGIS Enterprise (Advanced and Standard)

ArcGIS Monitor

ArcGIS Enterprise Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

Enterprise Additional Capability Servers

ArcGIS Image Server

Developer Tools

ArcGIS Runtime Standard

ArcGIS Runtime Analysis Extension

Limited Quantities

One (1) Professional subscription to ArcGIS Developer

Two (2) ArcGIS CityEngine Single Use Licenses

500 ArcGIS Online Viewers

500 ArcGIS Online Creators

62,500 ArcGIS Online Service Credits

500 ArcGIS Enterprise Creators

7 ArcGIS Insights in ArcGIS Enterprise

7 ArcGIS Insights in ArcGIS Online

100 ArcGIS Location Sharing for ArcGIS Enterprise

100 ArcGIS Location Sharing for ArcGIS Online

5 ArcGIS Parcel Fabric User Type Extensions (Enterprise)

5 ArcGIS Utility Network User Type Extensions (Enterprise)

5 ArcGIS Trace Network User Type Extensions (Enterprise)

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	4
Number of Tier 1 Help Desk individuals authorized to call Esri	4
Maximum number of sets of backup media, if requested*	2
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement	

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

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("Ordering Document"). ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER 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 an Ordering Document, 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:

(Customer)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

CUSTOMER 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 Master Agreement, the following definitions apply to this Agreement:

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

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

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

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

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

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

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

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

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

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

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

2.0—ADDITIONAL GRANT OF LICENSE

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

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

3.0—TERM, TERMINATION, AND EXPIRATION

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

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

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

3.4 Termination for Lack of Funds. For an Agreement with government or government-

owned entities, either party may terminate this Agreement before any subsequent year if Customer is unable to secure funding through the legislative or governing body's approval process.

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

4.0—PRODUCT UPDATES

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

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

5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at *****.esri.com/en-). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other

than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

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

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to

supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

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

6.0—ENDORSEMENT AND PUBLICITY

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

7.0—ADMINISTRATIVE REQUIREMENTS

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

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

8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download,

operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee up to thirty (30) calendar days before the annual anniversary date for each year.

- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri reserves the right to suspend Customer's access to and use of Products if Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at a monthly rate equal to the lesser of one percent (1.0%) per month or the maximum 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. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.
- 8.2 Order Requirements.** Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.
- a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.
 - b. The following information will be included in each Ordering Document:
 - (1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
 - (2) Order number
 - (3) Applicable annual payment due

9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

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

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