



ESRI MPA TERMS AND CONDITIONS (State and Local)

ARTICLE 1—DEFINITIONS

As used herein, the following words, phrases, or terms in this Master Purchase Agreement ("Agreement") shall have the following meanings:

"Licensee" means the governmental body that has signed this Agreement or an Authorized Entity that places orders pursuant to this Agreement.

"Authorized Entity" means a political subdivision of the governmental body authorized by the contracting governmental body to order and acquire Software, Data, Documentation, products, or services through this Agreement.

ARTICLE 2—TERM OF AGREEMENT

The Licensee's right to purchase under this Agreement shall remain in effect for two (2) years from the effective date unless terminated earlier as prescribed in Article 5—Termination; Cancellation. At the end of the initial and any succeeding term, the parties may negotiate a new term and pricing based on mutual agreement. The term of any Software or Data licenses ordered through this Agreement shall be as stated in the General License Terms and Conditions. Environmental Systems Research Institute, Inc. (ESRI), may elect to not renew the Agreement should total orders for licenses, training, consulting, or custom application development not exceed fifty thousand dollars (\$50,000.00) per year or one hundred thousand dollars (\$100,000.00) per any two (2)-year period.

ARTICLE 3—PRODUCT OFFERINGS

ESRI may, at its sole discretion, discontinue offering any Software, Data, other product, or service included in this Agreement at any time upon reasonable written notice.

ESRI may, at its sole discretion, offer new Software, services, Data, Documentation, hardware, or larger quantity discount pricing by providing written notice. ESRI may require additional license terms prior to use of new Software or Data. Such notice shall become part of this Agreement upon (i) ordering Software, hardware, or services covered by the notice or (ii) thirty (30) days after Licensee's receipt of notice, whichever is sooner. Licensee may object in writing to the notice prior to the occurrence of items i or ii. Any objections or changes to the notice shall require written agreement of both parties.

ARTICLE 4—GRANT OF LICENSE AND SCOPE OF USE

The license grant and permitted uses specified in Article 3 and Article 4 of the General License Terms and Conditions (E200) are restricted to use within the United States of America, its possessions, and territories. For Internet mapping Software, the server must be located within the United States of America, its possessions, and territories.

ARTICLE 5—TERMINATION; CANCELLATION

5.1 Termination

This Agreement may be terminated by either party upon forty-five (45) days' written notice. Should the notice specify termination for cause, the recipient of the notice shall have fifteen (15) days in which to correct or cure any default or defect in performance. On termination of this Agreement, all accounts and payments will be processed according to financial arrangements set forth herein for performance rendered to the date of termination. After termination, Licensee shall no longer be permitted to place orders under this Agreement. ESRI, at its sole election, may terminate the right of any Authorized Entity to participate in this Agreement in accordance with this provision without terminating the Agreement with respect to the governmental body or any other Authorized Entity.

5.2 Cancellation

Purchase orders, other than for the initial purchase, may be canceled by the Licensee in whole or in part, upon forty-five (45) days' written notice to ESRI. There will be no cancellation charge for canceled Software unless the Software has been delivered. If the Software has been shipped, the cancellation will require Licensee payment of return shipping costs. Licensee has the right to cancel hardware purchases forty-five (45) days prior to scheduled delivery without cost. After hardware delivery or within forty-five (45) days of scheduled delivery, cancellation of the hardware purchase is subject to a manufacturer cancellation charge not to exceed thirty-five percent (35%) of hardware list price.

5.3 Deficiency Action

Without prejudice to any other right or remedy available to ESRI, ESRI may terminate this Agreement provided Licensee is given fifteen (15) days prior notice to cure deficiency.

- a. If Licensee fails to pay any license fees to ESRI in accordance with the requirements of this Agreement; or
- b. If Licensee distributes ESRI® Software, Data, and Documentation to any person or entity other than a Licensee; or
- c. If Licensee discloses any trade secret technology and other information proprietary to ESRI in breach of this Agreement.

5.4 License Survival

Upon voluntary termination of this Agreement for the convenience of Licensee or expiration of this Agreement, Licensee may continue to retain and use such licensed ESRI Software, Data, and Documentation in accordance with the General License Terms and Conditions; Exhibit 1, Scope of Use; and any other license terms contained herein. Licensee may then directly and separately contract for Software updates, maintenance, and/or technical support service.

ARTICLE 6—NONAPPROPRIATION OF FUNDS; LIMITATION

6.1 Funding

Where the financial obligations of the Licensee payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available and the funds are not appropriated or otherwise available, this Agreement may be terminated as set forth in Article 5.

6.2 No Minimum Purchase

Licensee does not guarantee to purchase any certain amount under this Agreement.

ARTICLE 7—ORDERS

7.1 Licensee Purchase Orders

Licensee shall issue purchase orders to ESRI for Software, Data, services, or hardware based on the fees specified in this Agreement. The Licensee is requested to confirm hardware pricing and model availability with ESRI prior to placement of a purchase order. The terms and conditions of this Agreement shall govern all orders issued by Licensee. Any additional or different terms included with an order shall require specific approval by ESRI via a written modification to this Agreement to be binding.

7.2 Purchase Order Requirements

All purchase orders shall reference and be subject to the terms and conditions of this Agreement.

The following information/statements shall also be included in each purchase order.

- a. Name or identification of Licensee, place of delivery, and the end user name and contact information
- b. Purchase order number
- c. Date delivery is requested (minimum thirty [30] days after ESRI receipt of order)
- d. Primary site for maintenance if primary maintenance is *not* ordered
- e. Quantity, description, and unit price
- f. On the face of the purchase order, print the following statement: "Subject to Master Purchase Agreement No. _____."

ESRI is a trademark, registered trademark, or service mark of ESRI in the United States, the European Community, or certain other jurisdictions.

7.3 Additional Quotes

Licensee may request a quote for any new or unlisted Software/services and issue a purchase order under this Agreement, provided ESRI may require additional license terms for use of the new or unlisted Software.

7.4 Authorized Entity

An Authorized Entity may order or acquire Software, Data, Documentation, hardware, services, updates, maintenance, or support under and subject to the terms and conditions of this Agreement.

7.5 Registration/Keycode Request

To activate Software, subject to a License Manager, Licensee may be required to obtain a keycode through ESRI's Web site at myESRI.com or through ESRI's Customer Service Department.

ARTICLE 8—ESRI AUTHORIZED RESELLER ORDERS

Licensee may purchase ESRI Software from an authorized ESRI reseller under the terms of this Agreement. To implement this approach, the following requirements must be satisfied:

- The quotation for ESRI Software and the selection of the ESRI reseller must comply with all applicable State and local public procurement laws and regulations;
- The ESRI reseller must be a member of the ESRI Business Partner Program in good standing at the time the order is placed with ESRI and be authorized to provide the Software ordered as defined at ESRI Web site <http://gis.esri.com/partners/index.html>. Select "Resellers" to view the authorized resellers and the Software they are authorized to provide; and
- The Licensee purchase order forwarded by the reseller to ESRI must list the information requested in Article 7.2, the ESRI reseller name, and the Software MPA pricing [needed because the reseller must use the MPA pricing under the MPA. If the reseller does not use the MPA pricing, then it can't use the MPA.].

If all conditions of sale under the MPA are met, ESRI will accept the order and the authorized reseller will receive a sales commission. ESRI will deliver the ESRI Software directly to the Licensee, invoice, and receive payment for any such order. If ESRI does not accept the order, the Licensee may enter into a direct transaction with the ESRI reseller, and the order will not be processed under this MPA.

Upon request, the ESRI regional office will provide the Licensee with a list of authorized ESRI resellers in good standing that do business in the State.

ARTICLE 9—PRICING

ESRI will provide Software, Data, Documentation, maintenance, and support specified at the prices incorporated into this Agreement. The specified prices stated in the incorporated ESRI Price List are exclusive of shipping, installation, and tax. The pricing for consulting and training services are subject to annual escalations beginning in January of each year. After the initial term of this Agreement, the prices for Software, Data, Documentation, maintenance, and updates may be escalated annually during any extension to the term of this Agreement.

9.1 Software, Maintenance, and Support

ESRI will provide technical support and maintenance services as specified by the Support Services policies described under "Support" ("Support Services Brochure") on the ESRI Web site home page at www.esri.com.

9.2 Hardware

Hardware purchases will be accomplished in accordance with procedures in Article 11, Hardware Purchases. ESRI is subject to hardware vendors' price fluctuations; however, ESRI shall provide a firm quote for hardware valid for sixty (60) to ninety (90) days upon written request. Licensee shall confirm delivery dates with ESRI's hardware manager prior to placing orders.

9.3 Custom Software and Application Services

ESRI Services are available on a time and materials or firm fixed price basis via a signed task order, but only if this Agreement expressly incorporates the Custom Software, Technical Data, and Assistance License Addendum (E600), including the current Time and Materials Rate Schedule (J-7264-a/BD). The E600 Addendum and the J-7264-a/BD Rate Schedule together comprise the applicable terms, staffing, and hourly labor rates (hourly rates applicable only for time and

materials projects) for any such work to be performed under this Agreement. Labor rates are subject to annual escalation not to exceed 7.5% per year in January of each year. The scope of work and any additional terms are subject to mutual agreement in the task order. Information and arrangements regarding Custom Software and Application Services are available from the Implementation Services Program Manager, Craig Morgan, at 909-793-2853, ext. 1546.

9.4 Training Services

Training will be provided in accordance with the policies defined under "Education and Training" at www.esri.com and the ESRI Client Site Training Terms and Conditions (E207) incorporated herein. Training prices are subject to annual escalation, not-to-exceed 7.5 percent (7.5%) in January of each year.

ARTICLE 10—TERMS OF COMPENSATION AND ACCEPTANCE

10.1 Terms of Compensation

Software and hardware will be invoiced one-hundred percent (100%) upon shipment.

10.2 Acceptance and Payment

Software and hardware installation and training services, as applicable, will be invoiced upon completion. When ESRI installation is ordered, acceptance occurs upon completion of ESRI Software installation and testing, unless rejected in writing.

Licensee agrees to pay each invoice in full within thirty (30) days of receipt of a valid invoice.

Unless rejected in writing, acceptance of any shipment of ESRI Software, Data, Documentation, and hardware shall be presumed to have occurred fifteen (15) days after shipment by ESRI.

ESRI may reject any purchase order if Licensee fails or refuses to pay any license or service fee due.

ARTICLE 11—HARDWARE PURCHASES

11.1 Hardware Purchase Procedures

ESRI is a value-added hardware reseller. As such, ESRI is restricted from selling hardware to any user who has not licensed ESRI Software. Licensee acknowledges ESRI's representations in this regard.

ESRI shall provide hardware prices by written quotation prior to issue of an order. ESRI will order hardware upon receipt of the Licensee's purchase order.

11.2 ESRI Installation of Workstation and/or Peripheral Equipment

When ordered by Licensee, ESRI will provide a hardware vendor's installation service for applicable hardware ordered under this Agreement in Licensee's designated office within one hundred twenty (120) days (if possible), depending on vendor inventory/delivery schedules. Installation dates may be changed by mutual consent of ESRI and Licensee. This installation shall include the successful interfacing and testing of equipment according to standard procedures associated with each manufactured item of the system.

11.3 Procedures at Site

During the installation period, ESRI shall coordinate with the hardware vendor to guide the Licensee's systems administrator on the installation and administration of the new hardware system as it relates to the operation of ESRI Software and other related Software. As the two parties work together on installation tasks, the systems administrator will be guided through key procedures needed to install and administer ESRI Software and other related software on the equipment.

11.4 Deliverables

- Hardware system as ordered
- Interfaced ESRI Software and hardware, as applicable
- Assistance in familiarization with operation of hardware (ESRI and hardware vendor, as applicable)

11.5 Responsibilities

- Licensee shall designate a person to act as its system administrator. Prior to the start date for installation, Licensee shall, at its own expense, prepare the designated site in accordance with the hardware manufacturer or third party vendor's ("Vendor's") specifications. These preparations shall include installation of appropriate electrical wiring, air conditioning, heating, humidity control, lighting, and space for hardware components.
- ESRI shall coordinate the shipping, insurance, and delivery of the various hardware components including communication with Licensee regarding appropriate logistics.
- Licensee shall provide appropriate insurance coverage for the equipment after delivery.

11.6 Manufacturer's Warranty and Infringement Indemnity

ESRI will pass through any hardware warranty and infringement indemnity from each respective manufacturer directly to the Licensee. Neither ESRI Software and Data nor vendor's hardware is designed for use in fail-safe environments or mission-critical applications such as, but not limited to, running nuclear operations, airport/aircraft control systems, or 911 emergency and life support response systems. Licensee shall hold ESRI and the hardware vendor harmless from any claims for loss, cost, damage, expense, or liability arising out of, or in connection with, the use and performance of Software, Data, hardware, or services in such fail-safe environments or mission-critical applications.

SUCH WARRANTIES AND INDEMNITIES ARE IN LIEU OF AND THIS AGREEMENT EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (i) ANY WARRANTY THAT THE HARDWARE IS FAULT-FREE, WILL OPERATE WITHOUT INTERRUPTION, OR IS COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS; AND (ii) ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINTERFERENCE, SYSTEM INTEGRATION, AND NONINFRINGEMENT.

ARTICLE 12—GENERAL PROVISIONS

12.1 Notice

Notice required or contemplated by either party must be delivered in person or by courier, express mail, facsimile, or postage-prepaid certified or registered airmail addressed to the party for whom it is intended at the address specified herein. Either party may change its address by giving prompt notice to the other party of the change.

Licensee Contact:

See signature page (E111)

ESRI Contact:

Contracts Manager
ESRI
380 New York Street
Redlands, CA 92373-8100
Phone: 909-793-2853
Fax: 909-307-3020

12.2 Shipping and Handling

- Standard shipping is by two (2)-day air via UPS or equivalent carrier.
- Expedited express delivery for Software can be arranged.
- It is suggested the shipping and handling charges be confirmed in advance as the ESRI invoicing program will incorporate the current fees automatically. Also, there may be periodic changes due to fluctuations in the transportation industry fees.

12.3 Maintenance

Generally, maintenance is offered on an annual basis. Upon expiration of the initial complimentary maintenance year, or any subsequent maintenance term, Licensee may issue a purchase order under this Agreement for renewal of maintenance at the terms and pricing then in effect. Upon acceptance of an ESRI quotation, the purchase order shall be issued in advance or not later than concurrent with the present maintenance term. Should there be a lapse in maintenance coverage, and at some later date the Licensee chooses to reinstate maintenance, Licensee shall pay maintenance fees for the lapsed period, not to exceed a maximum of two (2) prior years, plus one (1) year's maintenance fees in advance.