

# Amendment No. 01

## Master Agreement No. 330815



This Amendment No. 1 to the Master Agreement under Ohio MLA0064 ("Amendment") is entered into by and between the State of Ohio ("Customer" or the "State") and Environmental Systems Research Institute, Inc. (hereinafter referred to as "Esri" or "Contractor").

WHEREAS, Esri and Customer executed a Master Agreement on July 11, 2018 (hereinafter "Agreement"); and

WHEREAS, due to changing business conditions, the parties desire to amend the Agreement to update applicable terms and conditions;

NOW THEREFORE, the parties agree to the following:

1. Update the Esri Master Agreement number from 324532 to 330815, due to Esri's contract management system. Any reference in the Agreement to the Master Agreement or to number 324532 shall mean Master Agreement No. 330815 as of the effective date of this Amendment.
2. To reflect the effective date as intended by the parties, delete and replace the third paragraph of the Master Agreement signature page with the following:

The parties may sign this Agreement in counterparts or via electronic signatures; such execution is valid even if an original paper document bearing both parties' original signatures is not delivered. This Agreement is made effective as of July 1, 2018.

3. Delete the definitions of "Esri Offering(s)," in **Attachment A Glossary of Terms** and replace with the following:

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

4. Delete and replace sections a. and b. in **Attachment B General Terms and Conditions, Article 1 – General Use Restrictions** with the following:

- a. Sell, rent, lease, sublicense, distribute, lend, time-share, or assign Services or Esri Offerings;
- b. Distribute or provide direct access to Services or Esri Offerings to third parties, in whole or in part, including, but not limited to, extensions, components, or DLLs;

5. Delete and replace **Section 4.1 Disclaimer of Liability in Attachment B General Terms and Conditions, Article 4 – Limitation of Liability** with the following:

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

6. Add a new **Section 6.0 Professional Services** as follows:

### 6.0 PROFESSIONAL SERVICES

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

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

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

### 6.3 Task Orders and Project Schedule

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

### 6.4 Ownership of Deliverables and Inventions

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

### 6.5 Acceptance

- a. **For Firm Fixed Price Task Orders.** Customer will complete its acceptance review within 15 working days of receiving each Deliverable and classify the Deliverables as follows:
  1. "DELIVERABLE ACCEPTED" means a Deliverable conforming to the applicable Task Order with no more than minor nonconformities.
  2. "DELIVERABLE ACCEPTED WITH REWORK" means a Deliverable substantially conforming to the applicable Task Order but having a significant number of identified nonconformities and accepted subject to rework by Esri. Esri will rework the Deliverable for the identified nonconformities and resubmit it within 30 days. Customer will rerun its acceptance review for the nonconformities detected in the initial review within 15 working days of such resubmission and will reclassify the Deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.
  3. "DELIVERABLE REJECTED" means a Deliverable that fails to substantially conform to applicable Task Order(s). Esri will rework the Deliverable and resubmit it to Customer within 30 days, at which time Customer will have 15 working days to rerun its acceptance review and reclassify the deliverable as either DELIVERABLE ACCEPTED or DELIVERABLE REJECTED.

Customer may not use any Deliverable in its business operations before acceptance as described in a.1 or a.2. If Customer does not notify Esri in writing within 15 working days after delivery that it has classified the Deliverable as ACCEPTED WITH REWORK or REJECTED in accordance with a.2 or a.3, or if Customer uses the Deliverable in its business operations, the Deliverable will be deemed, as of the first of either of these events to occur, to have been accepted.

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

Esri within 15 days after performance. Deliverables produced under a time and materials Task Order are consulting hours only and will not be subject to acceptance testing.

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

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

**6.8 Customer Termination for Convenience.** Customer may terminate any Task Order at any time upon 30 days' written notice to Esri and upon payment to Esri of all amounts due through termination pursuant to this Agreement as invoiced by Esri.

#### **6.9 Payment; Invoices**

- a. **For Firm Fixed Price Task Orders.** Unless otherwise specified in a Task Order, Esri will prepare and submit monthly invoices based on the percentage of completion for each Deliverable as of the end of the preceding month. Upon acceptance of all Deliverables under a Task Order, the unpaid balance of the total Task Order value is due.
- b. **For Professional Service Packages.** Esri will submit an invoice for Professional Service Packages upon completion of the Professional Services performed under the Professional Service Package. Esri may, at its sole discretion, stop work to avoid exceeding the total labor hours or number of days allotted in the applicable Professional Service Package description set forth in the applicable scope of work. Professional Service Packages expire if not used within 12 months of Esri's receipt of Customer's Ordering Document.

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

1. Esri will submit to Customer written monthly invoices to the Customer address provided in the Task Order. The invoices will include the payment due for work performed, including travel time, and any other direct costs (ODCs) incurred as authorized and pre-approved under a Task Order. The amount invoiced for labor will be equal to the number of hours expended during the previous month, multiplied by the applicable labor rates. Esri and Customer may include hourly labor rates in this Agreement; if the parties elect to do so, Attachment D will identify the hourly labor rates for each labor category. Esri may change hourly labor rates for Services; provided, however, if this Agreement is incorporated into a Master Purchase Agreement, hourly labor rates shall be set forth in an MPA Price List and may only be changed in accordance with the provisions set forth in the Master Purchase Agreement. Esri will invoice pre-approved ODCs, including travel related expenses incurred, pursuant to Ohio Administrative Code 126-1-02 at <http://codes.ohio.gov/oac/126-1-02v1> or any subsequent update published by Customer.
2. Esri may reallocate the budget between activities, labor categories, and ODCs as necessary to facilitate the work effort, provided the overall price is not exceeded. If Esri reaches the funded not-to-exceed Task Order value and the activities are not completed, Customer may increase the order funding to allow additional work to be performed, or Esri may stop work without further obligation or liability.

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

7. Add a new **Section 7.0 Training** as follows:

#### **7.0 TRAINING**

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

- a. **"Customer-Supplied Training Data"** means any digital dataset(s) including, but not limited to, geographic vector data, coordinates, raster data reports, or associated tabular attributes supplied by Customer for use in training.

- b. **"Esri Mobile Lab"** means a service in which Esri will deliver and set up a training environment at the Customer's site for use in conjunction with scheduled Esri Training Events only. The Esri Mobile Lab will include certain hardware, software, power cords, and network switches necessary for the instructor to set up the environment.
- c. **"Esri Training Event(s)"** means an Esri site class, Esri instructor-led online class, a Customer site/private class, workshop, or coaching services.
- d. **"Esri Training Event Assistant"** means Customer's primary Esri liaison in organizing private Esri Training Events.
- e. **"Student(s)"** means a Customer employee or agent who is a registered participant in a specific Esri Training Event or Training-related services. If Customer is an individual, then Student means Customer.
- f. **"Training Pass"** means a nonrefundable, nontransferable block of prepaid training days with a fixed price per day training price throughout the Term of the Training Pass.

## 7.2 Permitted and Prohibited Uses

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

## 7.3 Esri's Responsibilities

Esri will

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

## 7.4 Customer's Responsibilities

Customer will

- a. Ensure that all Students have received confirmation from Esri to participate in an Esri Training Event. Esri reserves the right to disconnect any Student who permits unregistered student access to an online classroom Esri Training Event. In such case, the full Esri Training Event fee stated in the order will be invoiced and payable;
- b. Ensure that all Students meet the minimum prerequisites for the applicable Esri Training Event as listed on Esri's training website;
- c. Submit Student registrations in Esri site classes with payment method information at least 15 business days before the scheduled start date;
- d. Provide the Esri Training Event Assistant with a list of names and email addresses of any Students who are to attend an Esri Training Event at least 3 business days before the scheduled start date, for compliance with the US embargoed country lists and the various US Government Lists of Parties of Concern or Specially Designated Nationals lists;
- e. For classes held at the Customer-designated facility, complete a client-site training request form; consult with Esri personnel to determine classroom, computer, and network requirements; and provide all such required classrooms, computers, and network access;
- f. Ensure that Student use of Training Materials provided by Esri complies with the terms of this Agreement; and
- g. Assume responsibility for Students attending Training course(s) under this Agreement provided that the Students are acting within the scope of their employment.

- h. If the Esri Mobile Lab is used, Customer will
  - 1. Take delivery of the Esri Mobile Lab from the shipping agent, and keep it in a secure, locked area at all times;
  - 2. Immediately report any previously damaged Esri Mobile Lab equipment to the Esri Training Event Assistant upon receipt of the shipment; and
  - 3. Be responsible for loss of, damage to, or theft of Esri Mobile Lab equipment while in Customer's possession.

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

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

**7.6 Invoicing**

- a. Esri will invoice Customer upon completion of the Esri Training Event or on purchase of a Training Pass.
- b. For a multiyear order, Training days must be consumed by the end date specified on the Esri quotation. Thereafter, all prepaid fees are forfeited.
- c. Training Pass redemption rates are described at <https://www.esri.com/training/training-for-organizations/>.

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

**8. Reserved.**

- 9. Add Attachment C - Sample Task Order to the Agreement.
- 10. Add Attachment D - Time and Materials Rate Schedule to the Agreement.

Except as may be specifically modified by this Amendment, all other terms and conditions of the Agreement and any Amendment(s) or Addendum(s) remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 to the Master Agreement under Ohio MLA0064 as of the date of the last party to sign below.

ACCEPTED AND AGREED:

STATE OF OHIO  
(Customer)

By: Matthew M. Samuel  
Authorized Signature

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

Title: DIRECTOR

Date: 2/13/2020

ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
(Esri)

By: Erick Arial  
Authorized Signature

Printed Name: Erick Arial

Title: Manager, Commercial & Government Contracts

Date: Feb 10, 2020

**ATTACHMENT C**  
**SAMPLE TASK ORDER**  
Esri Agreement No. 330815  
Task Order No. \_\_\_\_\_

In accordance with the terms and conditions of the above-referenced Agreement between Environmental Systems Research Institute, Inc. ("**Esri**"), and \_\_\_\_\_ ("**Customer**"), \_\_\_\_\_ ("**Customer Address**"), this Task Order authorizes preparation and provision of the Deliverables described and in accordance with the terms, schedule, and start/end date(s) specified below.

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

In addition to the foregoing, Customer agrees that its employees, representatives, and subcontractors will cooperate and communicate with Esri during performance of this Task Order.

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

ACCEPTED AND AGREED:

[sample only—do not sign]  
(Customer)

ENVIRONMENTAL SYSTEMS  
RESEARCH INSTITUTE, INC.  
(Esri)

Signature: [sample only—do not sign]

Signature: [sample only—do not sign]

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

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

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

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

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

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

**ATTACHMENT D  
TIME AND MATERIALS RATE SCHEDULE**

See MPA Price List for Pricing.  
If this Agreement is not incorporated into a Master Purchase Agreement, see Quotation for Pricing.