

**AMENDMENT #2
TO
CONTRACT MA-080-16010892**

This AMENDMENT is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California; hereinafter referred to as (hereinafter referred to as "County"), and Environmental Systems Research Institute, Inc. (ESRI) (hereinafter referred to as "Contractor"), with a place of business at 380 New York Street, Redlands CA 92373; hereinafter referred to as "Contractor," with County and Contractor sometimes referred to as "Party", or collectively as "Parties."

RECITALS

WHEREAS, Contractor and County entered into Contract MA 080-16010892, effective January 1, 2016 through December 31, 2018 for an Enterprise License Agreement (ELA) in the amount of \$1,350,000; and,

WHEREAS, Contractor and County amended the Contract to explain the allocation of ArcGIS Online Service Credits,

WHEREAS, both Parties now desire to amend the Contract to add services and increase the Contract amount for as needed services; and,

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

1. Contract shall be increased in the amount of \$1,000,000 for a total Contract amount of \$2,485,000.
2. Amend Contract to add Appendix F – Implementation Services Firm Fixed Price Addendum and Time and Materials Rate Schedule, incorporated herein by this reference.
3. Attached is a fully executed “Appendix F – Implementation Services Firm Fixed Price Addendum and Time and Materials Rate Schedule”.
4. All other terms and conditions in this Contract shall remain unchanged and with full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the date preceding the signature.

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.



Signature
William C. Fleming

Print Name
Managing Business Attorney

Title
May 19, 2016

Date

Signature

Print Name

Title

Date

* (Pursuant to California Corporations Code Section 313, the signatures of two corporate officials are required to bind the corporation, one from each of the following two groups: If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer of any Assistant Treasurer.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signator to bind the corporation.

COUNTY OF ORANGE
a political subdivision of the state of California

APPROVED AS TO FORM:
Office of the County Counsel
County of Orange, California

Signature

By _____
Deputy

Print Name

Date _____

Title

Date

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.

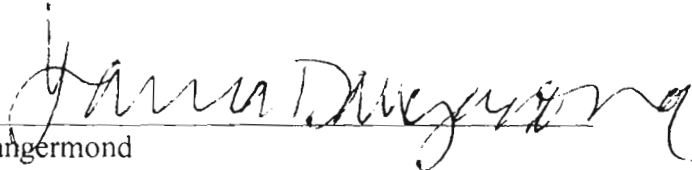
DELEGATION OF AUTHORITY

I, Laura Dangermond, as Secretary of Environmental Systems Research Institute, Inc., hereby appoint the following employee(s) to act for and on behalf of the Corporation, each acting solely, with full authority to sign agreements in accordance with the Signature Delegation Policy for the Contracts and Legal Services Department, on behalf of Esri. The authority delegation is not subject to further delegation without my prior written consent.

This authority hereby delegated to the named persons shall completely expire as of midnight in San Bernardino County, California on December 31, 2016.

In order of priority:

<u>NAME</u>	<u>TITLE</u>
KRISTA MORENO	Director, Contracts and Legal Services
CHRIS JOHNSON	Manager, Commercial & Government Contracts
ALEJANDRA MERINO	Manager, International Contracts
WILLIAM FLEMING	Managing Business Attorney
DON BERRY	Director, Operations



 Laura Dangermond
 Secretary

Effective Date: January 1, 2016

Corporate Seal of
Environmental Systems
Research Institute, Inc.



1. DEFINITIONS

"Commercial Off-the-Shelf Software" or **"COTS Software"** means all or any portion of Esri's proprietary software technology accessed or downloaded from an authorized Esri website or delivered on any media, in any format, including backups, updates, service packs, patches, hot fixes, or permitted merged copies, available under license to the general public.

"Custom Software" means all or any portion of the computer software code, components, dynamic-link libraries (DLLs), and programs delivered on any media type; provided in source, object, or executable code format(s), inclusive of backups, updates, or merged copies permitted hereunder; or subsequently supplied under this Addendum, exclusive of COTS Software.

"Deliverable(s)" means Custom Software, Technical Data, or Map Data specified for delivery to or use by Customer in the Scope of Work of an Esri Proposal or quote issued pursuant to this Addendum.

"Map Data" means any digital dataset(s) including geographic, vector data, coordinates, raster, or associated tabular attributes supplied by either party for use in the performance of this Addendum.

"Services" means consulting support specified in an Esri Proposal or quote that is being performed by Esri on a time and materials basis in exchange for compensation from Customer.

"Services Output" means any work product produced by Esri as a result of Services provided under this Addendum. Services Output can include, but is not limited to, reports, training materials, and Custom Software code.

"Technical Data" means, without limitation, all technical materials including formulas, compilations, software code or programs, methods, techniques, know-how, technical assistance, processes, algorithms, designs, data dictionaries and models, schematics, user documentation, training documentation, specifications, drawings, flowcharts, briefings, test or quality control procedures, or other similar information supplied or disclosed by Esri under this Addendum.

2. OWNERSHIP AND GRANT OF LICENSE

Except as specifically granted in this Addendum, Esri owns and retains all rights, title, and interest in Services Output and/or Custom Software delivered under this Addendum. Subject to the terms and conditions in this Addendum, Esri grants to Customer a nonexclusive, royalty-free, worldwide license to use, modify, and/or reproduce Services Output and/or Custom Software in connection with Customer's authorized use of Esri's COTS Software.

3. PATENTS AND INVENTIONS

Esri and Customer will retain title to any inventions, innovations, and improvements ("Inventions") made or conceived solely by its principals, employees, consultants, or independent contractors ("Inventors") during the term of this Addendum. Esri and Customer will jointly own any Inventions made or conceived jointly by Inventors from both parties. Where Inventions are jointly owned, each joint owner will share equally the costs of acquiring protection for the Inventions and furnish the other joint owner with assistance reasonably required for acquiring protection. Neither Esri nor Customer may license, transfer, or sell its interest in jointly owned Inventions without the written consent of the other party, which will not be unreasonably withheld.

4. COMPENSATION

On a Time and Materials Basis:

Esri will perform and invoice Services on a time and materials basis using the labor categories and rates specified in Exhibit 1 hereto for the performance period. Labor, including travel time, will be invoiced on a monthly basis for actual hours expended during the previous month. Meals will be invoiced on a "per diem" basis in accordance with the full daily limits stated in the most current Federal Travel Regulations. Other direct costs (ODCs), including travel-related expenses and meal per diem, will include a fifteen percent (15%) burden.

Esri may reallocate authorized funding between contracted activities, labor categories, and ODCs as necessary to facilitate the work requirements, provided the overall authorized funding is not exceeded. In the event that Esri reaches the not-to-exceed funding limit, Customer may increase the order funding to allow additional work to be performed, or direct Esri to stop work without further obligation or liability. If Services are required beyond the period of performance stated in the original proposal or resultant order, Esri reserves the right to escalate labor rates up to five percent (5%) per calendar year.

On a Firm-Fixed Price Basis:

Esri will invoice on a percent-complete or milestone basis as described in the Scope of Work. If the Scope of Work specifies percent-complete invoicing, Esri will prepare and submit monthly invoices based on the percent complete for each Deliverable as of the end of the preceding month. If the Scope of Work specifies milestone invoicing, Esri will prepare and submit an invoice after the completion of each milestone. Upon acceptance of all Deliverables under this Addendum, the unpaid balance of the total Addendum value will be due.

Payment Terms:

Payment will be made to the Esri address identified on original Esri invoices. Esri's payment terms are net thirty (30) days. If Customer's credit history has not been established, Esri reserves the right to require full or partial prepayment.

5. ACCEPTANCE (For Deliverables only)

Customer will complete its acceptance review within ten (10) working days of receiving each Deliverable. Acceptance for Deliverables will be categorized by Customer as follows:

- A. "Deliverable Accepted" means a Deliverable conforming to the Scope of Work with no more than minor nonconformities.
- B. "Deliverable Accepted with Rework" means a Deliverable substantially conforming to the Scope of Work but having a significant number of identified nonconformities and accepted subject to rework by Esri. Esri will rework the Deliverable to repair the identified nonconformities and resubmit the Deliverable within thirty (30) days. Customer will rerun its acceptance review for the nonconformities detected in the initial review within ten (10) working days of such resubmission and will reclassify the deliverable as either Deliverable Accepted or Deliverable Rejected.
- C. "Deliverable Rejected" means a Deliverable that fails to substantially conform to the applicable Scope of Work. Esri will rework the Deliverable and resubmit it to Customer within thirty (30) days, at which time Customer will have ten (10) working days to rerun its acceptance review and reclassify the deliverable as either Deliverable Accepted or Deliverable Rejected.

Customer will not use any Deliverable in its business operations before acceptance as described in A or B above. If Esri does not receive written notice that the Deliverable is either Accepted, Accepted with Rework, or Rejected in accordance with A, B, or C above within ten (10) working days after delivery, or if Customer uses the Deliverable in its business operations, the Deliverable will be deemed, as of the first occurrence of either of these events, to have been accepted.

6. LIMITED WARRANTY AND DISCLAIMER OF WARRANTIES

Esri warrants for a period of ninety (90) days: (i) from the date of performance of Services; and (ii) from the date of acceptance of a Deliverable, that Services and/or a Deliverable will substantially conform to the professional and technical standards of the software industry and to the applicable written specifications referenced in the Scope of Work. If Services and/or Deliverables do not substantially conform to these standards, Customer may require Esri to reperform Services and/or Deliverables at no additional cost to Customer. Services Output is provided as is without warranty of any kind.

Disclaimer of Warranties. With the exception of the limited warranty set forth in this Article, Esri disclaims and this Addendum expressly excludes all other warranties, express or implied, oral or written, including, without limitation, any and all warranties of merchantability or fitness for a particular purpose.

In addition to and without limiting the preceding paragraph, Esri does not warrant in any way Map Data. Map Data may not be free of nonconformities, defects, errors, or omissions; be available without interruption; be corrected if errors are discovered; or meet Customer's needs or expectations. Customer should not rely on any Map Data unless Customer has verified Map Data against actual data from documents of record, field measurement, or observation.

7. LIMITATION OF LIABILITY AND EXCLUSIVE REMEDY

In no event will Esri be liable to Customer for procurement of substitute goods or services; lost profits; lost sales; business expenditures; investments; business commitments; loss of goodwill; or any indirect, special, exemplary, consequential, or incidental damages arising out of or related to this Addendum, however caused or under any theory of liability, even if Esri has been advised of the possibility of such damages.

Esri's total cumulative liability under this Addendum, from all causes of action of any kind, will in no event exceed the amount actually paid by Customer for services under this Addendum from which the liability directly arose.

8. CONFIDENTIALITY

Services Output and/or the Deliverables are Esri confidential information, and Customer must preserve and protect the confidentiality of said Deliverables or Services Output. Customer agrees not to reverse engineer or decompile Custom Software delivered in object code, executable code, or similar formats (collectively, "Secure Formats"). For Custom Software delivered in source code or other human-readable formats, Customer will have met its obligations under this provision if its disclosure of Custom Software is limited to Custom Software in Secure Formats, provided that the means for reverse engineering, decompiling, or disassembling the Custom Software is withheld from such

disclosure, and the person or entity in receipt of the Custom Software similarly agrees not to perform the prohibited acts described above or allow others to do so.

Except as provided in the preceding paragraph, Customer will not disclose Services Output and/or the Deliverables to third parties without the advance written consent of Esri. Customer may make disclosures to Customer's employees to the extent reasonably required to allow Customer to use Services Output and/or Deliverables in a manner authorized under the applicable software licenses. Customer must comply with Article 8 in making any permitted disclosures. Before disclosing all or any portion of Services Output and/or Deliverables to employees or third parties as permitted in the preceding sentence, Customer will inform its employees or third parties of the obligations in this Addendum and obtain their agreement to be bound by them.

9. EXPORT CONTROLS

Customer must comply with all applicable laws and regulations of the United States including, without limitation, its export control laws. Customer expressly acknowledges and agrees not to export, reexport, transfer, or release Services Output and/or the Deliverables, in whole or in part, to (i) any US embargoed country (including to a resident of any US embargoed country); (ii) any person or entity on the US Treasury Department's List of Specially Designated Nationals; (iii) any person or entity on the US Commerce Department's Lists of Parties of Concern; or (iv) any person or entity where such export, reexport, or provision violates any US export control laws or regulations including, but not limited to, the terms of any export license or licensing provision and any amendments and supplemental additions to US export laws.

10. GENERAL PROVISIONS

10.1 Nonsolicitation. Neither party will directly solicit for hire any employee of the other party who is associated with Services and/or Deliverables called for under this Addendum during, and for a period of one (1) year after, project completion. In the event this provision is breached, liquidated damages equal to twelve (12) months of the employee's compensation, plus any legal expenses associated with the enforcement of this provision, will be paid by the breaching party to the aggrieved party. The foregoing will in no way restrict the parties from publicly advertising positions for hire in newspapers, professional magazines, or Internet postings.

10.2 Taxes. Services and/or Deliverables are quoted exclusive of all state, local, value-added, or other taxes; customs; 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, Services Output and/or Deliverables, Customer will pay the applicable tax upon receipt of written notice that it is due.

10.3 UCC Inapplicability. Deliverables and/or Services provided under this Addendum will not be governed by the Uniform Commercial Code (UCC) and will not be deemed "goods" within the definition of UCC.

10.4 Order of Precedence. These terms and conditions will take precedence over any Customer terms and conditions included in Customer ordering or authorizing documents, such as purchase orders. Any additional terms or conditions in Customer ordering or authorizing documents will be void and may be incorporated into this Addendum only by written amendment signed by both parties.

10.5 Equitable Relief. Customer agrees that any breach of this Addendum by Customer may cause Esri irreparable damage. In the event of a breach, in addition to any and all remedies at law, Esri

will have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction to prevent violation of these terms without the requirement of posting a bond or undertaking or proving injury as a condition of relief.

10.6 Claim Must Be Filed within One (1) Year. Any claim related to this Addendum or the Services and/or Deliverables may not be brought unless brought within one (1) year. The one (1)-year period begins on the date when the party knew or should have known of the claim. If it is not filed during the one (1)-year period, that claim will be permanently barred. This applies to Customer's and Customer's

successors and/or assigns. It also applies to Esri and/or Esri's successors and assigns.

10.7 Governing Law. This Addendum will be governed by and construed in accordance with the laws of the State of California without reference to its conflict of laws principles.

10.8 Entire Agreement. This Addendum is the sole and entire agreement of the parties for Deliverables and/or Services and supersedes any previous agreements, understandings, and arrangements between the parties relating to the subject matter.

EXHIBIT 1 TIME AND MATERIALS RATE SCHEDULE

Hourly time and materials labor rates have been provided for each labor category for calendar years 2016 to 2017. The hourly labor rates for services that are performed after 2017 may be escalated in an amount not to exceed five percent (5%) each year. Other allowed ODCs stated in the proposal or quote will be invoiced.

Labor Category	2016 OC ELA Rates	2017 OC ELA Rates
Sr. GIS Consultant/Project Manager (M2)	\$343	\$355
GIS Consultant/Project Manager (M1)	\$272	\$282
Sr. GIS System/Software Architect (S3)	\$356	\$368
GIS System/Software Developer (S2)	\$290	\$300
GIS Technical Specialist/Engineer (S1)	\$225	\$233
GIS Database Specialist/Analyst (DB)	\$190	\$197

Labor Category	2016 OC ELA Rates	2017 OC ELA Rates
Executive Advisor*	\$453	\$469

*The Executive Advisor category is used for strategic consulting and is only used for special engagements at the customer's request.

GIS Technical Specialist/Engineer (S1)

Hourly Rate: See Table above

Staff members in this labor category work collaboratively with software designers to perform software coding and the writing of software documentation according to design specifications developed by senior technical staff described below. As a group, these staff members are experienced in the coding of software and the creation of digital databases, as well as in software development associated with Esri's commercial off-the-shelf (COTS) software products; web, desktop, or server software development languages; geospatial data formats; and other technologies. These individuals also develop effective database designs, implement data conversion processes and procedures, and perform software and database quality control.

GIS System/Software Developer (S2)

Hourly Rate: See Table above

Staff members in this labor category support the design of technical project specifications for the implementation of application software projects and database development projects. They support the day-to-day technical activities of the project team and ensure that standard system methodologies are employed. They also perform detailed software design and detailed database conversion design and are directly involved in the coding and implementation of complex and strategic portions of application software and database conversion projects. As a group, these staff members are proficient in Esri COTS software products; web, desktop, and server software development languages; geospatial data formats; and other technologies. These staff members design and develop QA/QC programs and support design and code reviews, database reviews, and other QA/QC activities throughout the project life cycle.

Senior GIS System/Software Architect (S3)**Hourly Rate: See Table above**

Staff members in this labor category provide the overall technical vision and system architecture for large, complex systems. They support the application of sound software engineering principles and life cycle methodologies to programs/projects. These individuals are actively involved in systems architecture design, application software design, database process design, and the directing of coding development including the supervision of design and code reviews. These staff members may serve as principal investigators in focused studies or research and development projects. Individuals in this labor category have broad technical knowledge of geographic information system (GIS) applications and related information technologies and may also provide specific expertise in areas such as web-based software applications, service-oriented architectures, data warehousing, spatial analysis, and modeling. As a group, these staff members are proficient in Esri COTS software products; software and database design methodologies; web, desktop, and server software development languages; geospatial data formats; and other technologies.

GIS Consultant/Project Manager (M1)**Hourly Rate: See Table above**

Staff members in this labor category provide day-to-day consulting and management for contracted projects within Esri. These individuals work under the guidance of senior Esri managers described herein and support the design and implementation of project work plans. These staff members may provide consulting services and design and management support to software application development projects and database conversion projects. They may also conduct detailed requirements interviews, document application requirements, develop logical and physical database designs using standard engineering diagramming methodologies, design software and database QA/QC programs, and provide management oversight of daily technical activities. These staff members work with senior consulting and technical staff to design comprehensive work plans that employ standard system methodologies that define project deliverables, milestones, and realistic schedules. These individuals work with Esri administrative staff to ensure that progress and financial reporting is provided according to contract requirements.

Senior GIS Consultant/Project Manager (M2)**Hourly Rate: See Table above**

Staff members in this labor category work as project managers or project advisers, providing strategic consulting and project management activities for GIS and information technology (IT) projects. These staff members have market/application domain expertise using extensive experience in GIS and related geospatial technologies to support the successful completion of a project. Consulting activities may include strategic planning, GIS workshops and seminars development, requirements definition, application and database design, and system integration. Management activities may include defining project requirements and objectives, establishing budgets and schedules, allocating staff and other resources, and managing and overseeing subcontractor activities. These individuals may also design comprehensive work plans that employ standard system methodologies that define project deliverables and milestones and realistic schedules.

Principal GIS Consultant/Program Manager (M3)**Hourly Rate: See Table above**

Staff members in this labor category work as program directors or project advisers, providing project vision, strategic consulting, and program management activities for GIS and IT projects. These staff members apply market/application domain expertise using extensive experience in GIS and related geospatial technologies to support the successful completion of the program. Consulting activities may include strategic planning, review and oversight of requirements definitions, application and database design, and system integration. Management activities may include defining program requirements and objectives, establishing budgets and schedules, allocating staff and other resources, and managing and overseeing subcontractor activities. Staff members in this labor category work with senior client staff in coordination with Esri senior management to resolve issues and support successful project completion.

GIS Database Specialist/Analyst (DB)**Hourly Rate: See Table above**

Staff members in this labor category provide database development support in creating cartographic and digital data products. These staff members have expertise that includes the performance of hard copy to digital data conversion tasks, data migration, and translation activities utilizing advanced processing techniques in ArcGIS. These individuals design, develop, and implement efficient production tools and workflows in accordance with approved project plans and design parameters.